

Minnesota Attorney General: Administrative Rules Proceedings

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BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

OF THE STATE OF MINNESOTA

In the Matter of the Proposed Adoption of Rule of the Department of Public Welfare Governing the Administration and Provision of Protection Services to Vulnerable Adults. (12 MCAR § 2.221)

OAH Docket No. DPW-82-006-JL

4th Floor, Conference Room
Centennial Building
St. Paul, Minnesota
Wednesday, October 14, 1981

Met, pursuant to Notice at approximately 12:30 p.m.

BEFORE:

JON LUNDE: Hearing Examiner.

APPEARANCES:

DIANE MASTERS: Special Assistant Attorney General, appearing on behalf of the Department of Public Welfare.

ZETTA FEDER: Department of Public Welfare.

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P R O C E E D I N G S

EXAM. LUNDE: My name is Jon Lunde, I'm a Hearing Examiner with the State Office of Administrative Hearings, and it's my purpose to conduct this hearing this afternoon and then to issue a Report with respect to the rules that are being proposed by the agency. This particular matter bears Docket No. DPW-82-006. It's being held pursuant to a Notice and Order for Hearing that was issued by the Commissioner of the Department of Public Welfare on August 26, 1981. The hearing pursuant to that Notice is being held on the 4th Floor, Conference Room A, at the Centennial Office Building in St. Paul.

The agency is represented by Diane Masters, who is a Special Assistant Attorney General, and she's sitting in the gray sport coat up front. Seated immediately to my left is Susan Donahue, who is a law student with the William Mitchell College of Law, and she will be assisting me in the preparation of the Report that I issue in this matter at the conclusion of the hearing.

The purpose of the hearing this afternoon is to determine four things, pirmarily. Number one is whether or not the department has statutory authority to adopt the rules proposed. Second, whether or not they have complied with the procedural prerequisites to adopt the rules; and those procedural prerequisites are set forth

in the Administrative Procedures Act. The department will be submitting various exhibits showing and documenting that they have complied with the notice requirements and the other requirements of Ch. 15. Third, the agency, today, must establish that the rules they're proposing are necessary and also that the rules are reasonable. And the purpose of that demonstration is, of course, to avoid the adoption of rules that are inappropriate.

When the department has finished its presentation this afternoon, which they will make as soon as I'm done with these introductory commments, members of the public who are present here, that have any comments to make, will have an opportunity to make those comments or ask any questions that they have. When a member of the public does come up, I'd ask them to sit at the microphone here. Since we are tape recording the hearing, I would request when they do come forward that they identify themselves and spell their last name, indicate any association that they're representing, and then direct their questions specifically by name to whatever individual they wish to address, or if they simply have a statement, to go ahead and proceed to make that statement.

Following the conclusion of this hearing, if there

are further comments that members of the public wish to submit to me, they can do so. My name, again, is Jon Lunde, the address of our office is 1745 University Avenue, Room 300, St. Paul, Minnesota. If you forget that address, it's listed in the Notice of Hearing and it's also listed on this rule hearing procedures form that's available at the registration desk in the front of the room. That has our office's address, and it also explains the procedure we're going to follow here today. Written comments must be submitted to me within five workin days, or no longer than 20 calendar days, depending on the time period established at the hearing today. And it's my intention at this point to hold the record open for a period of 20 calendar days for the submittal of written comments from the public following today's hearing. Are there any comments or requests in that respect? Ms. Masters, does the department have any objection to a 20-day comment period?

MS. MASTERS: No, Mr. Lunde.

EXAM. LUNDE: OK. Then the hearing record will remain open for 20 calendar days following today's date for the submittal of any written comments that the public may have. And those comments must be sent to me or delivered to our office at the address noted, and they must be received, to be timely, by 4:30 p.m. on the 20th

calendar day.

Following the conclusion of that 20-day period, I will proceed to write a Report with respect to these rules. That Report will cover the issues of need and reasonableness, and authority and compliance with Ch. 15, and will make certain recommendations with respect to the rules. It may also recommend that certain rules not be adopted or that additional rules be adopted, depending on public comments that are made here today. A copy of that Report, when it is available, will be mailed to any party who so desires to receive one. If they would simply fill out an envelope that's available at the registration desk, printing their name and address clearly on the envelope.

Once the Report that I issue is submitted to the agency, the Commissioner will determine what action he determines should be taken with respect to the rules. Some of the things that I may conclude in my Report are not binding on the Commissioner, other things will be binding, and as to those matters, you can refer to Ch. 15 and the Report to determine which are binding and which are not binding. If the Commissioner finally adopts rules after waiting the specified five-working-day time period before taking any final action, he must then submit those rules again to our office, in the event he

makes any changes in the rules that deviate from the Report and Recommendations that I issue. During the five-day period that he waits before taking any action, members of the public who may be disatisfied with recommendations that I have made, can also submit further recommendations to the Commissioner asking for specific changes. When the Commissioner submits the rules in their final form to the Attorney General for approval as to form and legality, members of the public, again, have an opportunity to submit comments to the Attorney General with respect to the rules in their final form. And if you desire to be notified when the department will make that submittal to the Attorney General's Office, please indicate on the registration form at the desk. And I would ask that everybody who is present today, that they would sign in and indicate that they were present.

And I intend to, with respect to those individuals who wish to make comments or ask questions today, I will follow the order listed on the registration form, in terms of calling people up to the front. However, those individuals who have comments that might be more than 15 minutes in duration, I will ask them to pass their comments so that people who have shorter comments can make theirs and be on their way, because it is kind of an uncomfortable room in terms of temperature, and it's very

crowded. So, maybe by getting the shorter comments out of the way first, it will make it easier for everybody.

Are there any questions that anyone has with respect to this hearing or the procedure that's going to be followed?

I should add that if anyone wants to get a copy of the transcript of this proceeding, they can make that request to me and I'll see that a transcript is prepared; they will be billed for the cost of preparation.

OK, with that preliminary statement taken care of, Ms. Masters, perhaps you would like to introduce the agency panel today?

MS. MASTERS: Thank you, Mr. Lunde. I have seated at my left, Ms. Zetta Feder, and she is an Adult Protection Consultant, and will be providing the agency testimony here this afternoon. Ms. Carol Watkins is the Supervisor of the Adult Services Unit, and she is seated in the audience but will be available as a resource person if necessary.

EXAM. LUNDE: OK. Before we accept the agency exhibits with respect to compliance with Ch. 15, I want to point out two other things, or raise two issues. One is, if there's anyone here who is acting on behalf of an association in a capacity of a lobbyist, you do have an obligation under the law to register with the State

Ethical Practices Board. If you have any questions, at all, with respect to your status as a lobbyist, I would refer you to the definition that's contained in the Notice of Hearing, and also on the rule hearings procedures outline form that's available at the desk. And that gives the address of the Ethical Practices Board, if you have any inquiries to make.

And second, today I expect the agency will simply offer the Statement of Need and Reasonableness into evidence as a summary of their testimony today, because that Statement has been available, now, for 25 days and that will expedite the conduct of this hearing. Are there any objections if that exhibit would be received, in lieu of them going through the actual document and repeating that testimony? OK, good.

Ms. Masters, do you have any exhibits to present at this time? If so, would you indicate for the record what those exhibits are?

MS. MASTERS: Yes, thank you, Mr. Lunde. I do have a number of exhibits, and I will read them off. The first is DPW Exhibit A, which is a Notice of Hearing. DPW Exhibit B is an Affidavit of Mailing. DPW Exhibit C is an Affidavit of Additional Mailing. DPW Exhibit D is a Certificate. DPW Exhibit E is the Statement of Need and Reasonableness. DPW Exhibit F, the Notice of Intent

to Solicit Outside Opinion with the letters received in response to that Notice attached. DPW Exhibit G is the list of agency personnel who will be testifying. DPW Exhibit H is a Notice and Rule published in the State Register. DPW Exhibit I is the August 20, 1981 submission to the Chief Hearing Examiner from Zetta Feder and includes the Order for Hearing. DPW Exhibit J is a copy of changes that were made to the rule after submission to the Hearing Examiner, but before they were published in the -- the entire rule was published in the State Register. So, these are changes that are reflected in the State Register copy of the rule. And DPW Exhibit K, which is the amendment which is being proposed here today. At this time I'd like to take the opportunity to read the amendment being proposed into the record.

The amendment is being proposed to Section E, which is on page six of the rule that was provided you here today. And for purposes of clarification, the first sentence under No. E. -- letter E., was changed to include an additional phrase. And that first sentence now reads, "If a vulnerable adult, who is the victim of abuse or neglect by a caretaker, refuses an offer of services from a local social services agency, and in the judgment of that agency, the vulnerable adult's safety or welfare is in jeopardy, the agency shall seek the

authority to intervene on behalf of that adult."

EXAM. LUNDE: Are you offering those at this time, then?

MS. MASTERS: Yes, I am.

EXAM. LUNDE: All right. Those exhibits -- Agency Exhibits A through K will be received at this time to demonstrate compliance with Ch. 15 procedural requirements.

(DPW Exhibits A through K received into evidence.)

EXAM. LUNDE: Those exhibits are available for public inspection if there's anyone who would like to examine them now or at the conclusion of the hearing, feel free to do so. And I will note that the Statement of Need and Reasonableness is received in lieu of testimony of the agency. And copies of the Statement of Need and Reasonableness, the rules that are being proposed, and also the amendment that's being proposed by the agency, are available at the front desk, if there's anyone who hasn't gotten a copy of those.

MS. MASTERS: Thank you. At this time, I'd like to turn this over to Zetta Feder who is the agency person who will be testifying in support of Rule 221.

MS. FEDER: I'm Zetta Feder, and I'm the Adult Protection Consultant in the Adult Services Unit, Division of Social Services here in the Department of

Public Welfare. My responsibility is to set standards and give technical assistance to counties, so that they can carry out their responsibilities under the Vulnerable Adults Act, and generally so that they can do a good job to protect vulnerable adults from maltreatment.

This is one of three rules that will be promulgated to implement this law. And I think it's very important to make it clear here because there's been a lot of confusion about rules and which rules are responsible for what. The Licensing Division of DPW, Department of Public Welfare, will be promulgating a rule which will bind facilities licensed by DPW to certain procedures. The Minnesota Department of Health will be promulgating a rule which will bind Health Department licensed facilities to certain procedures so that they can implement the requirements of the Act. And this proposed rules is to carry out the requirement of subd. 16C. of the statute which reads, "The Commissioner of Public Welfare shall promulgate rules as necessary to implement the requirements of subd. 10." Now, subd. 10 of the statute deals solely with the responsibilities of the county welfare department, or the local social services agency, as we call them in this proposed rule. It's very important to keep that in mind because there were certain things in the law that are of some problem, for example,

in the area of record, but records are in another subdivision of the law, and so this rule cannot deal with record retention because this must deal strictly with subd. 10. The kinds of things that the licensing agencies will be dealing with will be facility abuse prevention plans, individual abuse protection plans, procedures for facilities to follow in order for them to implement the requirements of the law.

Now, our department has had ongoing communication with a variety of persons and groups since the passage of the Act, and through this dialogue with counties and persons interested in the law, we've really learned a lot about the issues necessary for implementing the law. There have been a number of meetings of persons representing various concerned divisions in our department, here, and this encompasses practically the whole department, division -- the Chemical Dependancy Program Division; the Mentally Ill Program Division; Mental Retardation Program Division; Aging Program Division; Deaf Services Program Division; Blind Services Program Division; Residential Insitutions, this is the division that is responsible for our state hospitals; Client Protection Office, an advocacy office; Social Services, of course; Licensing Division. So, there's been lots of dialogue, lots of conversation within the

department. There's also been a lot of dialogue with people in the community, social services supervisors, line staff, administrators, representatives of law enforcement, persons concerned about domestic violence, persons representing key mandated reporters, medicine, nursing, nursing homes, hospitals, psychologists, persons representing vulnerable adult population groups, people active in Mental Health Association, Minnesota, Minnesota Association for Retarded Citizens, Minnesota Senior Federation, Minnesota Coalition of Battered Women, Minnesota Chemical Dependency Association, Minnesota Council for the Handicapped. There have been discussions with representatives of minority groups, state hospitals, Assocation of Health Care Facilities, the Association of Residents for Retarded Citizens, Advocates of Nursing Home Residents, Association of Voluntary Social Services Agencies and others, emergency room staff of hospitals. It's just been a constant dialogue with -- and this has flushed out many, many issues which are of concern, not only for this rule, but in coordinating with other state agencies, the Health Department, with our own licensing group, just devising a form for getting reports from counties, as we've needed to know. OK, what are the issues, what should we want to know, this beginning round? And we have gained a better understanding of

what's needed to implement the law. I'm sure that we have, yet, a lot to learn, and we hope that time and experience will serve us well there.

With this comment, time and experience, I think it's important to mention that we've tried to keep this rule really to what's absolutely necessary at this point in time for implementing the law. I'm sure there are other things that are not contained in the rule. Rules, as well as laws, even, can change over a time, as we start to find out what's needed. And we've made an attempt to deal with bare-bone essentials in hopes that we will learn from experience and then be able to modify as we go along.

I'd like to start walking through the rule and I hope that -- I'll try to help you, in walking through, and I'm looking at the Statement of Need at the same time, I'm going to just try to hit some high points and maybe to give some illustrations that have not been given in the Statement of Need.

A, in the rule, applicability. There's sometimes confusion about what adult protection means, and this statement is to make clear that this rule doesn't encompass all of the services which might be thought of as services needed toward the goal of protecting adults. These supportive services, as we call them, are such

things as homemaker services, daycare services, counseling services, chore services and many others. This rule is strictly -- the sole purpose is to implement the requirements of subd. 10 of the Vulnerable Adults Act.

If you'll look at definitions now, on -- and if you'll refer to page two of your Statement of Need, the definitions of number 1., abuse -- these following definitions are definitions that are identical to the definitions used in the law: Number 1., abuse; number 3., facility; number 7., licensing agency; number 10., report; and number 13., vulnerable adult. Now, they're included in the rule because we really believe it's crucial to the ability of those affected by the rule to have the definitions all in one place in order to comprehend the rule's meaning and effect.

So, I would like to move, now, to number 2., the definition for caretaker. The first sentence of the definition is the one contained in the law. The second sentence is to make clear that a person is not a caretaker merely because of providing financial support to another person. Number 3., as I said, facility is the same as that in the law. Number 4., the definition for false. This is best explained by looking at number 12. on page five of the Statement of Need, and that is --

that gives the reason for using the term unsubstantiated in the rule rather than the term false, which is used in the statute. The effort here is to prevent confusion for county agencies. They've been accustomed to using three terms for classifying reports of child abuse: unsubstantiated meaning that you can disprove a complaint to the satisfaction of the agency; unable to substantiate, meaning that you can neither disprove or prove a complaint; and the third one is substantiated, when you can prove that a complaint is valid and does mean that there has been abuse or neglect. The Child Protection Rule which is 12 MCAR § 2.207, that's Department Rule 207, uses the term unsubstantiated and false interchangeably. They use a phrase which says "unsubstantiated or false", and reports that have been submitted to our department have been submitted -- the classification has been -- three classifications, unsubstantiated, unable to substantiate and false. So, we purposely use the term unsubstantiated rather than false to maintain consistency with the child abuse classification system. Heaven knows there's plenty for the counties to learn without having to develope a new vocabulary. And another very important reason is because false is sometimes -- there have been many instances where it's been used to define the motive of the

reporter. Sometimes been used to describe a report that was not made in good faith. And, so, this is to make very clear that we're talking about a certain classification that the counties have been accustomed to using.

Number 5., host county, that's on page two of the rule, for those who walked in late, and on page -- also on page two of the Statement of Need. This is the commonly accepted term for a county in which a facility is located.

Number 6., impairment of mental or physical function or emotional status. Now, this phrase is contained in the statute in B.3., under the third definition of vulnerable adult. This functional definition says, "A person 18 years of age or older who, regardless of residence, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status." Now, we've made a special effort to give some kind of a laundry-list definition for this term because there's been an enormous number of questions. There seems to be a great judgment call when it comes to this term, apparently greater than a judgment call when it comes to the definition of abuse of neglect, and constant calls from counties and others, what does this really mean?

And, so, we felt that it was important to give some kind of guidelines as to what this really means.

If you'll refer to the bottom of page two and all of page three and part of page four of the Statement of Need and Reasonableness, to summarize this, the broad definition is really to carry out the legislative intent as revealed in the tapes of the Legislature's committee deliberations. From these tapes, it's clear that there was -- clear intent to cover all potentially maltreated adults in an effort to make up for the lack of protection and the lack of reporting in the past. In a March 4 tape, a question was asked, isn't this definition overbroad to a certain -- won't it be just too inclusive? And the answer was, yeah, I suppose you could say it's overbroad to a certain extent, but this is intentional, just too many maltreated adults have been missed in the past, there's just been too long a history of nonreporting and nonattention to protecting these people. In the March 6, criminal law subcommittee of the Senate Judiciary Committee in their hearing, the question was asked of the committee, is anyone concerned about our using too broad a brush? And the answer was, if anything, we're concerned about using too narrow a brush.

An interesting thing came up in the hearings in the definitions, when definition for abuse was being

discussed, the author asked the committee to help him devise a phrase to suggest constant harassment, hounding, bullying of a person, and that's when the phrase came up "persistent course of conduct intended to produce mental or emotional distress", and that came up as part of the definition for abuse. This is just an illustration of this attempt to include in this law a lot of various kinds of abuse that certainly could not be thought of as producing injury, but various kinds of abuse, including verbal abuse.

Another reason for the board definition being used here is that many county staff, as well as many advocates in the community, believe that we really should allow ourselves the benefit of time and experience to learn what the real needs are and to learn the limits of our own capacity to respond because the purpose of this law was to protect adults who cannot protect themselves, we want to learn who these individuals are and what our social services system can reasonably be expected to do to meet their needs. Ten years ago the country was not really aware or accepting of the fact that there was a great deal of child abuse and then reporting laws were passed by state after state, and there was really surprise at the amount of child maltreatment coming out of the woodwork, you might say. I'm afraid we're very

likely to find a similar thing when it comes to adults. At the time our law was being deliberated, 11 states had passed such laws and 11 were contemplating the passage of such laws. And those states which have instituted reporting laws are finding an unanticipated number of people, of victims being reported, particularly shocking has been the number of elderly suffering maltreatment in their own homes, with the high number of the perpetrators being relatives. And these elderly persons are not physically or mentally impaired, by any definition, but have not reported because of such things as shame, fear of the consequences, embarrassment, it's -- we feel it's very important to be sure that these people are protected.

Our department is very much aware of the shrinking resources for delivering social services and we've taken this into account when drafting the rule. We do strongly support the intent behind this law, and we hope that our system can be responsive to the needs. We know we'll do the best we can and we know the counties will do the best they can, and we know, also, that they have a lot to learn, and we hope that as we do learn, we'll be able to sharpen up and shape our program accordingly.

I'd like to move now to number 8., the definition for local social services agency, on page three of the

proposed rule, and on page four of the Statement of Need. This definition -- the statute says local welfare agency, but most county agencies have dropped the word "welfare" from their title, and they use social services instead. In addition to this, local social services agency is the term used in our department's program rules and we want to maintain consistency here.

Number 9., neglect. Essentially, this is the definition used in the statute. The phrase, "or to ensure the supply of", has been added in the rule because not all caretakers supply food, clothing, shelter, health care or supervision directly, but are still responsible for their being supplied, and would conceivably be guilty of neglect if these items were not supplied.

Number 11, state agency. This, of course, is to identify our department as the state agency to which this rule refers.

Now, I'd like to start with C. on page three of the rule, and page fi --

EXAM. LUNDE: Before you go on, could I -- is this helpful to everybody? I want to make sure we have enough time today, if possible, to get all the comments. If this is repeating what is in the Statement, if people are familiar with that, maybe we can dispense with the things like defining why we define the commissioner. I think

that that would be pretty apparent to most people. But, is this helpful, or to people here wish we could dispense with this elaborate explanation and get right into your comments and questions? Are there any comments on that? Could I see a show of hands if there's anyone here that finds the explanation helpful or they want it to continue?

(no response)

EXAM. LUNDE: In view of that, Ms. Feder, perhaps we could get right into --

MS. FEDER: Do I ever feel rejected.

EXAM. LUNDE: -- public comments and questions on the rules so we get to the heart of the concerns.

MS. FEDER: I was just getting to the good part.

EXAM. LUNDE: Just let me grab the registration form and we'll get right into public comments and questions, then, so I know who to call first.

As I indicated earlier, I'm going to call people in the order that they registered, and if they have a statement or questions that they expect to be of more than 15 minutes duration, I would like them to pass so that we can take those persons first who have the shorter comments.

MS. MASTERS: Excuse me, Mr. Hearing Examiner.

EXAM. LUNDE: Yes.

MS. MASTERS: Could Ms. Feder just make a brief

comment regarding the reasoning behind the amendment that was proposed here today?

EXAM. LUNDE: That's fine, I think that's a good idea if you want to do that, Ms. Feder.

MS. FEDER: OK. If you would turn to page six, that says E., actions on behalf of a vulnerable adult who refuses services, this is on page six of the rule, and page eight of the Statement of Need. As has already been stated by Ms. Masters, there -- we have introduced an amendment, actions on behalf of a vulnerable adult who refuses services, if a vulnerable adult and the amendment is, who's the victim of abuse of neglect by a caretaker, refuses an offer of services from a local social services agency and in the judgment of that agency, the vulnerable adult's safety or welfare is in jeopardy, the agency shall seek the authority to intervene on behalf of that adult. The amendment has been inserted as a clarification. As stated in the Statement of Need, subd. 10 of the statute mandating the agency to seek authority deals with caretaker situation, and the caretaker phrase is to clarify the applicability of this in the event it wasn't already clear. Thank you.

EXAM. LUNDE: Will that do it? Do we have an Eric Janus present who wishes to speak?

MR. JANUS: My name is Eric Janus, J-A-N-U-S, I'm an

attorney for Legal Advocacy for Developmentally Disabled Persons, Minneapolis, 222 Grain Exchange Building. I'm here representing an individual person who was instrumental in the development of this law, as was I instrumental in drafting the law. I've just a few comments.

First of all, I want to assure Ms. Feder that the reason we wanted to move on to the comments was because of the completeness of the written Statement of Reasonableness and Need. I want to compliment the agency in the relative speed and efficiency with which it's put together the rule. And I have just a few particular comments about it.

VOICE: May we ask the speaker to speak a little louder please (unclear)

MR. JANUS: First of all, I am concerned about the use of the word "unsubstantiated and false" in the way in which they're used in the rule. As the Statement notes, the word "false" is used in the statute, and I'm afraid that the definition of the word "false" on page two, line 11, of the proposed rule, that's section B.4., may be misleading if it's read out of context. To a lay person reading this definition which says, "false" means unsubstantiated. I believe to lay people, the word "unsubstantiated" means unable to be proved, rather than

disproved, as it is further defined in this rule. And I'm afraid that this definition of false -- again, if it's read out of context without following through in the rule and finding out that the word "unsubstantiated" means essentially what the word "false" does, that the impression could be created that the word "false" as used in the statute, is being considered by the agency to mean unable to be substantiated, and I think that would have unfortunate consequences if that were the impression. I guess my suggestion would be that, first of all, the word "false" is not -- so far as I can tell, is not used in the rule at all, and I'm not sure that there's a need to define it then. The only reason in the rule, as far as I can see, for having these categories, is that the local agency has to categorize complaints for the purpose of reporting to DPW and for the purpose of reporting to the victim and the alleged perpetrator. And I would suggest that either they use -- either the word "false" can be used, or if the agency feels that that could be misleading, that the term "disproved to the satisfaction of the agency" be used instead of the word "insubstantiated", since, I think, that has a clear meaning, whereas the word "unsubstantiated", I think, may have unclear meanings to various people.

With regard to section F.3., I believe, -- I'm

sorry, C.3.f. on page four of the proposed rule, this section requires local agencies to have discussion with other residents of the facility, unless the complaint is unsubstantiated, to determine whether the conditions which resulted in the reported abuse or neglect, place other vulnerable adults in jeopardy of being abused or neglected. I have no quarrel with that as far as it goes. The statute indicates that the local welfare agency shall also investigate to determine whether the conditions which resulted in the reported abuse or neglect place other vulnerable adults in jeopardy. And I'm concerned that this section of the statute may create the impression that the investigation need only consist of discussions with other residents of the facilities. Whereas, I believe that that might be a part of an investigation, but need not -- the impression should not be given that that necessarily satisfies the statutory requirements of an investigation.

The last point I want to make is that -- and this is in part a comment I want to make, and also, I guess, there's a quest -- implicit in it is a question to the agency, and that is that, as pointed out by Ms. Feder, the applicability section, Section A., indicates that the rule governs the administration and provision by local social service agencies of protective services to

vulnerable adults which are required by the Vulnerable Adults Protection Act. In reading the rule though, there's no general requirements governing the provision of social services. There are two specific places where the provision of social services are referred to in the rule, one is with respect to investigations by the host county, where the county of financial responsibility is another county, and that's on page five, lines 23 through 2 -- and 24, that is to say, where the rule says that the host county must take whatever measures are necessary to correct the situation, or to remove the adult from the facility. In addition, on page six, section E., where the vulnerable adult refuses services, then there are a coup -- four sorts of actions spelled out that the agency may take. My concern is that there's no general provision implementing the requirement of the statute that emergency and continuing protective social services be provided for purposes of preventing further abuse or neglect, et cetera. And I'm wondering whether the omission was purposeful on the part of the agency with the thought that the statute is clear, or whether there was some other reason for it because, again, I am concerned that local welfare agencies not be -- not get the misimpression that their responsibilities are finished when they finish their investigation.

Just let me add one more thing. I think that subd. 10 could be interpreted -- that is the provision of emergency and protective social services. Those sorts of services may have to be provided before a complaint can be absolutely substantiated or disproved. In other words, it may be clear that the person is in need of emergency or continuing social services, even though it cannot be proved that the need was created by neglect or abuse, and I think that the statute may be interpreted in that way. And, again, I think that might be an appropriate area in which to provide some guidance. I'm wondering whether there was some reason for not doing that other than the fact that I never commented on that when I looked at the drafts. So, that concludes my remarks, unless there's an answer.

EXAM. LUNDE: Did you want to responde, Ms. Feder?

MS. FEDER: If I'm understanding you, are you suggesting that the -- subd. 10 is not explicite enough of the statute in requiring the agency to immediately investigate and offer emergency continuing protective social services for purposes of preventing further abuse of neglect, or for safeguarding and enhancing the welfare of the abused or neglected vulnerable adult?

EXAM. LUNDE: Could you speak up a little bit? There's people in the back who can't hear.

MS. FEDER: Yeah. Because I think that's basically the idea that it would be redundant for the rule to repeat that but -- Am I hearing you right?

MR. JANUS: I don't disagree with you necessarily. What I'm concerned about, though, is that the rule says that it governs the provision of social services. And I think it might be clearer, so that there's no misunderstanding, and that -- so the omission of those sort of services and those situations isn't read as having some significance. It would be clearer, perhaps, if the applicability indicated that it governed the investigation and reporting under the Vulnerable Adult Protection Act, and some aspects of the provision of social services, so that it's not read as stating the universe of what the local agencies' responsibilities are.

MS. FEDER: Thank you.

EXAM. LUNDE: That it? Iris Freeman, I hope I have the first name right?

MS. FREEMAN: My name is Iris Freeman, F-R-E-E-M-A-N, and I'm speaking on behalf of Nursing Home Residents Advocates. I discovered in the last few minutes that an absolutely unrehearsed bit of colleagueship, Mr. Janus has stolen my testimony. You did work very, very hard with us beforehand, and that's why we had so much background. The passage, as the

agency has pointed out, passage of this law was critical because it began to forge a connection between those of us who know of harms to vulnerable adults and those who are already required by law to take some action law enforcement licensing agencies, ways to trigger the system. But, further and crucial for today's enterprise, is that the law set out and the rule will define a specific role for the investigation, counseling and protection by county social service agencies, a role that is individualized to the case, specific to the client, and a matter of protecting the victim. This draft rule accomplishes virtually all that was needed to define that role, and I'm hopeful that subsequent working guides, and training and colleague-to-colleague meetings will continue to develop and refine the most efficient and effective ways for helping. But, I had three concerns, three suggestions. The first refered to the problem of definition of false being coterminous with unsubstantiated. They're not equal, literally they're not equal in the minds of the consumer. And I think in consumer experience with reports from the Office of Health Facility Complaints, we've found that where a report is found to be unsubstantiated, the consumer takes it as a slight, as being told, no, that never happened, where the agency was simply saying, we couldn't tell.

There is a difference in consumer's minds between that which is indeterminate, or inconclusive, and that situation in which the evidence really did refute the allegation that had been made. And I'm concerned, particularly, that limited evidence which may be a practical factor in many, many cases, should not alone impune the report, should not tell the reporter that she or he has wasted his time. Also, because the statute does have a penalty for false reports made in bad faith, I'm concerned that a false report, even one made in good faith -- a good faith report found to be false, despite the fact that false merely means unsubstantiated, could put the reporter in jeopardy of some sort of penalty. I think we just need, for difficulty's sake, three categories. I think we need one that's called substantiated, it happened, we found that it happened. One that's called false, we found that it didn't happen. And one that's simply called inconclusive or indeterminate, we couldn't tell. I think that would be a clearer way of pointing out that as an investigating person or an investigating agency, when you go in, there are three findings that you can make.

The second matter that I wanted to bring up was on page four, in number 3., investigations related to a facility. I'm very, very pleased to see that there is a

mandate in the rule for an on-site visit, that is crucial to any complete investigation.

I was concerned, however, that discussions with the reporter, which come under that same on-site classification, may need to be somewhere else, the reporter may not be calling from the facility, or wish to be identified within the facility. The reporter may be someone with whom you can deal only by phone, or in writing, and so I don't want to tie the investigator or investigating agency to speaking with that reporter on the site of the facility. Similarly, in requiring a discussion with the alleged perpetrator, that perpetrator may not be there, that perpetrator may have been someone who came in a basement door. I want to be sure that the investigating agency or investigating social worker not be too strong there.

In the matter of number 3., discussion with other residents, unless the complaint is unsubstantiated. My confusion and/or fear there is one of timing. At what point does the investigator decide whether or not to talk to other residents, well, not until it's proved to be unsubstantiated or false, that may not work. It may be only the witness of various other residents which helps to substantiate or to prove that an abuse or a neglect has occurred. And so, I want to fix that wording up so

that the investigator, in the course of doing a review of the situation, have the opportunity, in fact the encouragement to speak with other residents of the facility.

The third concern I had was that the rule emphasizes the investigatory reporting -- recording roles of the local social service agency, but said a bit too little about any ongoing protective service, and I, too, was making reference to that section A. in subd. 10, section 1. of the statute. That the local welfare agency offer emergency and continuing protective services for the purpose of preventing further abuse and for safeguarding the welfare of abused or neglected vulnerable adults. Somehow, I believe, that the rule would be strengthened by a limited piece of language which defines where the agency needs to stay involved, beyond the finding of the report, or see to it that some other agency is involved in the protection of the resident. And I don't mean to imply here that that will happen only in the case where an alleged abuse or neglect is substantiated. There may be numbers of cases in which the actual evidence leads the investigating agency to a finding of inconclusive. We don't know exactly what happened here, we can't report the need for some specific penalty because we don't know exactly who did what to this person, but we believe that

this person is in jeopardy or could be in jeopardy, and that someone needs to keep some ongoing protective watch of that client because it's a questionable enough situation that the client's safety will be well served by someone checking back beyond the actual investigating occasion.

Those are my three concerns. I want to thank you for the opportunity to comment on this draft rule.

MS. FEDER: Thank you. I would really appreciate your submitting the specifics of your suggestions for the actual wording. If you could submit that, it would really be helpful.

MS. FREEMAN: I'll give it a crack.

MS. FEDER: I'd appreciate it.

EXAM. LUNDE: Mary -- excuse me, Joy Samsel and Jeannette McDougal.

MS. SAMSEL: I'm speaking for Jeannette.

EXAM. LUNDE: OK. Perhaps you could --

MS. SAMSEL: I must say in an opening statement, that I'm amazed to see so many people here. When I went intitially to the United Handicapped Federation in 1978, following my rape and spoke on behalf of those handicapped people who could not report their assaults, and then we hade a conference in July of 1979, I never expected to get into legislation. And then I met

Jeannette, and things have sort of snowballed, and this is the final cumulation in terms of implementation of the rule. I'm totally amazed to see so many people here.

Yes, Jeannette and I do have some comments. We, like Eric and Iris, share our concerns with the problems of unsubstantiation and false. In fact, I've also discussed this with Jane Hoyt (ph), who's a well-known nursing home activist, and we are all in total agreement that something has to be done with that. We are particularly concerned, and I'm sorry I don't have the citation in the original law, of a part that was added by the house author, that dealt with the destruction of unsubstantiated records. These would be records that did not have revealing names on them, but just unsubstantiated records. And the question we posed is, what, if in patchwork crossword puzzle-style fashion, the pieces of the puzzle, particularly when you're dealing with non-communicating people, and Iris made this point before, the affects of assault is only obvious after a period of time, or is -- affects more than one person, is you're talking about a facility. And things that were presumed accidents were later -- there were potential motives for it. So, there was a misreading, so to speak, at the time of the signs. So, this has been a real problem, and I want to call your attention to page seven,

section B., where it refers to the prior injuries. Now, the question that Jeannette and I have very clearly is, what are you going to know about the prior injuries if you've destroyed the records? If you see this as possibly developing as a pattern over time, and affecting more than one individual, if you're talking about a facility of some sort, this is going to be compoundedly difficult to find out about.

Another question we wanted to add was the very bottom line on the bottom of page five, where it discusses expertise in areas such as behavior modification. Jeannette, Jane and I have -- among several other people, have been working for more than a year, and are taking to the Legislature, and we have authors already, and we've sent out preliminary drafts, of a bill that will deal with behavior modification. And we feel that since there has not been a wide public discussion including mentally retarded, mentally ill consumers, advocates and others, that that should be abated, at least for the time being. We have been working on this draft for more than a year, and after numerous rewrites, I don't even remember how many, it will be ready to go to the Legislature. So, we feel that that's an issue that can -- really deserves full public disclosure, that has not been available before and we

would ask to have some abeyance in that particular area, with an understanding that the law will be introduced in January.

MS. FEDER: May I just ask for some clarification?

MS. SAMSEL: Yes, if I can give it.

MS. FEDER: When you mentioned the issue of destroying records, what were you referring to in the rule that has to do with --

MS. SAMSEL: It's in the law itself.

MS. FEDER: OK.

MS. SAMSEL: Not in the rule.

MS. FEDER: OK. And what --

MS. SAMSEL: It talks about destroying of -- they use the word "unsubstantiated" in that case, records after a time period.

MS. FEDER: OK. So it's the concern about the use of the term?

MS. SAMSEL: Yeah.

MS. FEDER: OK. But, you weren't suggesting anything in the rule to deal with records, only the use of the term, you're still concerned about that?

MS. SAMSEL: Yeah, recognizing that if there are events over a period of time, if you've destroyed the records, it may be impossible to substantiate things when you could get a little bit from one situation and a

little bit from another situation, and I would suggest in patchwork style put it together and begin to see a pattern.

MS. FEDER: Of course, this is something that we can't deal with in this rule.

MS. SAMSEL: Yes, I'm understanding that.

MS. FEDER: But, the term we could. Now, on the last thing, the behavior modification, what was it -- was there something in the rule that you were concerned about?

MS. SAMSEL: You were taking about consulting people who had expertise.

MS. FEDER: With expertise, right.

MS. SAMSEL: Yes. And I was saying that we really haven't had a lot of public discussion on the use of that, and that we were introducing legislation in that area.

MS. FEDER: Thank you.

MS. SAMSEL: Thank you.

EXAM. LUNDE: Thank you. Mary Martin?

MS. MARTIN: Mr. Hearing Examiner, my comments probably will be 15 minutes or more (unclear)

EXAM. LUNDE: OK, thank you. Ms. Arzdorf-Schubbe?

MS. ARZDORF-SCHUBBE: My name is Maggie Arzdorf-Schubbe, A-R-Z-D-O-R-F - S-C-H-U-B-B-E. I'm the Director of the Minnesota Program for Battered Women with

the Minnesota Department of Corrections.

My comments specifically address the need to include battered women in the definition. I would like to recommend, at some point, removing battered women from the definition of vulnerable adult. I don't know if that's possible, because I know that is mandated by legislation, and whether it can be worked into the rule under the definition of impairment of mental or physical function or emotional status is something, perhaps, you can decide. The State of Minnesota has defined a battered women in Minnesota Statutes 1977, Ch. 428, as a woman who has been assaulted by a spouse, male relative or male with whom they are residing or have resided in the past. The Minnesota Department of Corrections Battered Women's Program and the State Coalition has worked hard for three years to pass legislation that specifically aids battered women, such as the Probable Cause Arrest Bill, the Domestic Abuse Act, and more specifically, legislation developing the State Battered Women Program which provides shelter and nonshelter services for battered women throughout the state. The Statement of Need and Reasonableness does discuss battered women, and the statement is that they do not feel that this law will result in a deluge of battered women disputes being handled by the social service system. I would tend to

disagree because of the broad definition, that anytime in her life a battered woman would fit this definition. In the past two years we had 8,592 reports on battered women, and I would anticipate that any person who ever saw a woman in that situation could report under this law and fit it. I think since there are services for battered women in the state, that it would be best to try and exclude that population. There is a statement in there that is important to have legislation that specifically fits elderly women, perhaps, who do not come to our services. Out of the 8,592 reports in two years, one percent of those people were over 65, with is 85 people. If there's a need for that type of a service, a Vulnerable Adult Act to specifically deal with that population, then I would say define that population but exclude the other 99 percent of the women who also would come under this definition. That's all.

EXAM. LUNDE: Is that it? Thank you.

MS. FEDER: I would just like to comment. I can't question the statistics that you're giving about those over 65, I don't know what they are in Minnesota. I only know from reports from other states, that there is an enormous percentage of the abuse and neglect reports are people over age 60, in some cases they're almost 50 percent, the general of adults being -- and the one's

that our department has gotten up to -- well, we only know the first six months, and I think that we were talking about looking at about a third, now that doesn't -- there were a very small number that were being reported as of now, and so I don't know how much the percentages mean, but, I -- we are very concerned about -- if, in the process of narrowing the definition, we eliminate what we consider one of the most vulnerable populations that has no way to be protected or reported --

MS. ARZDORF-SCHUBBE: Yeah, and I can understand your statement on that, but I, again, go back to the 99 percent of the women that, at some time, can fit this definition, and therefore be reported. I have real concerns, for instance, about a women who may come into a shelter, decide to go back to her husband. It's our philosophy in Minnesota that a woman is an adult, it is her decision on what to do with the battering. We can provide options to her, but it is her decision to come -- or, to leave the situation or to go back to it. If she were to go back in the situation by choice and a police officer knocks on her door because somebody has again reported the abuse, I feel the danger to her is probably greater in that case than this law would help. And, again, if we can somehow make sure that the elderly population fits, but exclude the other 99 percent, I feel

that would be the best option.

EXAM. LUNDE: Thank you. Reverend Peterson?

REV. PETERSON: I said perhaps, but, yeah, I think I should say something. I am Reverend T. C. Peterson, with the Good Neighbor/Gold Medallion group of nursing homes. My address is 650 Southgate Office Plaza, Minneapolis, 55437. 835-7262.

A couple of things concern me. First of all, I am extremely unhappy that we come to this point in America where we have to have laws to get people to treat other people like people. That's, I suspect, beside the point, but it is really sad, but I know these things happen. I'm not too sure the legislation will solve it all. I am extremely concerned about what is going to happen in the reporting process. I think the departments are going to be deluged with complaints. Are you going to be able to handle them all? What are you doing to do that? The Legislature is cutting back. Congress is cutting back in money. And I think this is going to just deluge you with all kinds of problems, and I don't know how you're going to handle that. So, somebody, someplace better deal with that because it is going to happen. But, that still doesn't make me happy that this is going on. Thank you. There are some other things I could say, but I think other people will probably cover those, so I will not

bore you with repeating what they probably will say.

EXAM. LUNDE: Except for Ms. Martin, I have no other individuals that have indicated an intent or desire to ask questions or make comments. So, if there is anyone who has a comment of a duration of 15 minutes or less, at this point, who hasn't signed in, please feel free to come forward and make your comment, or ask your question at this point.

MS. MARTIN: Before I start, Mr. Van Slyke would like to say just a few words.

EXAM. LUNDE: OK, fine. Before he makes his comments, let me say that if you haven't made a statement here today, but you do wish to make a statement later, you can submit that comment within the 20-day period that I indicated, to me in writing, and your comments that are submitted in writing, will be considered when I evaluate these particular rules. Go ahead.

MR. VAN SLYKE: As you can see, I'm not Mary Martin. My name is Bob Van Slyke, V-A-N S-L-Y-K-E, and I am also with the Good Neighbor/Gold Medallion Care Centers, and I'm located in the St. Paul office. Need the address?

EXAM. LUNDE: No.

MR. VAN SLYKE: OK. Good Neighbor is one of 225 proprietary and nonproprietary long-term care providers

that are associated with the Minnesota Association of Health Care Facilities. Because of the potential impact of the proposed rules, our association decided to form a committee. I had the pleasure of chairing that committee, and I see all of our members are here in the room today.

During the process in the committee, we decided that, because of the impact, we needed to make comments and make the position of our association known. Therefore, I'd like to introduce Mary Martin. She is the Staff Counsel for the Minnesota Association of Health Care Facilities, and she will relay our comments from our committee and our association's position. Thank you.

EXAM. LUNDE: Now, I did hear, I think, before the hearing that your comments might take an hour or so, is that correct? Mr. Carter or --

MS. MARTIN: It's possible.

EXAM. LUNDE: OK. I think what we'll do is take a five-minute recess now, and everybody can stretch their legs, and those of you who may wish to leave, can leave, and those that might have some informal comments --

(Whereupon a short recess was taken.)

EXAM. LUNDE: All right. We're back on the record. Ms. Martin, there was one other public comment of a short duration, so I indicated that that gentleman could

speak. And would you go ahead, sir?

MR. HOPPE: Yes. My name is Dave Hoppe, from Dakota County Social Service.

EXAM. LUNDE: Would you spell your last name, please?

MR. HOPPE: H-O-P-P-E. And I just have jotted a few things that our agency has been concerned about in trying to work with this. And the one area that we were wondering about is whether there does need to be a caretaker relationship. We've had some complaints recently of -- regarding people who live in various MR facilities where the complaints have involved somebody out on the community rather than someone on staff, who's in a direct caretaker role. And so, one thing I wondered then, is if it doesn't include that sort of action, what really -- it's not clear to me what remedy is available.

EXAM. LUNDE: Ms. Feder, perhaps you could address that question.

MS. FEDER: Are you asking the question that if somebody is a resident of a facility, but the abuse or neglect takes place, let's say, on a visit home or what --

MR. HOPPE: Or outside. Had one instance where a man was picked up -- he wandered away from the facility and was picked up by someone and held for several hours. And the facility reported him as being a vulnerable adult. And I -- the only thing I could see where it

would pertain to whether or not he was a vulnerable adult, was the facility allowing him to wander away in the first place.

MS. FEDER: Right, and that would if -- was he -- did anything happen to him by virtue of having wandered away?

MR. HOPPE: Well, they weren't sure they -- pardon?

MS. FEDER: When he wandered away, was he abused in any way, or was it just --

MR. HOPPE: They were suggesting that he might have been. It was not very -- you know, it was hard to determine.

MS. FEDER: So, here you would want to determine was it neglect on the part of the facility?

MR. HOPPE: Right.

MS. FEDER: And the neglect of not supervising him, in which --

MR. HOPPE: Because we have been getting calls about people who live in a facility or perhaps go to a mental health center, but then there's a call or complaint saying that they're a vulnerable adult based on what someone else in the community may have done.

MS. FEDER: I certainly would be glad to talk to you further about it after the hearing, but essentially the law is clear that if a person is getting either partial

or total care services from a facility, they come under the law, number one. The other thing is a determination, this is the judgment call as to how -- whether it's a matter of lack of supervision, whether -- whatever happens to the person away from that facility, the facility is responsible for -- for determining whether it's a matter of neglect of the facility. The other thing is if it has nothing to do with the facility, then you determine under the functional definition of vulnerable adult, OK, is this person, regardless of residence, somebody who is unable or -- and willing to report, and I guess without the exact -- the particular situation, it's hard to answer what you do with it. In any event, it sounds to me as though this person is impaired, they definitely come under the law, and then it's a matter of determining how you classify it, whatever happens to him.

MR. HOPPE: Some of the ones we've seen of this sort is that myself or the other people involved didn't see what right we would have to interview an alleged perpetrator if they were not in any kind of caretaker relationship. Like, if this is somebody in the community, what -- how can I go -- you know, what backing do I have to even talk to that person, or if it is found to be true that they did do something, I don't see that

there's really anything under this that can be done about that. It would be more of a criminal --

MS. FEDER: Well, you have a responsibility to investigate. If it's something that entails criminal action, the police, law enforcement would be investigating too, and taking the ball from there. But, it is your responsibility to investigate as far as you can. Naturally, if the alleged perpetrator refuses to talk to you, you can't force him to. But, it is your responsibility to investigate any complaint, and to do whatever you can to follow through on that. On a criminal case, of course, the police would be pursuing that aspect of it.

MR. HOPPE: Just as the last thing, it -- maybe it could have a little clarification on what is available to the county if this can be substantiated, or if something is substantiated, what options are available to us as far as what we do about it. I guess this ties in with someone else's comments about diminishing resources, how liable is the county to provide something that may or may not exist.

MS. FEDER: Well, under -- your liable, if you don't follow what the statute requires, and that is preventing further harm and doing whatever you can to assure that that person is no longer abused or neglected, that that

person is protected. Beyond that, counties can only do what they can do within whatever resource constraints there are.

MR. HOPPE: Is, like, guardianship the main alternative or --

MS. FEDER: Well, there are a number of avenues for legal intervention, but there are many areas where there isn't any authority for intervening. I can appreciate the bind that the local agencies find themselves in. We, as a department, are going to have to work very hard to try to get out there and help counties interpret the law, try to establish guidelines in our manual, and do some training, and I'm sorry you have to be floundering until that point. As you know, we're very short staffed and we're going to do the best we can. Now that this rule is accomplished, the next thing is reaching out and helping counties to do what they're supposed to.

MR. HOPPE: Then this one last one would be, if -- had several instances where a licensing agency, or the -- usually it's been the Department of Health, is also -- well, often they've received a complaint first and then it will contact us. Is it -- maybe this is in here, but if the licensing agency has investigated and found that the complaint has been unsubstantiated, do we still follow that up?

MS. FEDER: Yeah, the county is still responsible for investigating it. It's very possible that you might come to a different conclusion. And the purposes for the counties investigating are quite different from that of the licensing agency. You're there to offer services and be concerned about that individual or others that may be at risk. Whereas the licensing agencies are concerned about whether their standards and rules are being complied with, in terms of the license. So, -- but, I think that is it, probably, will be very common for you to come to different conclusions from a licensing agency and it would be very unfortunate to accept their investigation as the last word; besides the fact that the law requires both to do it.

EXAM. LUNDE: Is that it?

MR. HOPPE: Thank you.

EXAM. LUNDE: I want to point out that anyone -- those of you that raised questions with language used in the rule, that you have suggested language that you think should be inserted in the rule, you can send that suggested language to me and you can send copies to the department, so that they know precisely what kind of language you're talking about that would clarify rules that you have some difficulty with.

Ms. Martin? I'm going to remind you to speak up as

loudly as you can so that everyone can hear you as you go along.

MS. MARTIN: Thank you, Mr. Hearing Examiner. After all this buildup, you probably thought I was going to sing and dance, but fortunately it's going to be much more mundane than that.

My name is Mary Martin, M-A-R-T-I-N, and as Mr. Van Slyke indicated, I am Staff Counsel for the Minnesota Association of Health Care Facilities. He also mentioned that we had a subcommittee that met extensively and discussed the proposed rules, and all of the members of the committee are here today and available for questions, as well. And the committee has asked me to convey to you a number of concerns that arose.

The first issue that I'd like to raise is the concern that none of these rules have gone through joint rulemaking with other agencies. I know Ms. Feder indicated that there would be at least three agencies that would be promulgating rules under the statute. And is there a particular reason that the agencies chose not to go together on joint rulemaking?

MS. FEDER: I think, just really for a matter of --

EXAM. LUNDE: Could you speak up a little bit, I'm having difficulty hearing you myself?

MS. FEDER: Yeah, I think that there would be very

little that would be in common among -- in the three rules, except perhaps for definitions. I think that each rule is dealing with very different kinds of issues and matters, and very little would be accomplished. The other reason is that, just traditionally, the different agencies have promulgated their own rules, they are contained in their own rulebooks, they follow certain format, well, now things do follow the same format with the Revisor's Office handling this. But, it's -- there's no other reason than that they're at different times being taken care of, and that they deal with different matters.

MS. MARTIN: I guess our concern is that the separate rules -- first of all, we feel that there may be more than just three rules because, as we read Minn. Stat. § 626.557, subd. 2.A.3., every licensing agency will be required to promulgate a separate rule, and we believe that that would require such groups at the Board of Nursing, and the Board of Nursing Home Administrators, and the Board of Medical Examiners and a number of other groups, to also promulgate rules that deal with vulnerable adults. And our concern is that, as health care providers, who may have potential or allegations of fraud or abuse occurring within our facilities, that we may have many separate investigations going on of a

single alleged incident. And we feel that that is not necessarily the best expenditure -- multiple investigations would not be the best expenditure of public dollars and that it would cause unnecessary and albeit unintentional harassment of facilities and families, and -- as well, I think it would also create an undue amount of fear and anxiety among the residents, themselves, if there is -- imagine a single alleged incident within a facility, and if you have 10 agencies decsending, all conducting a separate investigation of that incident, I think that would be rather disturbing to just about anybody, and particularly to the vulnerable adults that we're hoping to protect by this rule. And I guess for those reasons we would urge the agencies involved to once again reconsider joint rulemaking for that purpose.

#2 My next concern deals with section B.1.c., which is the definition of abuse. We recommend that the words "nontherapeutic" be inserted before the words "course of conduct" in the second part of that sentence. Subsection C. would then read abuse means "the intentional or nontherapeutic infliction of physical pain or injury or any persistent nontherapeutic course of conduct intended to produce mental or emotional distress." The reason that we feel that this is important is that often with

mental health therapy, that therapy is, indeed, designed to produce some level of mental or emotional distress. And we feel that adding the word "nontherapeutic" makes it clear that that therapy is not abuse.

Our next concern is under section B.2., definition --

EXAM. LUNDE: Let me ask you, are your comments contained in a written form that you're going to submit also, or --

MS. MARTIN: They will be. What I have with me is really notes, not of --

EXAM. LUNDE: But, you're going to be submitting written comments?

MS. MARTIN: We will be submitting written comments as well.

EXAM. LUNDE: OK. Go ahead.

#3 MS. MARTIN: Our next concern deals with section B.2., which is the definition of caretaker. Two changes that we would recommend, one is adding the words "by law" between the words "contract" and "or" at the end of the first sentence. In addition, we would recommend that the entire last sentence be deleted. This last sentence, as it currently exists, would exempt the person who is taking only financial responsibility for a vulnerable adult from liability for neglect or abuse of a vulnerable adult. We feel very strongly that one who has financial

responsibility for a vulnerable adult is a caretaker, and ought to be held responsible under the rule. There are many instances of friends or family members who have taken only financial responsibility for a vulnerable adult and who do inflict a great deal of abuse or neglect upon the vulnerable adult by failing to provide necessary financial support. For example, we know that there are adult children who receive the personal needs allowance of their parents who are on medical assistance and keep that money for themselves, they do not give it to their parents for the personal needs that it was intended for. This means then that the vulnerable adult is unable to buy clothing or personal items that the vulnerable adult needs and that the money was intended to be used for. And many times those items are even things that the facility is not required to provide, clothing is an example, I think. Those assuming financial responsibility for vulnerable adults in this matter are caretakers, and I think including them under the rule would be of great assistance to facilities who are very earnest about stopping this sort of theft and neglect of their residents.

Next, we have several comments that deal with the scope of the rule. I think it's clear that the intent of the statute is to protect vulnerable adults no matter

where they reside. This includes vulnerable adults who live in facilities as well as vulnerable adults who reside in their own private homes. We, therefore, recommend that definition B.5., which defines host county, be amended by deleting the words "in which the facility is located" and adding the words "in which the vulnerable adult resides". This would make it clear that the host county is responsible for a vulnerable adult who lives in a county, whether in a facility or in a private home.

#5 Our next concern is with definition B.6., impairment of mental or physical function, or emotional status. We feel that this definition is a duplication of the definition of vulnerable adult in section B.13. B.13. already defines a vulnerable adult as one who is a resident or a patient of a facility, one who receives services at a facility required to be licensed by Minn. Stat. § 245.781 through § 245.812, or who, regardless of residence, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status.

Being a vulnerable adult really means that the person is unable or unlikely to report abuse or neglect. Since this is already contained in the definition of vulnerable adult itself, we find that definition number 6

is really a duplication and is unnecessary, and we would recommend that it be deleted.

Alternatively, if the commissioner feels that definition B.6. does provide necessary clarification, we recommend that section B.6. become a part of section 13.C., which defines vulnerable adult. That is, we would recommend that it become a part of the definition of vulnerable adult as opposed to standing on its own because I think it reads a little bit out of sequence there. And I think it would be much less confusing to a reader.

If definition B.6. is retained in either location, we suggest that its current form is too long and over broad. Currently, impairment of mental or physical function, or emotional status means "a condition which includes being substantially unable to carry out one or more of the essential major activities of daily living, such as caring for oneself, performing manual tasks, walking, seeing, hearing, thinking, breathing, learning or working; being unable to protect oneself from hazardous or abusive situations without assistance" and then it goes on at some length with further elaboration. We would recommend that that definition be shortened just to read, impairment of mental or physical function or emotional status means being unable to protect oneself

from abusive or neglectful situations without assistance. The words "abuse" and "neglect" are already defined elsewhere in the rule, and we feel that that would be much more simple and clear.

Furthermore, the term "essential major activities of daily living" is not defined. Although, it is a term of art that's used by those who work regularly with vulnerable adults, our concern is that that term would not be readily understood by people such as law enforcement officials who will be dealing with the rule.

We also have a concern that defined that broadly, that a vulnerable adult may be many people who are not intended to be included under this definition. I think the ability to hear or to see, for example, does not, in and of itself, make one a vulnerable adult, or vulnerable to abuse and neglect. I think the key element there is really the inability to protect oneself from abuse or neglect as opposed to the mere presence of some sort of physical impairment.

Furthermore, I think that the language "being unable to protect oneself from hazardous or abusive situations without assistance" is quite over broad, because I think there are many hazardous situations in life from which one may not be able to protect oneself without assistance. I read recently, for example, of an elderly

woman who was mugged on Hennepin Avenue, and clearly that's a hazardous situation, but I'm not sure that that hazardous situation, in and of itself, makes her a vulnerable adult, nor do we want it to make her a vulnerable adult.

The department states in its Statement of Need and Reasonableness that the broad definition is necessary to gain experience and to collect data. The Vulnerable Adult Act is designed to protect a population that, it was felt, needed protection. It was not designed or meant to be a data collection tool. The department elaborates by saying that the section is necessary to include battered women who are unlikely to report abuse. It's our feeling that the battered woman is already included in the definition of 13.C. because of the factors that we outlined earlier. So, in summary, I think the best alternative would be just to delete that section completely.

EXAM. LUNDE: Before you go on, let me change the tape.

(tape change)

EXAM. LUNDE: All right, go ahead.

MS. MARTIN: Thank you. Our next concern is in definition B.8. which defines local service agency. We recommend that the word "welfare agency" be substituted

throughout the rule where the word "social services agency" or "agencies" appears. The statute, as was mentioned earlier, does use the "welfare agency", and we feel that the rule, since it's promulgated under the statute, ought to be consistent with the statute. Further, we feel that by doing so, we would eliminate the possibility that a welfare agency could be confused with a private social service agency. Our particular concern is that it would inappropriate for the type of policing and investigative functions that are required under subd. 10 to be subcontracted out to a private agency.

The committee is also concerned about definition B.9. which is the definition of neglect. As it currently reads the definition imposes an absolute responsibility upon the caretaker to supply or ensure the supply of necessary food, clothing shelter and health care or supervision for the vulnerable adult. We recommend that the words, "when reasonably able to do so", which is the wording that's also used in the Child Protection Act, be added to the end of this definition. The committee agrees that while a caretaker should do everything within its power to supply or ensure the supply of these items, that there may be situations in which it will be impossible to provide all of those things due to unforeseen or uncontrollable circumstances. For example,

during a truckers' strike it might impossible for a provider to provide all of the ingredients necessary for a special diet. The suggested change, we feel, would avoid noncompliance in situations like that where it's really out of the control of the caretaker.

Another concern that we have under this section is that -- although facilities try very hard to meet the needs of residents, a facility is not required by current regulation to provide clothing to a resident and there is no reimbursement mechanism under Rule 49 to reimburse a facility for clothing. But, if read literally, this definition would now require a facility to provide clothing to a resident, which I think is a significant change.

Another concern under this particular definition is the situation where the cost of prescribed diet or level of nursing care, for example, would exceed the maximum reimbursable amount for that particular item. For example, if a facility is asked by a doctor to provide 3.5 hours of nursing care for a resident, but the facility can only be reimbursed for 2.9 hours, will the facility be deemed to be abusing that -- or neglecting that vulnerable adult?

EXAM. LUNDE: Ms. Feder, do you have a response to the question?

MS. FEDER: One moment please. I think I understand what you're asking, but, I guess, I don't know how to answer it. The law gives this definition for neglect and, I guess, I really can't answer that right now as to what that means as far as at what point the facility is responsible for providing these things.

MS. MARTIN: I mean that the situation is that the provider, potentially, gets caught in the middle because you have a physician, for example, prescribing a certain level of nursing care, or diet or therapy, or whatever it is, but if the facility is not able to provide that because it cannot be reimbursed under department policies for that care, by -- I mean it's possible, that under this rule, as it reads, that that provider is going to be, technically, neglecting that resident.

MS. FEDER: I'm not an attorney, but I would think if I were a judge and if there were a suit and if a provider is absolutely unable to do something, if it's impossible, I think I would be hard put to say that the facility has done something wrong; but, then I'm not an attorney.

MS. MARTIN: Well, and that's our feeling too, but I guess that's why we're suggesting that, perhaps, that be looked at so the rule will not read that way so we can really prevent that sort of situation from occurring.

MS. FEDER: I guess I do have some concern about the suggestion that we alter the definition that is in law because I don't think we have the authority to build in provisos, that your suggestion, when reasonably able to do so. I've learned this from our attorney, that there's a limit to our authority, and that's just about the limit building in provisos when the law requires something. I don't think we could modify the requirement of law. Am I on the right track here?

MS. MASTERS: Perhaps some of your concerns might be addressed by a notion of what a caretaker is. And in the definition of neglect, they talk about a failure by the caretaker to supply the food, or the clothing or whatever, and caretaker is someone who, under the law, has assumed responsibility to do that, and then the neglect would be once they've assumed the responsibility, then not carrying through with that. So, perhaps, there's a way that your clients can address that concern through an analysis of the law dealing with the caretaker definition and what you've actually assumed responsibility to do.

MS. MARTIN: The definition of caretaker, though, as I understand it, does include someone who has agreed to take responsbility of the vulnerable adult by a contract or agreement, which, I think, would include a long-term

health care provider.

MS. MASTERS: Certainly, but perhaps there is something that you can specify in terms of that contract. The caretaker can assume responsibilities for some of the care of an adult without assuming responsibilities for all of that. And this is not something that I have dealt with specifically, but perhaps it's an option that would allow you to address some of these concerns that can't be addressed in rule.

MS. MARTIN: And, I guess, we're suggesting that it might be better addressed by rule rather in an individual contract with each provider, because I think that makes it much more clear exactly what is expected of everybody.

EXAM. LUNDE: Could you speak up a little bit? There's people in the back that aren't following you.

MS. MARTIN: OK. Our next cluster of concern centers on definition B.12., which is something that has already been discussed, the definition of unsubstantiated. The rule provides that reports will be divided into three categories, substantiated, unsubstantiated, and unable to be substantiated. In the definition section, however, as has already been pointed out, only unsubstantiated is defined. Our recommendation is that unsubstantiated be redefined, that substantiated be defined and that unable to be substantiated be

dropped. The definition says that an unstubstiated complaint is one that is able to be disproved to the satisfaction of the investigating agency. What this definition essentially says, then, is that the caretaker is guilty until proven innocent because they have to disprove to their satisfaction that it's not true. And that strikes us as being totally foreign to our whole notion of justice. The burden of proof should not be on the caretaker to prove the caretaker's innocence. The burden of proof should be on the investigative agency to prove that the complaint is substantiated and that the caretaker is guilty of a violation. Particularly here when criminal penalties could be the result of the investigation. The agency does not provide any rationale in its Statement of Need and Reasonableness for requiring the caretaker to prove his or her innocence. Therefore, we feel the definition is unreasonable and should be modified to read, "unsubstantiated means not able to be proved to the satisfaction of the investigating agency."

Substantiated, then, we feel, should be defined as, "able to be proved to the satisfaction of the agency." And not, able to be substantiated, as I mentioned, we feel should be deleted. All complaints, it seems to us, are either substantiated or unsubstantiated. This third category, not able to be substantiated, really sort of

connotes guilt, and we feel that, really, here, particularly where criminal charges could result from the investigation, that this is analogous to a verdict of unable to prove guilt, which sort of indicates, well, we think you're guilty, but we just couldn't find enough evidence to prove it, and we just feel, really, that that's unappropriate.

Our final concern under the definition section is in C.13. -- excuse me, 13.C. Although I discussed that definition extensively earlier, we also recommend that subsection C. of 13 be amended by inserting the words, "who regardless" -- excuse me, by inserting after, "who regardless of residence", the words, "for any other reasons". This makes it clear that the status of vulnerability revolves around inability to report not solely physical or mental impairment.

MS. FEDER: Excuse me. Would you advise me, again, as to what -- which section you're referring to now?

MS. MARTIN: OK, the section is definition 13, which is vulnerable adult. Subsection C.

MS. FEDER: All right, subsection C.

MS. MARTIN: So, that the section would read, "who, regardless of residence, is unable for any other reason" -- or, "for any other reason is unable or unlikely to report abuse or neglect". I'm sorry, I mispoke the first time.

Moving on to section C., which is complaint investigation by a local welfare agencies; our first concern is under subsection 1., the duty to accept and investigate complaints. The rule, in its current form, requires the local agency to accept and investigate all complaints including those where remedial action has already been taken. We suggest that in C.1., the word "shall" be struck and the words, "may if appropriate", be inserted before the word "investigate". For example, if an employee has been abusing a resident, a report is made and the administrator of the facility promptly terminates that employee's employment, the abusive situation has already been remedied. It seems that at that point investigation by the agency would serve no additional useful purpose. This concern about the appropriateness of an investigation in a situation that has already been resolved, follows through to the time limits for investigation which are set forth in section C.2. We also recommend that after the word "investigate" the words "those complaints deemed appropriate" be inserted. This gives the investigating agency some discretion to screen those complaints in which the resolution has already been reached. And I think that that -- in the Statement of Need and Reasonableness, that discretion to screen some complaints is already given in some other

instances, so I think it could be applied here as well.

We also have another concern in section C.2.a. and that is the appearance of the word "abandonment" in that section. We're not sure exactly what that is, and since it's not defined anywhere else in the rule, we think that maybe what the drafters intended was "neglect". And if that's the case we would suggest that the word "abandonment" be struck and "neglect" be substituted.

The heading of section C.3., requires investigations and on-site visits to facilities when the investigations are related to a facility. We recommend that this be changed to read, "investigations of complaints allegedly occurring in a facility", since vulnerable adults will live either in a facility or outside of a facility, we suggest that investigations, therefore, be conducted either within a facility or outside a facility. For example, if a resident of a facility for the mentally ill leaves to go to work on a regular basis, everyday, outside the facility, if that resident is abused or neglected while outside the facility and at work, that abuse, at that point, is no longer within the control of the facility, and it would not make any sense, really, to require an investigation within the facility at that point. I think that there are numerous situations where abuse could occur with one -- with a vulnerable adult who

is technically a resident of a facility, but the abuse is not the result of the actions or neglect of the facility, itself. Therefore, we feel it would be much better if the heading were amended to make it clear that an investigation and on-site visit will be done only when an alleged incident has occurred within the facility itself.

The next question I have is in section 3.C., and the words "psychological climate of a facility" are included as one of the things that can be included in an investigation. Can someone from the department tell me what the psychological climate of a facility is?

MS. FEDER: Well, the intent behind this was to -- the intent behind this was to address environmental kinds of conditions; things that might make somebody very fearful of reporting, for example. It might be just attitudes of staff that would make a person, well, be very tense and fearful of reporting something. Or -- well, the intent here was to deal with something other than physical conditions, but something -- other things, interpersonal kinds of relations, anything not physical in a facility.

MS. MARTIN: I guess our concern -- I think that that may be a valid thing to address, but I guess our concern is that the words "psychological climate" are words that are very subjective. I mean, that's really

not a standard by which a facility, or even an investigator can really make a determination. It's just so subjective that we feel that that section should -- that wording should be struck, and perhaps some better wording can be -- come up with.

MS. FEDER: I would really appreciate it if you could come up with a suggestion of wording that would deal with things in the environment that are other than physical condition, I think you know what we're trying to get at and anything that you could offer would be appreciated.

MS. MARTIN: The committee -- the suggestion -- the specific suggestion of our committee was that that whole section be struck because of the indefinite nature of that section. And I can speak with them after the hearing, and if they feel it's appropriate, we can submit additional language there.

Under section 3.H. we just wish to point out then, inspection of an alleged victims records; "victim" is not a word that's in the rule. It may appear here, but I think it should be vulnerable adult instead. That inspection of the vulnerable adult's record will require the consent of the vulnerable adult in conformance with the Minnesota Data Privacy Act, therefore, we'd suggest that the words, "with the consent of the vulnerable

adult", in conformance with the Minnesota Data Privacy Act be added to the end of the existing language in that section. #15

Our final concern under subsection 3., is that -- is the requirement that a discussion be held with other residents in the facility in evaluating a complaint. And I guess we really have two concerns here, the first is that we're concerned that the indiscriminate discussion of abuse with other residents in a facility is likely to create unwarranted concern and fear of abuse among the residents. And I guess I would just like to ask the department whether you feel it's possible that a number -- that a number of investigators going through the facility could cause emotional distress among the resdents, themselves?

MS. FEDER: I know I'm not suppose to give top-of-the-head responses, but, really, I don't know how an investigator could detemine whether other residents are at risk and the law requires the investigator to determine that and I would think that the trade off, well it could cause some kind of tension, hopefully the skills of a social worker investigating, and the sensitivity to what this could mean to the residents, would allay your fears because I really have a hard time figuring out how else this investigator -- the social worker could learn

just what potential risks are there for other residents.

MS. MARTIN: We, I guess, would like to see some sort of standard set in that area. Because, I think, potentially, that an investigator could cause emotional distress -- a great deal of emotional distress among the residents themselves. And, I think, that, in turn, opens up the investigating agency to complaints of abuse against the agency itself, and I don't think that was the intent of the law, but I think the way that this rule reads that's a possibility. I think there's also a possiblity that indiscriminate interviews with residents who may be somewhat disoriented could produce inaccurate information about conditions within a facility. While we realize that residents are a potentially valuable source of information, we hope that the investigators will limit, in some way, their discussion with other residents concerning alleged abuse and neglect.

Our specific suggestion on this would be that since the rule already says other residents will be contacted, if the rule is unsubstantiated that this section more properly belongs in subsection C.7.; at a later point in the investigation as opposed to at this very early stage.

MS. FEDER: I think it's very important to make a note of the phrase above A through H; "This investigation shall include the following activities when necessary to

make an accurate assessment." And -- which leaves to the discretion of the investigator what they need to do to learn whether there is substance to the allegation. And this does mean that these activities are reserved for the necessity of making an accurate assessment. And since making an accurate assessment is necessary for carrying out the responsibilities under the law, I guess I'm less concerned about what's included in there than --

MS. MARTIN: I guess, our response --

MS. FEDER: -- maybe that we've forgotten to include some things.

MS. MARTIN: I guess, our response to that would be, we aren't sure either what necessary -- we don't have any idea of what's necessary to make an accurate assessment means either, and perhaps there should be something spelled out, then, that gives some guideline as to what that is.

EXAM. LUNDE: Can everybody hear all right? OK.

MS. MARTIN: We would also propose an addition to subsection C.3., which would require the investigating agency to immediately send a report of its findings to all other agencies notified concerning the complaint in question. This would really be done to prevent duplication of investigations by several agencies at the same time. We really feel that by doing that we could

save a great deal of time, money, and really make the process work much more smoothly.

We also suggest that all of the requirements in subsection C.3. be adopted in section 3.4. As I mentioned earlier, this rule applies to all vulnerable adults, regardless of residents. And the way they're written now, subsections 3. and 4. really seem to apply a different set of investigatory standards for alleged problems that occur in facilities and alleged problems that occur outside of facilities. We feel that all investigations -- if an investigation is necessary, that the same investigation ought to be done, regardless of where the vulnerable adult lives. So, we feel that, then, all of the steps that are outlined under section 3. would be appropriate in section 4., with the possible exception of discussion with the facility administrator. Because if a vulnerable adult resides in a private home, of course, there will be no facility administrator involved.

Subsection C.5. deals with investigations by agencies which are not in the county of financial responsibility. We feel that section 5. should incorporate by reference, the standards of investigations set forth in sections 3. and 4. for investigating complaints, to make it clear that the host county must

investigate the complaint. Once that investigation is completed, then it is appropriate for the host county to notify each relevant licensing agency in the county of financial responsibility. It is also mandatory for them to consult with the county of financial responsibility as required under subsection C. This makes the words "if possible" unnecessary in subsection C., and we suggest that they be deleted.

Subsection D. gives the host county the authority to take whatever measures are necessary to correct the situation, or to remove the adult from the facility. We object to this, really, on two grounds. The first is that it is not the responsibility of the host county to take remed -- to take action to remedy the situation. That authority is given to the county of financial responsibility in subsection B.5.b.; secondly, even if the host county has the authority to take action, I think that this sentence is far too broad and exceeds the statutory authority given in the Act. There is nothing in the rule that says what measures are necessary to correct the situation, I have no idea what that means or how that will be interpreted. The statute, subd. 10, only gives the agency the authority to remove the vulnerable adult from the caretaker, in whose care the neglect or abuse has occurred. And I think that that,

really, is a much narrower mandate than the language of the rule which allows the county to take whatever measures are necessary to correct the situation.

A further concern arising under that section is how the department would, in any case, remove a vulnerable adult from a facility. In most cases, residents of nursing homes are not committed to the nursing home, they are there voluntarily. So, a number of questions arise as to how the department would propose to remove a vulnerable adult from a facility, and if a vulnerable adult is removed, where the vulnerable adult is going to be removed to, and if you have a situation where there is resident-to-resident abuse, removing the vulnerable adult is not going to solve the problem, because the abusing resident is still going to be in the facility abusing other residents; and we feel that those are questions that really should be addressed by the rule.

Subsection C.6., deals with the use of outside experts in investigating complaints. Basically, we feel that that's a good provision, and -- but, because of the wide range of problems -- problem areas in which neglect or abuse can arise, we feel it will not be possible for all investigators to be experts in all areas in which their investigations will go. Therefore, we feel that the consultation which is currently optional in the rule,

should be mandatory. We suggest that the last sentence of subsection 6. read, this consultation shall include at least matters of physical health, mental health, specialized treatment, such as behavior modifications, geriatrics or other matters; this is particularly important, we feel, if the investigation will later, again, be the basis of a criminal complaint.

Sections 3.,4., 5. and 6. of this part of the rule all deal with the determination of the validity of a complaint. After determination of the validity of a complaint, it seems that the next logical step really would be the classification of the complaint, but this classification of complaints is currently found farther down in the rule under subsection 7. We feel that it would be -- it would just read better if subsection D. were moved so that it immediately followed subsection 6. Again, because once the complaint has been investigated, it seems that the next logical thing to do is to classify it, and then to proceed with making recommendations about what is going to be done with the complaint.

In subsection D., another new term appears, and that's "victim of maltreatment". I think what was really meant there was "vulnerable adult", and we suggest that the words "vulnerable adult" be substituted for "victim of maltreatment". We also feel that in subsection D.,

that there be a requirement that notification of the classification also be sent to the facility if a facility is involved. These complaints are not anonymous complaints, and we feel that a facility does have the right to know who is complaining in a serious matter like this. Again, we're -- there's a possibility that criminal charges could result.

The current subsection 7. is entitled, "Investigations After Initial Complaints Assessment". I guess our committee found the use of that terminology somewhat confusing because subsections 3., 4., 5. and 6., all deal with the investigation and classification of the complaint. And the substance of subsection 7., as we read through it, really is that it deals with developing a plan of action after the complaint has been assessed. And we would recommend retitling section C.7. as "Post-investigation Plan of Action", or some such terminology, to really label it as what it is. We also feel that as it reads now, the language is somewhat weak and confusing. It states that; "If upon initial assessment required by sections 1. to 6. there appears to be substance to a complaint, the local social service agency shall attempt to define ...", and then it goes on to say what will be defined. We feel that that section would read better and be stronger if it said merely that,

"If upon the initial assessment required by sections 1. to 6., the complaint is substantiated, the local welfare agency shall determine ...", the following things.

Under subsection 7.B., and I think this is a point that someone else has already raised, too, and I'll just mention it briefly, we feel that the words, "assessment of prior injury" may not get at exactly what the department is concerned about. We would suggest substituting the words, "the history or pattern of abuse or neglect or related prior injuries", as appropriate.

We suggest that subsection 7.C. is duplicative and should be deleted because the name, address, age, sex and relationship of the alleged perpetrator to the vulnerable adult will already have been collected in the initial investigation of the complaint and there's no need to do that again.

In subsection D., we would also suggest deleting the phrase "in a complaint of neglect", because we feel that the subsection should apply to any complaint of abuse or of neglect. We also suggest deleting the words "agreed upon roles", and substituting the relationship of the caretaker or caretakers to the vulnerable adult, including the relationship and history of the relationship between the caretaker and the vulnerable adult. We felt that the words, "agreed upon roles" are

vague and difficult to understand, and we're not sure exactly what that means. There really is not standard there. We do think it is important to assess the relationship and that responsibility between the caretaker and the vulnerable adult, and that the information should be obtained from as many caretakers as are involved in the situation. But, the real question, I think, in subsection D. is whether the caretaker has some sort of responsibility for the situation; some responsibility which they're not carrying through on.

Our final concern deals with subsection 8. The current version of subsection E. requires a local agency to seek intervention if it feels that the vulnerable adult's safety or welfare is in jeopardy, and that the adult has refused services; so there's a two-prong test there. They have to feel that safety and welfare are in jeopardy and the adult has to have refused an offer of services.

EXAM. LUNDE: What section are you on right now?

MS. MARTIN: E.

EXAM. LUNDE: E.?

MS. MARTIN: I'm sorry, I have a typo in my notes; E.

So, anyway, there's a two-prong test there; there has to be a concern about the health or welfare of the vulnerable adult being in jeopardy, and the adult must

have refused services. We feel that the rule should specify what the agency can do, both when adults refuse services and when vulnerable adults accept services. The rule should state what authority and what actions are appropriate for the agency to take to intervene on behalf of a vulnerable adult who has accepted an offer of services. We feel it would be more clear if there were a separate subsection that dealt with vulnerable adults who had accepted services and those who had refused services.

We do feel that the section that deals with vulnerable adults who have refused services should be optional -- action on the part of the agency should be made optional because there may be situations in which abuse of a vulnerable adult has been reported, but the vulnerable adult, for a valid reason, may refuse to accept those services. And I think that the example that Ms. Arzdorf-Schubbe used earlier about the battered woman who refuses services and chooses to go back into the situation in which she was abused is a good example of that, where it may be appropriate for her to -- or any vulnerable adult to refuse to accept services for a good reason. We really feel that a vulnerable adult who is capable of making a decision should be able to refuse that assistance, and I guess that's really our concern.

Therefore, in summary, we'd suggest that subsection

E. be retitled "Actions on Behalf of Vulnerable Adults", and that there be a subsection 1. which deals with the general authority given by statute to the agency to take actions, and that it specify what actions are appropriate when a substantiated report of abuse or neglect occurs. Further, there would be a subsection 2. which deals with the vulnerable adult who has refused services or is incapable of requesting assistance.

We would also suggest that the last sentence of subsection E. be amended by deleting the words "shall" and "victim" and substituting "if the agency believe it to be in the adult's best interest it may seek the help, or help the family, facility or vulnerable adult seek any of the following:". Our providers really had a concern that there was no way, or no authorization in the rule for the investigating agency to assist the facility in seeking help to remedy the situation.

This is just a technical thing, but I think under subsection E., to be consistent with the numbering system that's been used before, subds. A. through D. should be sections 1. through 4. instead of A. through D.

Section E.1. also says that a restraining order or court order for removal of the perpetrator from the residence of the vulnerable adult, pursuant to Minn. Stat. § 518B.01, may be obtained. We suggest that this

be modified to read, "A restraining order or a court order for appropriate relief under Minn. Stat. § 518B.01 may be obtained." Removal of the perpretrator from the residence of the vulnerable adult makes no sense whatsoever in at least two situations that were brought to our attention. Consider the situation where a vulnerable adult resides at home with an adult child who abuses that vulnerable adult, and the vulnerable adult is unable to care for him or herself. If the vulnerable adult and child are the only residents of the household and the vulnerable adult is unable to care for him or herself, the result of applying the rule is forced neglect of the vulnerable adult because the vulnerable adult will be left living alone unsupervised in that home, and I don't think that's what we wanted to do, but that's how it would work in that situation.

Consider, also, the problem of resident-to-resident abuse in a facility. Removing the abusing resident from the residence of the abused resident would not remedy the problem. It would be difficult to transfer that abusing resident, as there would be no assurance that abuse by the abusing resident would stop just because that person had been moved to another facility. I think in that situation the more appropriate remedy would be to provide a private room for the abusing resident. However, if the

abusing resident is a medical assistance recipient, the reimbursement rules do not provide for private rooms for those persons, and then you get into the situation again of where the provider may not be able to provide what's required, but may techincally be breaking the rules because the requirements, what is required of them is not reimbursable expense.

Our final comment deals with subsection E.4. This section requires referral to a prosecuting attorney for criminal prosecution of the perpetrator under Minn. Stat. Ch. 609, which is the criminal code. Again, we had two concerns, I guess, one is whether the executive branch can refer a matter to a county attorney. I think that they can turn it over to them for consideration, but I'm not sure that referral is an appropriate word. Our second concern, I guess, is that criminal prosecution may not always be the most appropriate action. There may be cases in which it may be more appropriate to refer the alleged perpetrator for chemical dependency treatment or treatment of mental illness, just as two examples. We feel that providing those kinds of options, really, would be in the better interests of society as a whole, than criminal prosecution.

Just one other thing that we would like to raise, and that is that if the agency investigation eventually

leads to a criminal prosecution, the agency may wish to consider to what extent search warrants will be necessary in both health care facilities and private homes to preserve the use of evidence gathered in an investigation in prosecution of a criminal action.

That concludes our comments, we thank you very much.

EXAM. LUNDE: Ms. Feder, do you have any statements you want to make at this point in --

MS. FEDER: No, I believe we would like to respond in writing, thank you, when we've had a chance to look at the transcript.

EXAM. LUNDE: OK, fine. Is there anyone who now has any statement that they would like to make who hasn't signed up to do so? Yes, Mr. Carter?

MR. CARTER: Thank you, Rick Carter, Assistant Vice-President of the Minnesota Association of Health Care Facilities. Mary Martin, our staff counsel, did discuss this issue, but I would like to underscore it for the benefit of the Hearing Examiner, and hopefully for the benefit of the panel. The issue of joint rulemaking is something that I feel particularly strong about, and something that I believe should be discussed here today, or at least considered by the Hearing Examiner. We have seen, at least several allusions today, primarily by Ms. Martin, but also be other individuals of already

conflicting or possibly conflicting rules; the whole issue of food, clothing, et cetera, is of grave concern to health care facilities, particularly in areas where the Department of Public Welfare has chosen not to reimburse certain items such as nursing care, food costs, et cetera. The Department of Public Welfare is full well aware that the Legislature imposed a 10 percent increase on health care facilities each year of the bienium, which means health care facilities will be further pinched in their ability to address to the needs of long-term care facility residents. Many of the items mentioned in that particular section in the rule are not items which facilities are reimbursed at the present time; although I think facilities try to -- endeavor to provide these items, such as clothing, when it's appropriate and when nobody else cares for the individual resident. That's just one example, Mr. Hearing Examiner, of potential conflict. The department representative has indicated that it's own licensing division within the department also will promulgate a rule. I find it absolutely incredible that this particular rule could not have been incorporated with another rule to be promulgated by the Department of Public Welfare. I understand, and we all understand in this room that there are times when communications between departments and among departments

are difficult. But, certainly within this department they could have promulgated the two rules at the same time. Beyond that, it is true, as Ms. Martin has pointed out, that we're talking about potentially, at least, one dozen rules on this same subject. Again, the department representative indicated that she didn't see any particular problem, except possibly in the definition area. Well, certainly, I believe the Hearing Examiner has heard today that there are numerous problems with some of the definitions. And if all the rules do not contain the same definitions, then none of us are going to know what we're talking about; there are some difficulties there. But, beyond that, some of the responsibilities of the various investigating agencies, and care givers -- caretakers rather, are -- mesh at a number of points. It seemed to us, and we had recommended this quite some time ago, that all the parties that are responsible for these rules should have come together under joint rulemaking, otherwise we run a very serious risk of not having a complete process, or a process, at the minimum, is at least not confusing. There are numerous responsibilities, not only at the Welfare Department level, the social service division and those folks that relate to the counties, but also at the licensing level. Also, I would point out, at the

reimbursement level, at least for health care facilities. Beyond that, the Department of Health has responsibility in licensing some of the same facilities that DPW licenses, and in some instances, other facilities. Beyond that, as Ms. Martin indicated also, we have numerous professional licensing bodies and credentialing bodies, and the list goes far beyond what she just -- that she mentioned. Take for example, an instance of a case that may arise in a health care facility, be it a hospital or a nursing home. There are certain licensing bodies beyond the Health department and Welfare Department that relate to, for example, the licensed nursing home administrator; for example, the credentialed therapist that works on-site; for example, the licensed nurse; for example, the licensed medical doctor, and on it goes. So, we would strongly encourage the Hearing Examiner to, at least, ponder this concern, and hopefully the Hearing Examiner might be willing to give some direction to the department in your Report. I guess our bottom line is that it makes more sense for all these organizations -- excuse me, agencies and licensing boards to come together with one rule that covers the entire statute, and the responsibility of everybody in one place at one time, and we would be very supportive of such an effort; without it, I think we'll have confusion

and, furthermore, we don't know when the end of this process will occur, so we don't know how much confusion there will be between the time this rule is finally implemented and when the last rule of the last licensing agency or licensing board is promulgated. And that's essentially what I wanted to say. Thank you.

EXAM. LUNDE: Is there any other comments at this time? If not, I'll remind you that if you do have comments, or if other thoughts, or ideas, or criticisms come to your mind, you can submit those to me within the next 20 calendar day period at the address I gave you before. And there being no further testimony at this time, or comments on the rules, the hearing is closed.

(Whereupon the hearing was adjourned.)

TRANSCRIBER'S CERTIFICATE

We, Patricia J. Byron and Nancy M. Thomas, do hereby certify that the proceedings had in the foregoing matter on the 14 day of October, 1981, at St. Paul, Minnesota before Jon Lunde, Hearing Examiner, were recorded by electronic device on magnetic recording tapes by the Hearing Examiner.

We further certify that we thereafter transcribed into typewriting the foregoing transcript from said recording tapes.

We further certify that said transcript of said hearing constitutes a full, true and correct transcript of the proceedings to the best of our ability.

Dated this 21st day of October, 1981.

Patricia J. Byron

PATRICIA J. BYRON
Legal Secretary
Office of Administrative Hearings

Nancy M Thomas

NANCY M. THOMAS
Legal Secretary
Office of Administrative Hearings

Our File No. 789

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 3-2-82
DATE FOR REVIEW 3-13-82
DATE DUE 3-22-82

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

Approved 3-22-82 Disapproved Returned to Agency 3-22-82

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 3-22-82 Revisor approved 3/5/82 disapproved

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___ Rule as Adopted

___ Rule as Proposed

✓ Order Adopting 2.11.82 Date combined with F&F

✓ Notice of Intent to Solicit Outside Opinion SR. 10.20.80 + Comments

✓ Order for rulemaking
10.14.81 date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavits of Mailing Notice or rulemaking
9.9.81 At least 30 days prior to hearing/adoption

✓ Mailing list Certificate

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

✓ Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
✓ 12.11.81 Approving H.E.'s Report
✓ 2.25.82 Approving agency action

✓ Agency's Findings of Fact combined with Order Adopting

N/A LCRAR Report or agency Affidavit

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)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA
Office Memorandum

TO : ARTHUR E. NOOT
Commissioner of Public Welfare

DATE: 3/22/82

ATTN: Dianne G. Masters, Spec. Ass't. Atty. Gen.

FROM : TED A. MARTINEZ
Special Assistant
Attorney General

PHONE: 296-0315

SUBJECT: In the Matter of the Proposed Adoption of Rule 221 of the Department of Public Welfare Governing the Investigation and Reporting of Maltreatment of Vulnerable Adults and Some Aspects of the Emergency and Continuing Protective Social Services Required to be Furnished by Local Social Services Agencies Under Minn. Stat. § 626.557

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.

TAM:drw

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

Department of Public Welfare

Adopted Rule Governing the Investigation and Reporting of Maltreatment of, and Some Aspects of the Provision of Protective Services to, Vulnerable Adults (12 MCAR S 2.221)

Rule as Adopted

12 MCAR S 2.221 Protective services by local social services agencies to vulnerable adults.

A. Applicability. 12 MCAR S 2.221 governs the ~~administration and provision by local social services agencies of the protective services to vulnerable adults which are required by~~ investigation and reporting of maltreatment of vulnerable adults and some aspects of the emergency and continuing protective social services required to be furnished by local social services agencies under Minn. Stat. S 626.557.

B. Definitions. As used in 12 MCAR S 2.221, the following terms have the meanings given them.

1. Abuse. "Abuse" means:

a. Any act which constitutes a violation of Minn. Stat. S 609.322 related to prostitution;

b. Any act which constitutes a violation of Minn. Stat. SS 609.342-609.345 related to criminal sexual conduct; or

c. The intentional and nontherapeutic infliction of physical pain or injury, or any persistent course of conduct intended to produce mental or emotional distress.

2. Caretaker. "Caretaker" means an individual or facility which has responsibility for the care of a vulnerable adult as a result of family relationship, or which has assumed responsibility for all or a portion of the care of the vulnerable adult voluntarily, by contract, or by agreement. A person who has assumed only financial responsibility for an adult is not a caretaker.

3. County of financial responsibility. "County of financial responsibility" means the county designated as the county of financial responsibility pursuant to Minn. Stat. S

256E.08, subd. 7.

~~3.~~ 4. Facility. "Facility" means a hospital or other entity required to be licensed pursuant to Minn. Stat. SS 144.50-144.58; a nursing home required to be licensed pursuant to Minn. Stat. S 144A.02; an agency, day care facility, or residential facility required to be licensed pursuant to Minn. Stat. SS 245.781-245.812; a mental health program receiving funds pursuant to Minn. Stat. S 245.61; and any entity required to be certified for participation in Titles XVIII or XIX of the Social Security Act, 42 U.S.C. 1395 et seq.

~~4.~~ 5. False. "False" means ~~unsubstantiated~~ disproved to the satisfaction of the investigating agency.

~~5.~~ 6. Host county. "Host county" means the county in which a facility is located.

~~6.~~ 7. Impairment of mental or physical function or emotional status. "Impairment of mental or physical function or emotional status" means a condition which includes being substantially unable to carry out one or more of the essential major activities of daily living, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning or working; being unable to protect oneself from hazardous or abusive situations without assistance; a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality or ability to cope with the ordinary demands of life; substantial difficulty in engaging in the rational decision-making process and inability to weigh the possible benefits and risks of seeking assistance; a condition in which an individual is so fearful, so ashamed, so confused, or so anxious about the consequences of reporting that that individual would be unable or unlikely to make a responsible decision regarding whether or not to report abuse or neglect.

~~7.~~ 8. Licensing agency. "Licensing agency" means:

a. The Commissioner of Health, for a facility which is required to be licensed or certified by the Department of Health;

b. The Commissioner of Public Welfare for facilities

required by Minn. Stat. SS 245.781-245.812 to be licensed;

c. Any licensing board which regulates persons pursuant to Minn. Stat. S 214.01; and

d. ~~Any agency responsible for credentialing human services occupations~~ The Minnesota Department of Health if the human services occupation of the alleged perpetrator is credentialed pursuant to Minn. Stat. S 214.13 or 149.02.

~~8.~~ 9. Local social services agency. "Local social services agency" means the local agency under the authority of the human services board or board of county commissioners which is responsible for social services.

~~9.~~ 10. Neglect. "Neglect" means failure by a caretaker to supply or to ensure the supply of necessary food, clothing, shelter, health care, or supervision for a vulnerable adult.

~~10.~~ 11. Report. "Report" means any verbal or written report of abuse or neglect of a vulnerable adult received by the local social services agency, police department, county sheriff, or licensing agency.

~~11.~~ 12. State agency. "State agency" means the Minnesota Department of Public Welfare.

~~12. Unsubstantiated. "Unsubstantiated" means able to be disproved to the satisfaction of the investigating agency.~~

13. Substantiated. "Substantiated" means proved to the satisfaction of the investigating agency.

~~13.~~ 14. Vulnerable adult. "Vulnerable adult" means any person 18 years of age or older:

a. Who is a resident or patient of a facility;

b. Who receives services at or from a facility required to be licensed pursuant to Minn. Stat. SS 245.781-245.812; or

c. Who, regardless of residence, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status.

15. Inconclusive. "Inconclusive" means a report which cannot be substantiated or disproved to the satisfaction of the investigating agency.

C. Complaint investigation by local social services agencies.

1. Duty to accept and investigate complaints. The local social services agency shall accept and investigate all complaints alleging that a vulnerable adult has been abused or neglected in that agency's county. The local social services agency shall notify each relevant licensing agency and the local police departments or county sheriffs and shall cooperate in coordinating its investigation with the investigations of the licensing agencies, police departments, and sheriffs. The local social services agency shall immediately send a report of its findings to all other agencies notified concerning the complaint in question.

2. Time limits to initiate investigations. The local social services agency shall begin to investigate all complaints within the following time limits.

a. The local social services agency shall conduct an immediate on-site investigation for complaints alleging or from which it can be inferred that a vulnerable adult is in need of immediate care or protection because the adult is life threatened ~~and~~ or likely to experience physical injury due to abuse or abandonment.

b. The local social services agency shall begin its investigation within 24 hours for complaints alleging, ~~or from which it can be inferred~~ or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly abused.

c. The local social services agency shall begin its investigation within 72 hours for complaints alleging, ~~or from which it can be inferred~~ or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly neglected.

3. Investigations related to a facility. When an investigation involves an alleged incident or situation ~~in~~ related to a facility, the local social services agency shall make an on-site visit to the facility to assess the validity of the complaint. This investigation shall include the following

activities when necessary to make an accurate assessment, but activities specified in a., c., and e. need not occur on the site of the facility:

a. Discussion with the reporter;

b. Discussion with the facility administrator or responsible designee;

c. Discussion with the physician or other professionals, or any corroborating contacts as necessary;

d. Contact with the alleged victim;

e. Discussion with the alleged perpetrator;

~~f. Discussion with other residents of the facility, unless the complaint is unsubstantiated, to determine whether the conditions which resulted in the reported abuse or neglect place other vulnerable adults in jeopardy of being abused or neglected,~~

~~g.~~ f. Examination of the physical conditions or the psychological climate of the facility; and

~~h.~~ g. Inspection of the alleged victim's record.

The local social services agency shall also determine whether the reported abuse or neglect places other vulnerable adults in jeopardy of being abused or neglected.

The local social services agency shall immediately send a report of its findings to all other agencies notified concerning the complaint in question.

4. Investigations not related to a facility. When an investigation involves an alleged incident or situation which is not related to a facility, the local social services agency shall assess the validity of the complaint. This investigation shall include the following activities where necessary to make an accurate assessment:

a. Discussion with the alleged victim;

b. Discussion with the reporter or any corroborating contacts, as necessary; ~~and~~

c. Discussion with the alleged perpetrator~~.~~;

d. Discussion with the physician or other professionals; and

e. Examination of the physical conditions or the psychological climate of the residence.

The local social services agency shall also determine whether the reported abuse or neglect places other vulnerable adults in jeopardy of being abused or neglected.

5. Investigations by agencies which are not in the county of financial responsibility. When a complaint involves a vulnerable adult who is receiving services from a facility located in a county other than the adult's county of financial responsibility, the local social services agency of the host county shall:

a. Investigate the complaint in accordance with C.3. and determine whether the complaint is substantiated, ~~unsubstantiated~~ inconclusive or ~~unable to be substantiated~~ false;

b. Notify each relevant licensing agency, the police or sheriff, and the county of financial responsibility;

c. Consult with the county of financial responsibility, ~~if possible~~ unless the host county must take immediate emergency measures and representatives of the county of financial responsibility are not available;

d. Take whatever measures are necessary to correct the situation or to remove the adult from the facility and notify the county of financial responsibility of the actions taken to correct the situation or of the removal of the adult from the facility; and

e. Complete and transmit all required written forms and findings to appropriate agencies.

The local social services agency of the county of financial responsibility shall then resume responsibility for ensuring ongoing planning and services for the vulnerable adult.

6. Use of outside experts. When it is investigating alleged abuse or neglect of a vulnerable adult, the local social services agency shall consult persons with appropriate expertise if the local agency believes that it lacks the expertise necessary for making judgments pertaining to the allegations.

This consultation may include matters of physical health, mental health, specialized treatment such as behavior modification, geriatrics, or other matters.

7. Investigations after initial complaint assessment. If upon the initial assessment required by 1.-6. there appears to be substance to a complaint, the local social services agency shall attempt to determine the following:

a. The risk posed if the vulnerable adult remains in the present circumstances;

b. The current physical and emotional condition of the vulnerable adult, including ~~an assessment of prior injuries, if any~~ the history or pattern of abuse or neglect or related prior injuries;

c. The name, address, age, sex, and relationship of the alleged perpetrator to the vulnerable adult; and

d. In a complaint of neglect, the relationship of the caretaker to the vulnerable adult, including the agreed-upon roles and responsibilities of the caretaker and the vulnerable adult.

8. Protective Services. The local social services agency shall offer emergency and continuing protective social services for purposes of preventing further abuse or neglect and for safeguarding and enhancing the welfare of the abused or neglected vulnerable adult.

D. Classification of complaints. Within 90 days of receiving the initial complaint, the local social services agency shall assess, make a finding, and classify all complaints as either substantiated, ~~unsubstantiated~~ false, or ~~unable to be substantiated~~ inconclusive. At the conclusion of the assessment, the alleged victim of maltreatment and the alleged perpetrator shall be notified in writing as to whether the complaint was substantiated, ~~unsubstantiated~~ false, or ~~unable to be substantiated~~ inconclusive.

E. Actions on behalf of a vulnerable adult who refuses services. If a vulnerable adult who is the victim of abuse or neglect by a caretaker refuses an offer of services from a local

social ~~service~~ services agency and in the judgment of that agency the vulnerable adult's safety or welfare is in jeopardy, the agency shall seek the authority to intervene on behalf of that adult. If the agency believes it to be in the adult's best interest, it shall seek or help the family or victim seek any of the following:

~~a.~~ 1. A restraining order or a court order for removal of the perpetrator from the residence of the vulnerable adult pursuant to Minn. Stat. S 518B.01.

~~b.~~ 2. Guardianship or conservatorship pursuant to Minn. Stat. SS 525.539-525.6198, or guardianship or conservatorship pursuant to Minn. Stat. ch. 252A.

~~c.~~ 3. A hold order or commitment pursuant to the Minnesota Hospitalization and Commitment Act, Minn. Stat. ch. 253A.

~~d.~~ 4. A referral to the prosecuting attorney for possible criminal prosecution of the perpetrator under Minn. Stat. ch. 609.

F. Reports to the state agency.

1. Initial report. Every incident of abuse or neglect reported to the local social services agency shall be reported to the Social Services Division of the state agency on forms provided by the state agency. The local agency shall send the completed report form to the state agency within 20 days of receiving the complaint, whether or not the classification of the report has been determined according to D.

2. Subsequent report. When the classification of the report has been determined or if the classification has changed subsequent to the time of the initial report to the state agency, the local agency shall advise the state agency in writing of the correct information. The local agency shall do this within 90 days of when the local agency received the complaint.

3. Data privacy. Reports to the Social Services Division of the state agency are for statistical purposes only. The identity of the vulnerable adult and of the perpetrator shall

not be included on the copy of the report sent to the state agency.

APPROVED AS TO LEGALITY

March 22 1982

WARREN SPANNAUS, ATTORNEY GENERAL

BY Ted A. Mondale

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 22 1982
Joan Anderson Growe
Secretary of State

11:02 A.M.

RECEIVED
SEP 17 1981
ADMINISTRATIVE HEARINGS

qualified employee, and service designed to return an individual to ~~(1)~~ suitable gainful employment by returning the individual to a job with the former employer or to a job related to the individual's former employment, ~~(2)~~ or by placing the individual in a job in another field ~~which produces an economic status as close as possible to that enjoyed before the injury~~, or ~~(3)~~ by placing the individual in a job with higher economic status than would have occurred without the disability if it can be demonstrated that this is necessary to increase the likelihood of reemployment. The service may include, but is not limited to, medical evaluation, medically prescribed physical rehabilitation, work evaluation, counseling, job analysis, job modification, job placement ~~and implementation of~~, on-the-job training, or ~~short-term~~ retraining.

L. Review panel. "Review panel" means the panel created by ~~Minnesota Statutes, Section~~ Minn. Stat. § 176.102, ~~Subdivision~~ subd. 3.

RS 5. Plan modification. Upon request of the employer or employee, the commissioner may suspend, terminate or alter a rehabilitation plan for good cause, including, but not limited to:

~~(a)~~ A. A new or continuing physical limitation that significantly interferes with the implementation of the plan;

~~(b)~~ B. The employee's performance indicates that he is unlikely to complete the plan successfully; or

~~(c)~~ C. The employee is not cooperating with the plan~~, or (d)~~ .

The commissioner may alter a plan on the request of an employee if the employee believes that the occupation for which he is being trained is not suited to him, provided that ~~a request by an employee for the reason indicated in (d) above~~ the employee's request shall be made within 90 days from the plan's implementation date and that no more than one change ~~under (d) above~~ shall be permitted for this reason. Any decision of the commissioner regarding a change in a plan may be appealed to the review panel within 15 days of the filing of and service of the decision on the interested parties.

Department of Public Welfare

Proposed Rule Governing the Administration and Provision of Protective Services to Vulnerable Adults (12 MCAR § 2.221)

Notice of Hearing

A public hearing concerning the above entitled matter will be held in Room A, 4th Floor, Centennial Office Building, St. Paul, Minnesota, 55155 on October 14, 1981 commencing at 12:30 p.m. and continuing until all interested persons have an opportunity to be heard. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, 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 participate by asking questions and making 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 L. Lunde, Office of Administrative Hearings, 1745 University Avenue, Room 300, St. Paul, Minnesota, 55104, either before the hearing or within five working days after the public hearing ends. Mr. Lunde's telephone number is 612/296-5938. The hearing examiner may, at the hearing, order that the comment period be extended for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.041-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

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 the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The purpose of 12 MCAR § 2.221 is to establish the procedures and standards necessary for implementation of Minn. Stat. § 626.557 (1980), subd. 10, governing the administration and provision of protective services to vulnerable adults by county social services agencies.

The rule has eight major sections: A. Applicability; B. Definitions; C. Complaint Investigations by local social services agencies; D. Classification of complaints; E. Relocation of vulnerable adults; F. Social services for vulnerable adults; G. Actions on behalf of a vulnerable adult who refuses services; H. Reports to the state agency.

Section A. "Applicability" cites the state statute upon which the rule is based.

Section B. "Definitions" includes definitions of terms used in the rule.

DPW Exh. No. H
File No. AP 0-82-006-V
Date 10/14/81

Section C. "Complaint investigation by local social services agencies" pertains to the county social services agency's responsibility for accepting and investigating complaints about alleged maltreatment of an adult within that agency's county. This section also establishes the time-frames within which a county social services agency must begin its investigation of alleged maltreatment of an adult. The section outlines the components of an investigation of alleged maltreatment of an adult in a facility. The section outlines the components of an investigation of alleged maltreatment of an adult when the allegation is not related to a facility. The section stipulates the responsibilites of the host county and the county of financial responsibility when a complaint involves a vulnerable adult who is receiving services from a facility located in a county other than the adult's county of financial responsibility. The section addresses the issue of consultation with appropriate specialists when the assessment of a complaint of alleged maltreatment requires knowledge which is broader than that of the social services agency investigating the complaint. The section outlines the information to be gathered by the investigating social services agency if upon initial assessment, there appears to be substance to the complaint.

Section D. "Classification of complaints" requires a county social services agency to complete its assessment and classification of all complaints within 90 days of receiving the complaint. It also requires the agency to provide written notification of the classification of the complaint to the alleged victim of maltreatment and the alleged perpetrator.

Section E. "Actions on behalf of a vulnerable adult who refuses services" lists the various legal avenues by which a county social services agency intervenes when a vulnerable adult's safety or welfare is in jeopardy.

Section F. "Reports to the state agency" requires county social services agencies to provide the state agency with data on every complaint of adult maltreatment and provides specific requirements for completing or correcting this information and for privacy of certain data.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. § 626.557, subd. 16(c)(1980).

The department estimates that the cost of implementing 12 MCAR § 2.221 will not exceed $100,000 per year for local public bodies for the two years immediately following its 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 Karen Potter, Department of Public Welfare, Centennial Building, St. Paul, MN 55115, telephone (612) 296-4021. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule amendment, contact Zetta Feder at (612) 296-4019.

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 612/296-5616.

August 26, 1981

Arthur E. Noot
Commissioner of Public Welfare

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Rule as Proposed (all new material)

12 MCAR § 2.221 Protective services by local social services agencies to vulnerable adults.

A. Applicability. 12 MCAR § 2.221 governs the administration and provision by local social services agencies of the protective services to vulnerable adults which are required by Minn. Stat. § 626.557.

B. Definitions. As used in 12 MCAR § 2.221, the following terms have the meanings given them.

1. Abuse. "Abuse" means:

a. Any act which constitutes a violation of Minn. Stat. § 609.322 related to prostitution;

b. Any act which constitutes a violation of Minn. Stat. §§ 609.342-609.345 related to criminal sexual conduct; or

c. The intentional and nontherapeutic infliction of physical pain or injury, or any persistent course of conduct intended to produce mental or emotional distress.

2. Caretaker. "Caretaker" means an individual or facility which has responsibility for the care of a vulnerable adult as a result of family relationship, or which has assumed responsibility for all or a portion of the care of the vulnerable adult voluntarily, by contract, or by agreement. A person who has assumed only financial responsibility for an adult is not a caretaker.

3. Facility. "Facility" means a hospital or other entity required to be licensed pursuant to Minn. Stat. §§ 144.50-144.58; a nursing home required to be licensed pursuant to Minn. Stat. § 144A.02; an agency, day care facility, or residential facility required to be licensed pursuant to Minn. Stat. §§ 245.781-245.812; a mental health program receiving funds pursuant to Minn. Stat. § 245.61; and any entity required to be certified for participation in Titles XVIII or XIX of the Social Security Act, 42 U.S.C. 1395 et seq.

4. False. "False" means unsubstantiated.

5. Host county. "Host county" means the county in which a facility is located.

6. Impairment of mental or physical function or emotional status. "Impairment of mental or physical function or emotional status" means a condition which includes being substantially unable to carry out one or more of the essential major activities of daily living, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning or working; being unable to protect oneself from hazardous or abusive situations without assistance; a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality or ability to cope with the ordinary demands of life; substantial difficulty in engaging in the rational decision-making process and inability to weigh the possible benefits and risks of seeking assistance; a condition in which an individual is so fearful, so ashamed, so confused, or so anxious about the consequences of reporting that that individual would be unable or unlikely to make a responsible decision regarding whether or not to report abuse or neglect.

7. Licensing agency. "Licensing agency" means:

a. The Commissioner of Health, for a facility which is required to be licensed or certified by the Department of Health;

b. The Commissioner of Public Welfare for facilities required by Minn. Stat. §§ 245.781-245.812 to be licensed;

c. Any licensing board which regulates persons pursuant to Minn. Stat. § 214.01; and

d. Any agency responsible for credentialing human services occupations.

8. Local social services agency. "Local social services agency" means the local agency under the authority of the human services board or board of county commissioners which is responsible for social services.

9. Neglect. "Neglect" means failure by a caretaker to supply or to ensure the supply of necessary food, clothing, shelter, health care, or supervision for a vulnerable adult.

10. Report. "Report" means any verbal or written report of abuse or neglect of a vulnerable adult received by the local social services agency, police department, county sheriff, or licensing agency.

11. State agency. "State agency" means the Minnesota Department of Public Welfare.

12. Unsubstantiated. "Unsubstantiated" means able to be disproved to the satisfaction of the investigating agency.

13. Vulnerable adult. "Vulnerable adult" means any person 18 years of age or older:

a. Who is a resident or patient of a facility;

b. Who recieves services at or from a facility required to be licensed pursuant to Minn. Stat. §§ 245.781-245.812; or

c. Who, regardless of residence, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status.

C. Complaint investigation by local social services agencies.

1. Duty to accept and investigate complaints. The local social services agency shall accept and investigate all complaints alleging that a vulnerable adult has been abused or neglected in that agency's county.

2. Time limits to initiate investigations. The local social services agency shall begin to investigate all complaints within the following time limits.

a. The local social services agency shall conduct an immediate on-site investigation for complaints alleging or from which it can be inferred that a vulnerable adult is in need of immediate care or protection because the adult is life threatened and likely to experience physical injury due to abuse or abandonment.

b. The local social services agency shall begin its investigation within 24 hours for complaints alleging, or from which it can be inferred, that a vulnerable adult is not in need of immediate care or protection but is allegedly abused.

c. The local social services agency shall begin its investigation within 72 hours for complaints alleging, or from which it can be inferred, that a vulnerable adult is not in need of immediate care or protection but is allegedly neglected.

3. Investigations related to a facility. When an investigation involves an alleged incident or situation in a facility, the local social services agency shall make an on-site visit to the facility to assess the validity of the complaint. This investigation shall include the following activities when necessary to make an accurate assessment:

a. Discussion with the reporter;

b. Discussion with the facility administrator or responsible designee;

c. Discussion with the physician or other professionals, or any corroborating contacts as necessary;

d. Contact with the alleged victim;

e. Discussion with the alleged perpetrator;

f. Discussion with other residents of the facility, unless the complaint is unsubstantiated, to determine whether the conditions which resulted in the reported abuse or neglect place other vulnerable adults in jeopardy of being abused or neglected;

g. Examination of the physical conditions or the psychological climate of the facility; and

h. Inspection of the alleged victim's record.

4. Investigations not related to a facility. When an investigation involves an alleged incident or situation which is not related to a facility, the local social services agency shall assess the validity of the complaint. This investigation shall include the following activities where necessary to make an accurate assessment:

a. Discussion with the alleged victim;

b. Discussion with the reporter or any corroborating contacts, as necessary; and

c. Discussion with the alleged perpetrator.

5. Investigations by agencies which are not in the county of financial responsibility. When a complaint involves a vulnerable adult who is receiving services from a facility located in a county other than the adult's county of financial responsibility, the local social services agency of the host county shall:

a. Investigate the complaint and determine whether the complaint is substantiated, unsubstantiated or unable to be substantiated;

b. Notify each relevant licensing agency, the police or sheriff, and the county of financial responsibility;

c. Consult with the county of financial responsibility, if possible;

d. Take whatever measures are necessary to correct the situation or to remove the adult from the facility; and

e. Complete and transmit all required written forms and findings to appropriate agencies.

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

The local social services agency of the county of financial responsibility shall then resume responsibility for ensuring ongoing planning and services for the vulnerable adult.

6. Use of outside experts. When it is investigating alleged abuse or neglect of a vulnerable adult, the local social services agency shall consult persons with appropriate expertise if the local agency believes that it lacks the expertise necessary for making judgments pertaining to the allegations. This consultation may include matters of physical health, mental health, specialized treatment such as behavior modification, geriatrics, or other matters.

7. Investigations after initial complaint assessment. If upon the initial assessment required by 1.-6. there appears to be substance to a complaint, the local social services agency shall attempt to determine the following:

a. The risk posed if the vulnerable adult remains in the present circumstances;

b. The current physical and emotional condition of the vulnerable adult, including an assessment of prior injuries, if any;

c. The name, address, age, sex, and relationship of the alleged perpetrator to the vulnerable adult; and

d. In a complaint of neglect, the relationship of the caretaker to the vulnerable adult, including the agreed-upon roles and responsibilities of the caretaker and the vulnerable adult.

D. Classification of complaints. Within 90 days of receiving the initial complaint, the local social services agency shall assess, make a finding, and classify all complaints as either substantiated, unsubstantiated, or unable to be substantiated. At the conclusion of the assessment, the alleged victim of maltreatment and the alleged perpetrator shall be notified in writing as to whether the complaint was substantiated, unsubstantiated, or unable to be substantiated.

E. Actions on behalf of a vulnerable adult who refuses services. If a vulnerable adult refuses an offer of services from a local social service agency and in the judgment of that agency the vulnerable adult's safety or welfare is in jeopardy, the agency shall seek the authority to intervene on behalf of that adult. If the agency believes it to be in the adult's best interest, it shall seek or help the family or victim seek any of the following:

a. A restraining order or a court order for removal of the perpetrator from the residence of the vulnerable adult pursuant to Minn. Stat. § 518B.01.

b. Guardianship or conservatorship pursuant to Minn. Stat. §§ 525.539-525.6198, or guardianship or conservatorship pursuant to Minn. Stat. ch. 252A.

c. A hold order or commitment pursuant to the Minnesota Hospitalization and Commitment Act, Minn. Stat. ch. 253A.

d. A referral to the prosecuting attorney for possible criminal prosecution of the perpetrator under Minn. Stat. ch. 609.

F. Reports to the state agency.

1. Initial report. Every incident of abuse or neglect reported to the local social services agency shall be reported to the Social Services Division of the state agency on forms provided by the state agency. The local agency shall send the completed report form to the state agency within 20 days of receiving the complaint, whether or not the classification of the report has been determined according to D.

2. Subsequent report. When the classification of the report has been determined or if the classification has changed subsequent to the time of the initial report to the state agency, the local agency shall advise the state agency in writing of the correct information. The local agency shall do this within 90 days of when the local agency received the complaint.

3. Data privacy. Reports to the Social Services Division of the state agency are for statistical purposes only. The identity of the vulnerable adult and of the perpetrator shall not be included on the copy of the report sent to the state agency.

STATE OF MINNESOTA
COUNTY OF RAMSEY

ARTHUR E. NOOT, COMMISSIONER
DEPARTMENT OF PUBLIC WELFARE

In the matter of the Proposed Adoption of Rule 221 of the Department of Public Welfare governing the investigation and reporting of maltreatment of vulnerable adults and some aspects of the emergency and continuing protective social services required to be furnished by local social services agencies under Minn. Stat. §626.557.

ORDER ADOPTING
RULE 221

The above entitled matter came before Hearing Examiner, Jon L. Lunde, on October 14, 1981, beginning at 12:30 p.m. in Conference Room A of the Centennial Office Building, St. Paul, Minnesota. The Department of Public Welfare served proper notice as required by Minn. Stat. 15.0412, Subd. 4, as amended by Minnesota Laws 1980, ch. 615 §6, upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

At said hearing, the proposed rule as published in 6 State Register 452 on Monday, September 14, 1981 was considered. Dianne Masters, Special Assistant Attorney General, appeared as counsel for the Department. Zetta Feder, Adult Protection Consultant, testified on behalf of the Department regarding the adoption of Proposed Rule 221. Carol Watkins, Supervisor, Adult Services Unit, DPW, was present to act as a witness for the Department. The hearing continued until all interested groups and persons had an opportunity to be heard. Pursuant to order of the Hearing Examiner, the record was held open for twenty (20) days for the submission of written comments and statements.

Based upon all the records and proceedings, the Hearing Examiner issued a Report dated December 10, 1981, which included Findings of Fact, Conclusions and Recommendation. This Report is attached hereto as Exhibit A. A Report of the Chief Hearing Examiner, Duane R. Harves, dated December 11, 1981, was also issued and is attached hereto as Exhibit B.

Pursuant to the requirements of Minn. Stat. §15.0412, Subd. 4d (Minnesota Laws 1980, ch. 615 §6), this Report was available to all affected parties for at least five (5) days.

Having considered all 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 the above captioned Rule and the reasonableness thereof,

NOW THEREFORE, IT IS ORDERED

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

The Findings of Fact of the Hearing Examiner are enumerated 1 through 56 in his Report. The Commissioner accepts Findings of Fact 1 through 10 relating to procedural requirements and 12, 14, 15, 16, 17, 18, 19, 20, 22, 25, 26, 27, 28, 30, 31, 33, 36, 37, 40, 42, 43, 44, 52, and 56 which are substantive to the rule. The Commissioner agrees that they are not substantial in nature, are needed and reasonable, and adopts and incorporates them herein.

The following Hearing Examiner's Findings of Fact represent changes suggested by the Hearing Examiner:

Findings #49, #11 and #45

The Hearing Examiner has made three recommendations contained in Finding #49, Finding #11 and Finding #45. These three recommendations involve the addition of three requirements to Part C.1. of the rule. The Commissioner finds that these are necessary and reasonable and are not substantial changes.

The Commissioner accepts the recommendations and amends C.1. to read:

C. Complaint investigation by local social services agencies.

1. Duty to accept and investigate complaints. The local social services agency shall accept and investigate all complaints alleging that a vulnerable adult has been abused or neglected in that agency's county. The local social services agency shall notify each relevant licensing agency and the local police departments or county sheriffs and shall cooperate in coordinating its investigation with the investigations of the licensing agencies, police departments, and sheriffs. The local social services agency shall immediately send a report of its findings to all other agencies notified concerning the complaint in question.

The Hearing Examiner, in Finding #11, has recommended that in subsequent proceedings, the Social Services Division further clarify the cooperation and coordination required of local agencies in their investigations and that the clarification be made a part of 12 MCAR 2.221. The Commissioner accepts this recommendation and plans to incorporate standards in the rule as the coordinating role of the local social services agency is developed and clarified.

Finding #13

The Hearing Examiner has recommended that Part A be amended as follows:

A. Applicability. 12 MCAR §2.221 governs the ~~administration and provision by local social services agencies of the protective services to vulnerable adults which are required by~~ investigation and reporting of maltreatment of vulnerable adults and some aspects of the emergency and continuing protective social services required to be furnished by local social services agencies under Minn. Stat. §626.557.

The Commissioner finds that the recommendation of the Hearing Examiner with regard to Part A is necessary and reasonable and does not constitute substantial change. It is hereby adopted and incorporated.

Finding #23

The Hearing Examiner has advised that the statutory citation in Part B.7.b. should be changed to "Minn. Stat. §245.781-245.813" to conform with subd. 2(g) of the statute. The Commissioner does not adopt this recommendation because Minn. Stat. §245.813 was repealed by Laws 1980, Chapter 542, Section 2. The Vulnerable Adults Act itself is not consistent in its reference to the Public Welfare Licensing Act. Minn. Stat. §626.557, Subd. 2(b)(2) refers to sections 245.781 to 245.812.

Finding #24

The Hearing Examiner recommends that Part B.7.d. specifically name those agencies which credential human services occupations.

The Commissioner finds the Hearing Examiner's recommendation necessary and reasonable and not consituting substantial change. The Commissioner therefore accepts the recommendation and amends Part B.8.d. as follows:

~~7.~~ 8. Licensing agency. "Licensing agency" means:

a. The Commissioner of Health, for a facility which is required to be licensed or certified by the Department of Health;

b. The Commissioner of Public Welfare for facilities required by Minn. Stat. §245.781-245.812 to be licensed;

c. Any licensing board which regulates persons pursuant to Minn. Stat. §214.01; and

d. ~~Any agency responsible for credentialing human services occupations.~~ The Minnesota Department of Health if the occupation of the alleged perpetrator is credentialed pursuant to Minn. Stat. §214.13 or Minn. Stat. §149.02.

p.3

Finding #29

The Hearing Examiner has recommended that the Department give a definition of "county of financial responsibility". The definition for purposes of social services is in Minnesota Laws 1981, ch. 355 §13 (the Department was in error in citing ch. 355 §1, which pertains to public assistance issues rather than social services issues.) The Commissioner accepts the recommendation of the Hearing Examiner as necessary and reasonable and not constituting substantial change. The Commissioner believes it would be better, however, to cite the statute in the rule rather than to spell out the definition verbatim as it now stands in statute. This is preferred because the definition as it now stands in statute is controversial and is being challenged pursuant to Minn. Stat. §256.045. The Commissioner is reluctant to put in rule a definition which is being challenged and may be amended. The Commissioner therefore amends Part B to read:

3. County of financial responsibility. "County of financial responsibility means the county designated as the county of financial responsibility pursuant to Minn. Stat. §256E.08, Subd. 7.

p.1

The succeeding numbers in Part B are amended accordingly, with Part B.3. becoming Part B.4., Part B.4. becoming Part B.5., etc.

Finding #32

The Hearing Examiner is correct in having questioned the use of the word "and" in line 5 of Part C.2.a; the disjunctive "or" is the appropriate word and the Department finds it both necessary and reasonable and not substantial change that "and" be replaced with "or". The Commissioner hereby accepts the recommendation of the Hearing Examiner and amends C.2.a. to read as follows:

a. The local social services agency shall conduct an immediate on-site investigation for complaints alleging or from whcih it can be inferred that a vulnerable adult is in need of immediate care or protection because the adult is life threatened ~~and~~ or likely to experience physical injury due to abuse or abandonment.

Finding #34

The Hearing Examiner suggests amending Parts C.2.b. and C.2.c. as follows:

b. The local social services agency shall begin its investigation within 24 hours for complaints alleging, ~~or from which it can be inferred~~ or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly abused;

c. The local social services agency shall begin its investigation within 72 hours for complaints alleging, ~~or from which it can be inferred;~~ or when there is substantial evidence, that a vulnerable adult is not in need of immediate care or protection but is allegedly neglected.

The Commissioner adopts and incorporates the Hearing Examiner's recommendations. The Commissioner finds them both necessary and reasonable and not constituting substantial change.

Finding #35

The Hearing Examiner has recommended amending Part C.3. as follows:

3. Investigations related to a facility. When an investigation involves an alleged incident or situation ~~in~~ related to a facility, the local social services agency shall make an on-site visit to the facility to assess the validity of the complaint.

The Commissioner finds the suggested amendment necessary and reasonable and not constituting substantial change. The recommendation is adopted and incorporated herein.

Finding #38

The Hearing Examiner has recommended that the last sentence of Part C.3. be amended as follows:

3. Investigations related to a facility. When an investigation involves an alleged incident or situation ~~in~~ related to a facility, the local social services agency shall make an on-site visit to the facility to assess the validity of the complaint. This investigation shall include the following activities when necessary to make an accurate assessment, but activities specified in a., c., and e. need not occur on the site of the facility:

The Commissioner accepts the recommendation of the Hearing Examiner, finds it both necessary and reasonable and not substantial change, and adopts and incorporates it herein.

Finding #45

Refer to first page on which Findings #11, #45 and #49 are addressed jointly.

Finding #46

The Hearing Examiner recommends amending Part C.4. by incorporating certain provisions of Part C.3. into Part C.4. The Commissioner accepts the recommendation of the Hearing Examiner and finds it necessary and reasonable and not constituting substantial change. The Commissioner therefore amends Part C.4. as follows:

4. Investigations not related to a facility. When an investigation involves an alleged incident or situation which is not related to a facility, the local social services agency shall assess the validity of the complaint. This investigation shall include the following activities where necessary to make an accurate assessment:

a. Discussion with the alleged victim;

b. Discussion with the reporter or any corroborating contacts, as necessary; ~~and~~

c. Discussion with the alleged perpetrator~~.~~;

d. Discussion with the physician or other professionals; and

e. Examination of the physical conditions or the psychological climate of the residence.

The local social services agency shall also determine whether the reported abuse or neglect places other vulnerable adults in jeopardy of being abused or neglected.

Findings #47 and #48

These findings address amendments to Part C.5.a. The Hearing Examiner recommends amending Part C.5.a. by referencing Part C.3. The Commissioner adopts and incorporates the recommendation of the Hearing Examiner to clarify part C.5.a. by adding the words "in accordance with part C.3." The Commissioner finds that this is necessary and reasonable and does not constitute substantial change.

The Hearing Examiner has also recommended amending Part C.5.a. to be consistent with the Department's other proposed amendments. This amendment is necessary and reasonable and does not constitute substantial change. The Commissioner accepts the recommendations and hereby amends Part C.5.a. to read as follows:

5. Investigations by agencies which are not in the county of financial responsibility. When a complaint involves a vulnerable adult who is receiving services from a facility located in a county other than the adult's county of financial responsibility, the local social services agency of the host county shall:

a. Investigate the complaint in accordance with C.3. and determine whether the complaint is substantiated, ~~unsubstantiated~~ inconclusive or ~~unable-to-be-substantiated~~ false;

Findings #49

Refer to first page on which Findings #11, #45 and #49 are addressed jointly.

Finding #50

The Hearing Examiner has recommended that Part C.5.c. be amended, that the words "if possible" be replaced with the words "unless the host county must take immediate emergency measures and representatives of the county of financial responsibility are not available;" The Commissioner finds that this is necessary and reasonable and does not constitute substantial change.

The Commissioner hereby adopts and incorporates the recommendation of the Hearing Examiner.

Finding #51

The Hearing Examiner has recommended that Part C.5.d. be amended as follows:

d. Take whatever measures are necessary to correct the situation or to remove the adult from the facility and notify the county of financial responsibility of the actions taken to correct the situation or of the removal of the adult from the facility; and

This is necessary and reasonable and the change constitutes a clarification, not a substantial change. It is herein adopted and incorporated.

Finding #54

The Hearing Examiner has recommended amending Part D. to bring it into conformity with the definitions proposed earlier. The Commissioner accepts the recommendation of the Hearing Examiner and amends Section D. to bring it into conformity with the definitions proposed. It is necessary and reasonable and does not constitute substantial change. Section D. is amended to read as follows:

D. Classification of complaints. Within 90 days of receiving the initial complaint, the local social services agency shall assess, make a finding, and classify all complaints as either substantiated, ~~unsubstantiated~~ false, or ~~unable-to-be-substantiated~~ inconclusive. At the conclusion of the assessment, the alleged victim of maltreatment and the alleged perpetrator shall be notified in writing as to whether the complaint was substantiated, ~~unsubstantiated~~ false, or ~~unable-to-be-substantiated~~ inconclusive.

The Hearing Examiner's Findings of Fact #'s 21, 39, 41, 53 and 55 reflect the Hearing Examiner's acceptance of Department proposals for change. The Commissioner reaffirms that they are necessary and reasonable and do not constitute substantial change. The Commissioner adopts and incorporates them herein. The changes involved include:

Finding #21

Parts B.4., B.12 and B.14 are amended to categorize reports of abuse as either "false", "substantiated" or "inconclusive" (rather than "unsubstantiated", "substantiated" or "unable to substantiate"). Parts B.4., B.12 and B.14 will read as follows:

~~4.~~ 5. False. "False" means ~~unsubstantiated~~ disproved to the satisfaction of the investigating agency.

~~12.--Unsubstantiated.--"Unsubstantiated"-means-able-to-be-disproved-to the-satisfaction-of-the-investigating-agency.~~

13. Substantiated. "Substantiated" means proved to the satisfaction of the investigating agency.

14. Inconclusive. "Inconclusive" means a report which cannot be substantiated or disproved to the satisfaction of the investigating agency.

Finding #39

Part 3.C.f. is deleted and replaced with a separate paragraph at the end of that Part. Part 3.C. will read as follows:

~~f.---Discussion-with-other-residents-of-the-facility,-unless-the-complaint is-unsubstantiated,-to-determine-whether-the-conditions-which-resulted-in-the reported-abuse-or-neglect-place-other-vulnerable-adults-in-jeopardy-of-being abused-or-neglected;~~

~~g.~~ f. Examination of the physical conditions or the psychological climate of the facility; and

~~h.~~ g. Inspection of the alleged victim's record.

The local social services agency shall also determine whether the reported abuse or neglect places other vulnerable adults in jeopardy of being abused or neglected.

Finding #41

A new Part C.8. will be added to the rule. Part C.8. will read as follows:

8. Protective Services. The local social services agency shall offer emergency and continuing protective social services for purposes of preventing further abuse or neglect and for safeguarding and enhancing the welfare of the abused or neglect vulnerable adult.

Finding #53

Part C.7.b. is amended to read as follows:

b. The current physical and emotional condition of the vulnerable adult, including ~~an-assessment-of-prior-injuries,-if-any~~ the history or pattern of abuse or neglect or related prior injuries;

Finding #55

Part E is amended as follows:

E. Actions on behalf of a vulnerable adult who refuses services. If a vulnerable adult who is the victim of abuse or neglect by a caretaker refuses an offer of services from a local social ~~service~~ services agency and in the judgment of that agency the vulnerable adult's safety or welfare is in jeopardy, the agency shall seek the authority to intervene on behalf of that adult. If the agency believes it to be in the adult's best interest, it shall seek or help the family or victim seek any of the following:

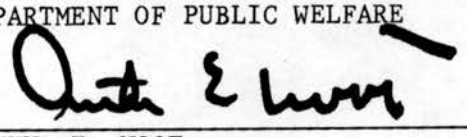
Parts a.-d. are renumbered to Parts 1.-4.

The word "services" is pluralized because of a printing error in the State Register; the 8-25-81 Revisor Office draft of the rule had the "s" but it was omitted in the October 14, 1981 Notice of Hearing in the State Register.

IT IS FURTHER ORDERED, that this Rule, identified as 12 MCAR §2.221 - Protective Services by Local Social Services Agencies to Vulnerable Adults - is adopted this 11 day of February, 1982 and after this day, Rule 221 shall read in its entirety as set forth in the attached Exhibit C. pursuant to the authority vested in me.

DATED: FEBRUARY 11, 1982

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE



ARTHUR E. NOOT
COMMISSIONER

Attachments

To: Ted

Date: 3/9/82

Re: DPW - Investigation and Reporting of Maltreatment of Vunerable Adults.

Rules as Adopted

.221 B. 8. c

p 3. line 3 Cites Minn. Stat. §214.01 which is replication of citation in authorizing statute, Minn. Stat. §626.557. It is interesting to note that §214.01 includes licensing boards which have nothing remotely to do with this rule e.g. barbers, veterinarians, abstracters, etc. But it would appear that a change to narrow the referenced boards would not be proper given the language in §626.557.

.221 B. 11

p. 3. line 15 "verbal" should be "oral"

DPW-82-006-JL

RECEIVED
AUG 20 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the matter of Proposed Adoption of the Department of Public Welfare Rule Governing the Administration and Provision of Protective Services to Vulnerable Adults (12 MCAR §2.221).

ORDER FOR HEARING

IT IS ORDERED this 21 day of August, 1981, that a public hearing on the proposed rules captioned above be held in Room A, 4th Floor, Centennial Office Building, on October 14, 1981, commencing at 12:30 p.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of said hearing be given to all persons who have registered their names with the Department of Public Welfare for that purpose and be published in the State Register.

STATE OF MINNESOTA

Commissioner of Public Welfare

BW/acg

RECEIVED
SEP 17 1981
ADMINISTRATIVE HEARINGS

DPW Exh. No. A
File No. DPW-82-006-02
Date 10/14/81

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF THE DEPARTMENT OF PUBLIC WELFARE RULE GOVERNING THE ADMINISTRATION AND PROVISION OF PROTECTIVE SERVICES TO VULNERABLE ADULTS (12 MCAR 2.221)

NOTICE OF HEARING

A public hearing concerning the above entitled matter will be held in Room A, 4th Floor, Centennial Office Building, St. Paul, Minnesota, 55155 on October 14, 1981 commencing at 12:30 p.m.and continuing until all interested persons have an opportunity to be heard. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, 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 participate by asking questions and making 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 L. Lunde, Office of Administrative Hearings, 1745 University Avenue, Room 300, St. Paul, Minnesota, 55104, either before the hearing or within five working days after the public hearing ends. Mr. Lunde's telephone number is 612/296-5938. The hearing examiner may, at the hearing, order that the comment period be extended for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§15.041-15.0417 and 15.052, and by 9 MCAR §§2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the Hearing Examiner.

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 the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The purpose of 12 MCAR §2.221 is to establish the procedures and standards necessary for implementation of Minn. Stat. §626.557 (1980), Subd. 10, governing the administration and provision of protective services to vulnerable adults by county social services agencies.

The rule has eight major sections: A. Applicability; B. Definitions; C. Complaint Investigations by local social services agencies; D. Classification of complaints; E. Relocation of vulnerable adults; F. Social services for vulnerable adults; G. Actions on behalf of a vulnerable adult who refuses services; H. Reports to the state agency.

Section A. Applicability cites the state statute upon which the rule is based.

Section B. Definitions includes definitions of terms used in the rule.

Section C. Complaint investigation by local social services agencies pertains to the county social services agency's responsibility for accepting and investigating complaints about alleged maltreatment of an adult within that agency's county. This section also establishes the time-frames within which a county social services agency must begin its investigation of alleged maltreatment of an adult. The section outlines the components of an investigation of alleged maltreatment of an adult in a facility. The section outlines the components of an investigation of alleged maltreatment of an adult when the allegation is not related to a facility. The section stipulates the responsibilities of the host county and the county of financial responsibility when a complaint involves a vulnerable adult who is receiving services from a facility located in a county other than the adult's county of financial responsibility. The section addresses the issue of consultation with appropriate specialists when the assessment of a complaint of alleged maltreatment requires knowledge which is broader than that of the social services agency investigating the complaint. The section outlines the information to be gathered by the investigating social services agency if upon initial assessment, there appears to be substance to the complaint.

Section D. Classification of complaints requires a county social services agency to complete its assessment and classification of all complaints within 90 days of receiving the complaint. It also requires the agency to provide written notification of the classification of the complaint to the alleged victim of maltreatment and the alleged perpetrator.

Section E. Actions on behalf of a vulnerable adult who refuses services lists the various legal avenues by which a county social services agency intervenes when a vulnerable adult's safety or welfare is in jeopardy.

Section F. Reports to the state agency requires county social services agencies to provide the state agency with data on every complaint of adult maltreatment and provides specific requirements for completing or correcting this information and for privacy of certain data.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. §626.557, Subd. 16(c)(1980).

The Department estimates that the cost of implementing 12 MCAR 2.221 will not exceed $100,000 per year for local public bodies for the two years immediately following its 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 Karen Potter, Department of Public Welfare, Centennial Building, St. Paul, MN 55115, telephone 612/296-4021. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule amendment, contact Zetta Feder at 612/296-4019.

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 612/296-5616.

Dated: August 26, 1981

Arthur E. Noot
Commissioner of Public Welfare

DTh-anb

RECEIVED
SEP 17 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF THE DEPARTMENT OF PUBLIC WELFARE RULE GOVERNING THE ADMINISTRATION AND PROVISION OF PROTECTIVE SERVICES TO VULNERABLE ADULTS

AFFIDAVIT OF MAILING

Wendy Johnson, being first duly sworn, deposes and says:

That on the 9th day of September, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Department of Public Welfare for the purpose of receiving notice of the proposed adoption of rules by this Department.

Wendy Johnson

Subscribed and sworn to before me

this 9th day of September, 1981.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

DPW Exh. No. B
File No. DPW-82-006-R
Date 10/14/81

RECEIVED
SEP 17 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF THE DEPARTMENT OF PUBLIC WELFARE RULE GOVERNING THE ADMINISTRATION AND PROVISION OF PROTECTIVE SERVICES TO VULNERABLE ADULTS

AFFIDAVIT OF ADDITIONAL MAILING

Wendy Johnson, being first duly sworn, deposes and says:

That on the 9th day of September, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to serving the attached Notice of Hearing to all persons and associations who have requested that their names be placed on file for the purpose of receiving notice of the proposed adoption of rules by this Department, she also served the attached Notice by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following agencies:

- County Departments
- State Hospitals
- Area Boards
- Mental Health Centers

Wendy Johnson

Subscribed and sworn to before me

this 9th day of September, 1981.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

DPW Exh. No. C
File No. DBD 82-006-R
Date 10/14/81

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. GAiovnik, being first duly sworn, deposes and says that on the 11th day of December, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of the Chief Hearing Examiner, and the Report of the Hearing Examiner, DPW-82-006-JL unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat. § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Eileen A. Gaiovnik

Subscribed and sworn to before me this
11th day of December, 1981.

Susan C. Wojcik

SUSAN C. WOJCIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 26, 1986

Commissioer Arthur E. Noot
Department of Public Welfare
Fourth Floor, Centennial Office Building
St. Paul, Minnesota 55101

Ms. Diane Masters
Special Assistant Attorney General
515 Transportation Building
St. Paul, Minnesota 55101

RECEIVED
SEP 17 1981
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF THE DEPARTMENT OF PUBLIC WELFARE RULE GOVERNING THE ADMINISTRATION AND PROVISION OF PROTECTIVE SERVICES TO VULNERABLE ADULTS

CERTIFICATE

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 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 3:00 P.M., this 9th day of September, 1981.

DPW Exh. No. 10
File No. DPW-82-006-R
Date 10/14/81

RECEIVED
SEP 17 1981
ADMINISTRATIVE
HEARINGS

Ethical Practices Board

Advisory Opinion #73

The full text of the opinion is available upon request from the office of the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, (612) 296-5148.

Approved by the Ethical Practices Board on September 19, 1980.

Issued to:

Michael L. Flanagan, Esq.
2350 IDS Center
Minneapolis, MN 55402

William F. Brooks, Jr., Esq.
900 Midland Bank Building
Minneapolis, MN 55401

DPW Exh. No. F
File No. DPW-82-006-R
Date 10/14/81

#73. A corporation may spend money to promote or defeat a ballot question either by registering its own political fund or by contributing to an already registered political fund.

Department of Public Welfare Social Service Bureau

Notice of Intent To Solicit Outside Opinion Concerning A Proposed Rule Relating to the Investigation and Reporting of Maltreatment of Vulnerable Adults

Notice is hereby given that the Minnesota Department of Public Welfare is drafting a proposed rule 12 MCAR § 2.221 (The Investigation and Reporting of Maltreatment of Vulnerable Adults).

This rule will govern the reporting of suspected abuse or neglect of vulnerable adults, investigation of reports, provision of protective and counseling services and outreach.

Authority for this rule is contained in Minnesota Statute § 626.557, subd. 15(c), passed by the 1980 Legislature on Reporting of Maltreatment of Vulnerable Adults.

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:

Art Jauss
Division of Social Services
Department of Public Welfare
Centennial Office Building
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-3730.

All statements of information and comment must be received by December 1, 1980. Any written material received by the Department shall become part of the hearing record.

Department of Public Welfare Support Services Bureau

Notice of Intent to Solicit Outside Opinion on Rules for Determining Welfare Per Diem Rates for Nursing Home Providers under the Title XIX Medical Assistance Program

Notice is hereby given that the Minnesota Department of Public Welfare is considering draft amendments to 12 MCAR § 2.049 (DPW Rule 49), rules for determining welfare per diem rates for nursing home providers under the Title XIX Medical Assistance Program. This rule governs the rate-setting for all nursing and boarding care homes participating in the Medical Assistance Program and those boarding care homes participating in the Minnesota Supplemental Aid Program. The rule defines cost reporting requirements and reasonable cost principles in order to provide a uniform and equitable mechanism for promoting efficiency and economy in the aforementioned programs.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
400 SUMMIT BANK BUILDING
310 SOUTH FOURTH AVENUE
MINNEAPOLIS, MINNESOTA 55415
(612) 341-7600

February 25, 1982

Ms. Zetta Feder
Adult Protection Consultant
Social Services
Department of Public Welfare
4th Floor - Centennial Office Bldg.
St. Paul, MN 55155

Re: In the Matter of the Proposed Adoption of Rule of the Department of Public Welfare Governing the Administration and Provision of Protective Services to Vulnerable Adults (12 MCAR § 2.221).
OAH Docket No. DPW-82-006-JL

Dear Ms. Feder:

Enclosed is the Order of the Chief Hearing Examiner in the above-referenced matter.

Also enclosed is the record which you submitted to us for review and the original Order of Commissioner Arthur Noot adopting Rule 221.

Yours very truly,

DUANE R. HARVES
Chief Hearing Examiner

Telephone: 612/341-7640

DRH:sh
Enc.

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DPW-82-006-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE ADMINISTRATION AND PROVISION OF PROTECTIVE SERVICES TO VULNERABLE ADULTS (12 MCAR § 2.221).

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on October 14, 1981, before Jon L. Lunde, 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 of Public Welfare has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4-4f; and

WHEREAS, the Department of Public Welfare 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 the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Public Welfare has cured the defects in the rule as required.

NOW, THEREFORE, upon receipt of this Order, the Department of Public Welfare has the responsibility of submitting the complete hearing record and the rules as adopted by the Department of Public Welfare to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4e and 4f.

Dated: February 25th, 1982.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

DPW-82-006-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rule of the Department of Public Welfare Governing the Administration and Provision of Protective Services to Vulnerable Adults (12 MCAR § 2.221).

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980) 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. Stat. § 15.0412, subd. 4-4f (1980) or of failure to establish need for and reasonableness of the proposed rule.

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 Examiner 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. Stat. § 15.0412, subd. 4-4f (1980) 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: This 11th day of December, 1981.

DUANE R. HARVES
Chief Hearing Examiner

DPW-82-006-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rule of the Department of Public Welfare Governing the Administration and Provision of Protective Services to Vulnerable Adults (12 MCAR § 2.221).

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Jon L. Lunde, duly appointed Hearing Examiner on Wednesday, October 14, 1981, commencing at 12:30 p.m. in Conference Room A, Fourth Floor, Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota 55155, pursuant to a Notice of Hearing dated August 26, 1981. This is a rulemaking proceeding conducted pursuant to Chapter 15 to determine whether the Department of Public Welfare has authority to adopt the rules proposed and whether they are necessary and reasonable and may be adopted. At the request of the Hearing Examiner, the date for the completion of this Report was extended to December 11, 1981 by the Chief Hearing Examiner.

Diane Masters, Special Assistant Attorney General, 515 Transportation Building, John Ireland Boulevard, St. Paul, Minnesota 55155, appeared as counsel on behalf of the Minnesota Department of Public Welfare (hereinafter the "Department"). The Department's witnesses were Carol Watkins, Supervisor, Adult Services Unit, and Zetta Feder, Adult Protection Consultant.

Approximately 45 persons attended the hearing and 35 of them signed the hearing register. The hearing continued until all persons present had had an opportunity to be heard. Subsequent to the close of the hearing, but before the expiration of the 20-day comment period ordered by the Hearing Examiner, four timely comments, including one Departmental comment, were filed with the Office of Administrative Hearings. Two comments were filed late.

The Commissioner of the Minnesota Department of Public Welfare 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. Stat. § 15.0412, subd. 4d (1980), 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 those instances 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. Stat. § 15.0412, subd. 4d (1980).

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. Stat. § 15.0412, subd. 4e (1980).

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 testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On August 20, 1981, the Department of Public Welfare filed the following documents with the Chief Hearing Examiner:

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

On August 27, 1981, an Amended Notice of Hearing was filed with the Chief Hearing Examiner.

2. On Monday, September 14, 1981, more than 30 days prior to hearing, a Notice of Hearing and a copy of the proposed rules were published at 6 State Register 452.

3. On September 9, 1981, more than 30 days prior to hearing, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.

4. On September 17, 1981, more than 25 days prior to hearing, the Department filed the following documents:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness (hereinafter "Statement").
(e) The names of Departmental personnel to represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.
(g) An Affidavit of Additional Notice.
(h) All materials received following a Notice of Intent to Solicit Outside Opinion published at 5 State Register 648, on Monday, October 20, 1980.

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

5. The record remained open through Tuesday, November 3, 1981 for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

6. The purpose of the rules proposed by the Department is to implement the requirements of Minn. Stat. § 626.557, subd. 10 (1980), which requires local social services agencies (local agencies) to immediately investigate and offer emergency and continuing protective social services to abused or neglected vulnerable adults as defined therein. Authority to adopt the rules proposed, as stated in the Notice of Hearing, is contained in Minn. Stat. § 626.557, subd. 16(c) (1980), which provides as follows:

> (c) The commissioner of public welfare shall promulgate rules as necessary to implement the requirements of subdivision 10.

The language cited delegates to the Department the authority to adopt the rules proposed and each provision of the rule is within the scope of that delegation.

7. The Minnesota Association of Health Care Facilities (hereinafter "MAHCF") suggested that the Department delay adoption and implementation of the rules until all agencies with rulemaking authority under § 626.557 have had an opportunity to jointly discuss and develop a single set of rules relating to their separate responsibilities for the investigation of abuse. Its posthearing comments state, in part, as follows:

> M.S. 626.557, subd. 16(b) states "licensing agencies shall as soon as possible promulgate rules necessary to implement the requirements of subdivisions 11, 12, 13, 14, 15, and 16, clause (a)." (Emphasis added.) Licensing agencies are defined as the Department of Health, the Department of Welfare, any licensing board which regulates persons pursuant to section 214.01, and any agency responsible for credentialing human services occupations in M.S. 626.557, subd. 2(g). M.S. 214.01 enumerates 22 licensing boards. Among these are the board of nursing home examiners, board of medical examiners, board of nursing, board of chiropractic examiners, board of psychology and board of pharmacy, all of which must, under M.S. 626.557, subd. 16(b) promulgate rules.
>
> The Association feels that failure to consolidate the required rule-making in this area will result in a scenario where a single complaint of abuse or neglect will result in as many as 8 separate, independent overlapping investigations. To require this number of separate investigations is an inappropriate, disproportionate use of dwindling public resources. Within a facility, this potential duplicity of investigation will cause unnecessary disruption of daily living, and will promote unnecessary anxiety among residents.
>
> Multiple rules in this area will almost inevitably create conflicting requirements, and will put facilities in a position where compliance with one rule will result in non-compliance with another. This is an unreasonable outcome. Therefore, MAHCF urges that adoption of rules be delayed until all agencies that will be involved have the opportunity to develop in a cooperative fashion, a single set of rules.

The Department rejected the joint rulemaking suggestion as burdensome and unnecessary because its rules regulate local social services agencies while rules of the licensing agencies regulate facilities. The Department also takes the position that jointly adopted rules would create the misleading impression that facility-related complaints are of primary concern under Subdivision 10 although the Department is equally interested in non-facility complaints.

The Department has recognized the need for consistent definitions, however, and the Social Service and Licensing Divisions of Public Welfare and the Office of Health Facility Complaints of the Department of Health have agreed to the use of common definitions in rules promulgated under § 626.557.

8. Under § 626.557, three distinct types of investigations will occur: (a) investigations by local social services agencies to determine the need for providing protective services to vulnerable adults; (b) criminal investigations of abuse and neglect by law enforcement agencies, and (c) investigations by various licensing agencies. The Legislature recognized that these various investigations could involve a duplication of effort and required, in Subdivision 13(b), that the investigating agencies cooperate in coordinating their investigations. In addition, licensing agencies which regulate facilities must "develop and disseminate" procedures to coordinate their activities with local social services agencies' provision of protective services.

9. Joint rulemaking is neither expressly permitted nor prohibited by the Administrative Procedure Act, Minn. Stat. §§ 15.041 et seq. However, agencies have jointly adopted rules under the Act without express authority to do so. In an appropriate case, joint rulemaking should be encouraged, but in the absence of statutory directive, joint rulemaking is not required. In this case, the Department has exclusive authority to implement the provisions of Subdivision 10, and it is not required to engage in joint rulemaking with other agencies in the exercise of the exclusive authority delegated to it. However, that does not mean that the Department should not develop its rules with respect to local agency investigations in consultation with the various licensing agencies or that its rules should create unnecessary intrusions into facilities, duplicative investigations or inconsistent requirements. Thus, the procedural issue raised by MAHCF (joint promulgation) must be distinguished from the substantive provisions of the rules themselves. It is the substantive effects that really concern MAHCF and the possibility of wasteful and duplicative investigations and requirements rather than the procedure followed. The substantive effects will, to the extent that they relate to reasonableness, be discussed throughout this Report.

MAHCAF's concern for duplicative, over-lapping and wasteful investigations was not supported by concrete examples of inconsistent rules and its concern for the possibility that such a "scenario" will develop is not a fact which demonstrates that the current rule is unnecessary or unreasonable. Furthermore, when various licensing agencies do adopt rules for the investigation of abuse and neglect, those that regulate facilities must coordinate their procedures with the procedures of the local social services agencies under subd. 13(b)(ii). Hopefully, other agencies will also work together in developing such procedures.

10. The Department has engaged in some consultation with other agencies in the development of the rule proposed but the rule does not contain any specific provisions implementing the requirements of subd. 13(b) which mandates investigating agencies to "cooperate in coordinating their investigatory activities." Its position is that procedures complying with that directive must be adopted ad hoc because of the variety of circumstances that will arise.

The requirement that investigating agencies cooperate in coordinating investigations should be clarified in duly promulgated rules. Normally, to "cooperate" means to "work together," and to "coordinate" means "to harmonize" or "to bring into common action." Webster's New Collegiate Dictionary, 250 (1975). Thus, the plain language of this requirement is that local social

services agencies must work together with other agencies in their investigations and harmonize their investigations with the investigations of other agencies. The Department has not elaborated on this requirement either because they believe an ad hoc approach is required or because the Social Service Division is only concerned with subd. 10, and the requirement or cooperation and coordination is found in subd. 13, which the Licensing Division may implement in separate rules.

11. While spreading responsibility for rulemaking among various divisions of the same agency is appropriate in some cases, the Hearing Examiner is firmly persuaded that all requirements pertaining to local social services agency investigations should be part of one comprehensive rule. To that end, it is recommended that the Social Services Division, in subsequent proceedings (separate from or jointly with the Licensing Division's rules under subd. 16(b)), further clarify the cooperation and coordination required of the local agencies in their invstigations and that the clarification be made part of 12 MCAR § 2.221. Furthermore, pending such clarification, it is recommended that an additional sentence be added to the end of 12 MCAR § 2.221 C.1. to read as follows:

> The local social services agency shall cooperate in coordinating its investigation with the investigations of other licensing agencies, local police departments and county sheriffs.

Such an amendment is not a substantial change for purposes of 9 MCAR § 2.111 and incorporates the statutory requirement in a rule which will be readily available to local agencies.

Substantive Provisions

12. Minn. Stat. § 626.557 (1980), pertains to the protection of adults who, because of their disabilities or dependencies, are particularly vulnerable to abuse or neglect. It places various responsibilities on state agencies in detecting such abuse or neglect and offering necessary protective services. The rules proposed by the Department at this time do not implement all the provisions of § 626.557 but merely implement the provisions of Subdivision 10 regarding the investigation of reports of abuse and the offering of emergency and continuing protective social services to those vulnerable adults who need them. It is only one of three rules to be promulgated to implement the statute.

The Rule is divided into five major parts: Part B contains definitions applicable to the Rule; Part C contains the required complaint investigation procedures; Part D contains the requirement that complaints be classified; Part E contains the required actions a local social services agency must take on behalf of vulnerable adults who refuse services, and Part F pertains to reports that must be submitted to the Department.

13. Part A, as originally proposed, contained a short statement of the applicability of the proposed rules. Eric Janus, an attorney for Legal Advocacy for Developmentally Disabled Persons, and Iris Freeman, who appeared on behalf of the Nursing Home Residents Advocates, both questioned the misleading nature of Part A insofar as it states that the Rule applies to the provision of protective services to vulnerable adults but contains very few requirements concerning the services that must be provided by local social services agencies. In order to make it clear that the Rule does not state all of a local social services agency's responsibilities with respect to the provision of services, and that a local agency's responsibilities do not come to an end when they

finish their investigations, the Department proposes to adopt Mr. Janus' proposed amendment to Part A so that it will read as follows:

> 12 MCAR § 2.221 governs the investigation, reporting and certain aspects of protective services to vulnerable adults which are required by Minn. Stat. § 626.557.

The amendment proposed to clarify the purpose and scope of the rule is necessary and reasonable and does not constitute a substantial change for purposes of 9 MCAR § 2.111. However, the sentence is not grammatically complete and it is suggested that it be further amended to read as follows:

> 12 MCAR § 2.221 governs the investigation and reporting of maltreatment of vulnerable adults and some aspects of the emergency and continuing protective social services required to be furnished by local social services agencies under Minn. Stat. § 626.557.

OK

So amended p. 1

14. 12 MCAR § 2.221 B.1. This Part defines the word "abuse." It is primarily a repetition of the statutory definition set forth in Minn. Stat. § 626.557, subd. 2(d), but it elaborates on the types of criminal activities involved in the provisions cited in the statute by referring specifically to acts of prostitution and criminal sexual conduct. To the extent that the Rule duplicates statutory language, that duplication is crucial to the ability of a person affected by the Rule to comprehend its meaning and effect for purposes of Minn. Stat. § 15.0412, subd. 1, and the definition is otherwise necessary and reasonable.

The Minnesota Association of Health Care Facilities (hereinafter "MAHCF") suggested that Part B.1.c. be amended to make any persistent course of conduct intended to produce mental or emotional distress an abuse only if such course of conduct is non-therapeutic. The Department declined to add the word "non-therapeutic" after the word "persistent" as suggested by MAHCF on the grounds that the rule incorporates the statutory definition and adequately states the intent of the Legislation which was alleged to be to "get at" ongoing "harassment, bullying and hounding." The Rule, as proposed is necessary and reasonable without the addition of the word non-therapeutic. However, the Department did not deny that therapeutic conduct intended to produce mental or emotional distress for the purposes of treatment is not an abuse, and the Rule should be so construed.

15. 12 MCAR § 2.221 B.2. This part defines the word "caretaker." The first sentence is basically a restatement of the statutory definition contained in Minn. Stat. § 626.557, subd. 2(c). To the extent that the first sentence duplicates statutory language, that duplication is crucial to the ability of a person affected by the Rule to comprehend its meaning and effect for purposes of Minn. Stat. § 15.0412, subd. 1, and to that extent, the duplication is authorized. The first sentence of the Part is also necessary and reasonable.

16. The second sentence in the definition of a caretaker provides that "[a] person who has assumed only financial responsibility for an adult is not a caretaker." It was challenged by MAHCF. It argued that excluding those who only take financial responsibility from the definition of caretakers would exclude the state from its statutory responsibilities as public guardians of mentally retarded persons under Minn. Stat. §§ 246.01 and 252 A.03, and that it is not reasonable for the state to be excluded from the Rule merely because the state is that person's guardian because the state should be held to the

same standards as all other caretakers. In addition, it argued that the exclusion allows persons with financial responsibility to convert the monthly needs allowances paid for vulnerable adults to their own use. The Department replied that it was "strongly committed" to the retention of the second sentence to make it clear that someone who supports another individual financially is not a caretaker. This position stems from the understanding of the author of Minn. Stat. § 626.557 that "material exploitation" was not intended to be covered by the law.

In determining the type of "care" necessary to make one a "caretaker" for purposes of Minn. Stat. § 626.557, subd. 2(c), the opinions of the statute's author are not material. Thus, the usual rule in Minnesota is that in determining the intention of the Legislature, even the intention or motives of individual members cannot be considered in construing statutory language. See, Dun.Dig. (3rd Ed.), § 8941. Therefore, in determining whether material exploitation constitutes abuse, the statute as a whole must be construed giving the words used their ordinary and usual meaning, and the opinions of the drafter must be ignored. The statute, itself, is remedial in nature and should be liberally construed to effectuate its manifest purposes. The Legislature in § 626.557, subd. 1, has specifically declared it to be the public policy of this state to protect vulnerable adults and to require the reporting of suspected abuse or neglect.

17. Under § 626.557, subd. 2(c), a caretaker is any individual or facility who has responsibility for the "care" of a vulnerable adult as a result of family relationship or who has assumed responsibility "for all or a portion of the care" of such an adult, either voluntarily, by contract, or other agreement. A vulnerable adult can be neglected under § 626.557, subd. 2(e), by the mere failure of a caretaker to supply necessary clothing. Thus, in MAHCF's example, persons who convert a vulnerable adult's monthly personal needs allowance would be chargeable with neglect if they are caretakers for purposes of the statute.

The word "care" is defined in 12A. C.J.S., p. 922, as follows:

> A relative term, and one of broad comprehension and flexibility of meaning, which has been generally defined or employed as meaning attention or management, charge or oversight, responsibility, or watchful regard and attention; also, preservation, safekeeping, or security. Depending upon the context and the circumstances under which it is employed, the word has been held to imply concern for safety and prosperity, responsibility for safety, serious attention of mind, heed, caution and regard, continued personal contact, and supervisory as distinguished from manual work.
>
> "Care" has been held to be synonymous with, or equivalent to "caution," "custody," "diligence," "maintenance," "possession," "protection," "prudence," and "superintendence."

In Madison v. State, 163 Tenn. 198, 42 S.W.2d 209 (1931), the court held that a husband was not punishable for the neglect of his child where the child's custody had been placed with his former wife, concluding that the words "care" and "support" were not synonymous but that the former meant custody more than support.

18. As a general rule, an administrative agency's construction of a statute is to be accorded great deference, either where that construction is adopted simultaneously with the enactment of new legislation, or where the statutory language is ambiguous. See, e.g., Red Lion Broadcasting Co. v. FCC, 395

U.S. 367, 381 (1969); Buhs v. State Department of Public Welfare, 306 N.W.2d 127 (Minn. 1981); and 82 C.J.S., Statutes, § 359. Contemporaneous administrative construction is given special deference because the agency is considered to have familiarity with the enactment and the Legislature's intent, but the weight accorded such construction is diminished where the interpretation is not of long standing, and the admininistrative interpretation is never conclusive.

The rule giving deference to the Department's construction should be followed in this case. Excluding those who have only a financial responsibility for vulnerable adults is consistent with the usual interpretation of the word "care" as meaning custody, management, charge, oversight and continued personal contact rather than a mere obligation to support. Furthermore, a broader and more comprehensive definition is not necessary because the proper use of personal needs allowances is covered by other laws. See, Minn. Stat. § 256B.35. Therefore, the second sentence of the definition is necessary and reasonable.

19. 12 MCAR § 2.221 B.3. This Part defines a "facility" and merely restates the definition contained in Minn. Stat. § 626.557, subd. 2(a). Repetition of the statutory language in the rule is crucial to the ability of a person affected by it to comprehend its meaning and effect for purposes of Minn. Stat. § 15.0412, subd. 1, and the duplication in the rule is, therefore, authorized. Furthermore, such duplication is necessary and reasonable.

20. 12 MCAR § 2.221 B.5. This Part defines a "host county" as the county in which a facility is located. A definition of host county is necessary because the term is used in Part C.5. and is a definition traditionally used by the Department and understood by local agencies to mean the county in which a facility is located. MAHCF suggested that the definition be amended to state that a host county is one in which the vulnerable adult "resides." The Department objected to that change on the grounds that the county of financial responsibility is the county of an adult's legal residence but, since an individual adult may not be abused or neglected in the county of financial responsibility (where that adult's legal residence is), the county where the alleged abuse or neglect occurs should be responsible for the necessary investigation and that would be the host county. For that reason, the proposed definition is necessary and reasonable.

21. 12 MCAR § 2.221 B.4. and B.12. Part B. of the proposed Rule requires the local social service agency, at the conclusion of its investigation, to classify all complaints as "substantiated, unsubtantiated, or unable to be substantiated." This is similar to, but different from, the statutory classification contained in § 626.557, subd. 11, which requires licensing agencies to classify reports as false, substantiated, or unable to be substantiated or disproved to the satisfaction of a licensing agency. Several individuals questioned the classification scheme originally proposed and the confusion that could result.

Based on the several comments received, the Department proposed, in its posthearing comments, to amend Part B.4. to read as follows:

> 4. False. "False" means disproved to the satisfaction of the investigating agency.

amended

In addition, Part B.12., containing the definition of the word "unsubstantiated" will be deleted, and in its place, a definition of the word "substantiated" will be added. As amended, Part B.12. will read as follows:

> 12. Substantiated. "Substantiated" means proved to the satisfaction of the investigating agency.

p. 3

Additionally, the Department proposes to define the word "inconclusive". The definition of this word will become Part B.14 and will read as follows:

> 14. Inconclusive. "Inconclusive" means a report which cannot be substantiated or disproved to the satisfaction of the investigating agency.

p. 3

The Department believes that the word false, which is contained in the statute, and which is used by other government agencies, should be defined as a report which is disproved. That is consistent with the approach taken by the Minnesota Department of Health. The other definitions are consistent with the categories contained in § 626.557 itself and compatible with common understanding and other agency rules. The definitions, as modified by the Department, correctly categorize reports of abuse as either false, substantiated or inconclusive. As such, the amendment is necessary and reasonable and it does not involve a substantial change for purposes of 9 MCAR § 2.111.

MAHCF argued that the definition of inconclusive (unable to be disproved to the agency's satisfaction) should be changed to "unable to be proved to the satisfaction of the agency" to be consistent with the proposition that one is innocent until proven guilty. However, the classification of complaints is not an adjudication of guilt. Rather, the classification is undertaken solely for the purpose of reporting to state agencies and to the victim and alleged perpetrator. Furthermore, the licensing agencies, themselves, must classify records along the same lines under §§ 626.557, subd. 12, for purposes of determining when those records must be destroyed. Subdivision 12(c) embodies the concept of reports which cannot be disproved to the satisfaction of the licensing agency. Therefore, the Department may reasonably reject MAHCF's suggested amendment.

22. 12 MCAR § 2.221 B.6. This Part defines "impairment of mental or physical function or emotional status." The quoted phrase is part of the definition of a vulnerable adult found in § 626.557, subd. 2(b). The definition of the phrase is not duplicative of the vulnerable adult definition contained in Part B.13 of the proposed rules, as MAHCF argued, and is a necessary and reasonable exercise of the Department's discretion.

MAHCF argued that the definition is too long and overbroad. It recommended that it be shortened to read "being able to protect oneself from abusive or neglectful situations without assistance." If their suggestion was adopted, the definition would become duplicative of the vulnerable adult definition because a vulnerable adult is one who is "unable or unlikely to report abuse or neglect without assistance. . . "

The legislative history cited by the Department on page 3 of its Statement supports the broad definition proposed by the Department. Furthermore, the Department noted that it needs the benefit of time and experience before a more specific definition can be adopted. It is generally recognized that agency rules may be less specific where the agency does not have sufficient experience in a particular area to formulate a precise rule. See, e.g., 1

Cooper, State Administrative Law, p. 182 (1965); Can Mfrs. Institute, Inc. v. State, 289 N.W.2d 416, 423 (Minn. 1979).

23. 12 MCAR § 2.221 B.7. This Part defines the term "licensing agency." It merely restates Minn. Stat. § 626.557, subd. 2(g). The duplication of statutory language in this definition is crucial to the ability of a person affected by the rule to comprehend its meaning and effect for purposes of Minn. Stat. § 15.0412, subd. 1, and the definition is authorized, necessary and reasonable.

However, the statutory citation contained in Part B.7.b. should be changed to "Minn. Stat. §§ 245.781-245.813" to conform with subdivision 2(g) of the statute.

not changed .813 has been repealed

24. With respect to Part B.7., the Department of Energy Planning and Development suggested that the agencies responsible for credentialling human services occupations in Part B.7.d. be specified or defined. The Hearing Examiner endorses that recommendation. Although the counties have been provided with a list of these agencies through the Department's social services manual, that list is not generally available or could be lost and provides no guidance whatsoever to other interested persons as to the identity of those agencies. The purpose of adopting rules is to make specific the law enforced or administered by an agency. Minn. Stat. § 15.0411, subd. 3. The Department's definition of agencies who credential human service occupations does not make specific the provisions of § 626.557 as required. This lack of specificity constitutes a substantive violation of law for purposes of Minn. Stat. § 15.0412, subd. 4c. This defect can be corrected by specifically naming those agencies which credential human service occupations.

named p. 3

25. 12 MCAR § 2.221 B.8. This Part defines "local social services agency." Section 626.557 alludes to the "local welfare agency" and MAHCF suggests that the same nomenclature be followed in the rules. However, the term "local social services agency" is used in other Departmental rules and is recognizable to the parties regulated. It is necessary and reasonable to use the nomenclature adopted by the Department and within its discretion.

26. 12 MCAR § 2.221 B.9. This Part contains the definition of "neglect." The definition is substantially the same as that found in § 626.557, subd. 2(e). The duplication of the statutory definition in this rule is crucial to the ability of a person affected by it to comprehend its meaning and effect for purposes of Minn. Stat. § 15.0412, subd. 1, and the duplication is, therefore, authorized.

MAHCF recommended that an additional phrase be placed at the end of the definition adding the words "whenever reasonably able to do so." The purpose of this proposed modification is to exclude from the definition of neglect those matters which are beyond the caretaker's control. MAHCF expressed the fear that a caretaker may be held liable for neglect which is beyond its control without this modification. The Department has rejected the proposed modification and the definition in the form originally proposed is necessary and reasonable. The primary purpose of § 626.557 is to discover vulnerable adults who are subject to abuse and neglect and to provide protective services to those adults. A neglected vulnerable adult is not in less need for protective services simply because the failure to provide for that adult is beyond the

control of a caretaker. Therefore, it is concluded that the proposed modification is contrary to the statutory purposes to identify those individuals in need of protective services.

The Hearing Examiner is not persuaded that caretakers will be found liable for neglect which is beyond their control or outside the scope of their undertaking or the agreements and contracts under which they operate. Subdivision 19 of the statute limits liability to "intentional" abuse and neglect, and the standards adopted for the reporting of abuse and neglect and the provision of protective services, while perhaps not immaterial in a criminal prosecution, would not necessarily be the same standards which would be applied.

27. 12 MCAR § 2.221 B.13. This Part defines a "vulnerable adult" using the same language contained in § 626.557, subd. 2(b). The duplication of statutory language in this definition is crucial to the ability of a person affected by the rule to comprehend its meaning and effect and the definition is, therefore, authorized under Minn. Stat. § 15.0412, subd. 1. The definition, which is further clarified in Part B.6., is necessary and reasonable.

28. It was suggested by the Minnesota Coalition for Battered Women that battered women be excluded from the definition of vulnerable adults. The Coalition argued that the current system in the State for the protection and treatment of battered women works satisfactorily and that intervention under the Department's rules could endanger them. Section 626.557, itself, does not contain any exclusions for battered women but it is uncertain whether the "typical" battered woman was intended by the Legislature to be covered under the provisions of that statute. Given the broad definition of "impairment of mental or physical function or emotional status" contained in Part B.6., it is likely that battered women would come within the provisions of the Department's rules. Thus, an emotional statuts rendering a woman "so fearful, so ashamed, so confused, or so anxious about the consequences of reporting that the individual would be unable or unlikely to make a responsible decision regarding whether or not to report abuse or neglect" would seem to cover many if not most battered women. However, since battered women do not have any distinguishing types of impairment, or lack of impairment, it is virtually impossible for the Department to structure a rule which would exclude them from coverage without excluding other individuals clearly contemplated to be within its terms. Furthermore, a paralyzing fear of the consequences of reporting abuse or neglect is clearly within the provisions of the statute and covered by the procedures the Department is mandated to adopt. Consequently, the Hearing Examiner agrees with the Department's conclusion that battered women should not be specifically excluded from coverage in the absence of a statutory provision permitting such an exclusion.

29. The Department of Energy, Planning and Development suggested that the rules contain a definition of the term "county of financial responsibility" and a definition of the word "perpetrator." The Department declined to define the former because it is defined in Minn. Laws 1981, Ch. 355, § 1. The same could be said of each of the other definitions adopted by the Department, however, and the Hearing Examiner believes that it would be better practice to adopt a definition to clarify the meaning of the term used and recommends that the Department do so. A definition of the term is especially needed because

added p. 1

the statutory definition is contained in an enactment different from the statute under which the rules are promulgated and designed to implement. However, the Hearing Examiner agrees with the Department that a definition of the word "perpetrator" is not necessary.

Complaint Investigation by Local Social Service Agencies.

30. 12 MCAR § 2.221 C.1. This Part requires the local agency to accept and investigate all complaints alleging that a vulnerable adult has been abused or neglected in that agency's county. MAHCF suggested that the mandatory word "shall" contained in the rule be replaced with the permissive words "may if appropriate." While there may be cases where an investigation would be absurd or clearly unnecessary, § 626.557, subd. 10, uses the same mandatory language requiring an investigation in every case, and the Department's retention of similar mandatory language is necessary and reasonable. However, it should be amended as recommended in Finding No. 11.

OK p.4

31. 12 MCAR § 2.221 C.2. This Part sets forth the time limits within which the local agency must commence its investigation. It is intended to implement the provisions of subdivision 10 requiring an immediate investigation of reports of abuse or neglect. Depending on the nature of the abuse or neglect reported to the local social service agency, investigations must be conducted immediately, within 24 hours, or within a 72-hour period.

Although the statute requires an "immediate" investigation, the Department's adoption of different time periods, depending on the particular circumstances, is a reasonable implementation of the statutory requirement. The word "immediate" is frequently construed with less strictness than the literal meaning requires and has been held to mean as soon as is reasonably practicable under the circumstances or within a reasonable period of time under all the circumstances. See, e.g., 42 C.J.S., Immediate p. 388; Ekberg v. Belfer, 222 Minn. 450, 24 N.W.2d 851, 852-53 (1946). The time periods established by the Department, which consider the nature of the abuse or neglect in establishing time limits for investigations, is a necessary and reasonable implementation of the statutory language and wholly consistent with it.

32. However, with respect to Part C.2.a., the Hearing Examiner questions the use of the word "and" on the Revisor's edition of the rules (line 5) dated August 25, 1981. It appears that the word "and" should be replaced with the disjunctive "or" so that an immediate investigation is undertaken if the vulnerable adult is in need of immediate care or protection because the adult is life-threatened or is likely to experience physical injury due to abuse or abandonment.

replaced p.4

33. MAHCF noted that the time periods established by the Department for the initiation of an investigation are different from those guidelines adopted by the Office of Health Facility Complaints. While there may be differences in the time periods established, it does not appear that the procedures adopted by the latter have been formally adopted as rules or that the purposes for the investigations undertaken by these separate offices should be governed by the same time periods. The investigation to be undertaken by the local social service agency may necessarily be required to be undertaken in a prompter fashion because of the necessity for offering protective services. Consequently, it is concluded that this difference does not render the Department's rules unnecessary or unreasonable.

Under § 626.557, subd. 13(b), the Office of Health Facility Complaints will be required to develop procedures to coordinate its investigations with the investigations required under this Rule. In complying with that mandate, unnecessary and avoidable duplication of effort should be minimized.

34. The only problem with the time periods established by Part C.2. is whether or not the standards adopted by the Department are sufficiently precise to enable a local social service agency to determine which time period is applicable. It appears to the Hearing Examiner that in order to safeguard the interests of abused or neglected vulnerable adults, the rule should create a preference for immediate investigations and should not permit those investigations to be deferred up to 72 hours where a mere inference can be drawn that more speedy care or protection is not required. Inferences can be drawn on rather scanty facts, and the same facts can support different inferences. For that reason, it is suggested that the language in Part C.2.b. and c., stating "or from which it can be inferred" be deleted and replaced with the language "or when there is substantial evidence." This approach favors immediate investigations in all situations unless the complaint, itself, or the facts known, clearly indicate that an immediate investigation is not necessary. Such an approach eliminates the risks which may follow from drawing inferences based on scanty facts and seems to be more consistent with the purpose of the statute to provide immediate care and protection.

Although the rule does not so state in specific language, it is clear that the time limits specified for the initiation of investigations apply to all types of investigations, whether related or unrelated to a facility, and whether conducted by a host county or the county of financial responsibility.

35. 12 MCAR § 2.221 C.3. pertains to investigations which are "related to" a facility. MAHCF suggested that the heading be changed to read "investigations of complaints allegedly occurring in a facility." Their suggestion is based on the belief that the words "related to" a facility are ambiguous, and if an incident does not occur in a facility, an on-site investigation is not appropriate. The Hearing Examiner is not persuaded by MAHCF's arguments in that respect. Abuse and neglect must not be assessed only according to the physical site of the incident reported or the actions occurring at a particular site. On the contrary, the knowledge, intention and actions of the caretaker must be weighed to determine if the alleged incident occurred because of the caretaker's actions or failures to act. For example, in its posthearing comments, the Department cited examples showing why the "in a facility" language should not be adopted. The Department stated (p. 11) as follows:

> An example of this is an actual report our Department received about a resident of a group facility for the developmentally disabled who was sexually exploited every time she visited her home. This occurred enough times and with the knowledge of the facility that the finding was that of neglect on the part of the facility. Another actual complaint had to do with a facility which sent residents on program trips with little supervision. In this latter instance, a resident was assaulted with no one from the facility on hand to prevent the abuse. The facility would most certainly in these cases be involved in the investigation in order to ascertain whether or not the facility was or was not responsible for whatever happened.

For these reasons, it is found that the language proposed by the Department is necessary and reasonable and should be adopted.

Although the heading is appropriate, the first sentence of Part C.3. contains language inconsistent with the Department's position. It reads in part: "when an investigation involves an alleged incident or situation in a facility, the local social service agency shall . . . ." The use of the word "in" in this statement is inconsistent with the Department's position that investigations are not limited to incidents "in" facilities. The Department takes the position that the words "in a facility" are not limited to incidents which take place at the facility. However, to make it perfectly clear that such a limitation is not intended, it is suggested that the first sentence be amended to read as follows:

> When an investigation involves an alleged incident or situation related to a facility, the local social services agency shall make an on-site visit to the facility to assess the validity of the complaint.

so amended p. 4

36. George Riedl, resident advocate at Cambridge State Hospital, suggested that Part C.3. specifically require the local social services agency to inform the facility of the specific complaint, the identity of the adult allegedly abused, and the identity of the alleged perpetrator. He believes that such a disclosure is necessary for the facility to perform its obligations to the vulnerable adult and necessary for the local social services agency to conduct an adequate investigation. The Department disagrees with Riedl's suggestion as a mandatory requirement in all cases because it could hinder investigations and because there is a definite advantage in some cases to conduct an unannounced investigation without forewarning the facility of the details, as Riedl suggested. Furthermore, disclosure of the informant's identity could result in retaliation and inhibit reporting. For the reasons, the rule, as proposed, is found to be necessary and reasonable. Unannounced investigations without prior disclosure of all the facts to the facility may be more effective in a particular case and requiring full disclosure prior to such investigations in all cases is not required to render the rule necessary or reasonable. That is not to say the local social service agency is prohibited from making such a disclosure in any case where they determine that it is appropriate or beneficial to do so and in most cases, such a disclosure will probably be made. Furthermore, the Department recognizes that where the immediate protection of a vulnerable adult is necessary, the facility would be advised of the identity of the person needing immediate protection and steps that should be taken. Since the types of situations that might arise will involve a variety of facts and circumstances, the rule properly leaves discretion with the local agency in selecting the particular steps that should be taken in any given case.

37. With respect to the investigation procedure to be followed by local agencies, the Department noted in its posthearing comments (p. 3) that the training of county staff and guidelines in the state agency manual are appropriate avenues for addressing the issues of the steps to be taken for the immediate protection of a vulnerable adult. It must be pointed out that any such "guidelines" contained in the so-called state agency manual, if intended to establish procedures that must be followed, are themselves rules which should be formally adopted. Any "guidelines" or manuals issued to implement or make specific the law enforced or administered by an agency or which have general applicability and future effect are rules within the meaning of Minn. Stat. § 15.0411, subd. 3 (1980), and must be formally adopted. Thus, in Burke v.

Public Welfare Div., 31 Or. App. 161, 570 P.2d 87, 90 (1977), the Oregon court held that the interpretative amplification or refinement of a rule is a new rule and must itself be properly adopted. In that case, the Court held that where the "Indian benefits" provision of a food-stamp manual represented a policy choice among alternatives followed by the terms of a general rule and was a policy-based interpretation of an income rule and not merely an application of that rule, the Indian benefits provision was itself a rule which had to be formally adopted. Consequently, the Department should not amplify or interpret its rules by the issuance of a manual but should issue rules under Chapter 15 which set forth all the steps they require local social service agencies to follow.

38. 12 MCAR § 2.221 C.3.a. through h. The components of the local agency's investigation necessary to make an accurate assessment of the report received are specified in this Part. Iris Freeman, Director of the Nursing Home Residents Advocates, queried whether the investigatory activities specified were required to be conducted on the site of the facility. The Department did not intend that all investigatory activities take place on the site of the facility and in order to clarify the rule it proposes that the last sentence of Part C.3. be amended to read as follows:

> This investigation shall include the following activities when necessary to make an accurate assessment, but activities such as 3.a. and 3.e. need not occur on the site of the facility:

The amendment partially clarifies the ambiguity raised by Freeman but does not eliminate it. For example, no reasons were given why corroborating contacts or discussions with physicians or other professionals would necessarily be required to be conducted at the site of the facility. Therefore, it is suggested that the last sentence of Part C.3. be further amended to read as follows:

> This investigation shall include the following activities when necessary to make an accurate assessment, but activities specified in 3.a., 3.c., and 3.e. need not occur on the site of the facility:

so amended p.5

39. Part C.3.f. requires the local agency to have discussions with other facility residents (unless a complaint is unsubstantiated) to determine whether the conditions which resulted in the reported abuse or neglect placed other adults in jeopardy of being abused or neglected. Several persons expressed confusion regarding the meaning of this Part. In order to clarify its intention, the Department, in its posthearing comments (p. 5), proposes to delete Part C.3.f. and replace it with a separate paragraph at the end of that Part to read as follows:

deleted p.5

> The local social services agency shall also determine whether the reported abuse or neglect place other vulnerable adults in jeopardy of being abused or neglected.

added p.5

The purpose for this amendment is to clarify the fact that more than a mere discussion with other residents is necessary to determine whether other vulnerable adults might be in jeopardy. The amendment is consistent with the unequivocal mandate of § 626.557, subd. 10(a), and does not constitute a substantial change for purposes of 9 MCAR § 2.111. The amendment is also a necessary and reasonable implementation of the statutory mandate.

40. Part C.3.g. requires the local social service agency to make an examination of the physical condition and the psychological climate of the facility

involved. Although MAHCF questioned the need for considering the psychological climate, a consideration of that factor is necessary and reasonable to determine if residents may be inhibited from making full disclosure and to evaluate the need for further inquiry..

41. 12 MCAR § 2.221 C.8. The Department proposes to add a new Part C.8. to the Rule to read as follows:

> The local social services agency shall offer emergency and continuing protective social services for purposes of preventing further abuse or neglect and for safeguarding and enhancing the welfare of abused or neglected vulnerable adult.

added 9.1 SK

This amendment is proposed in response to public comments pointing out that there was no general provision in the proposed rules implementing the statutory requirement that emergency and continuing protective services be provided to vulnerable adults to prevent further abuse or neglect. In order to make it perfectly clear that such services must be provided by the local social services agency, the additional language is proposed by the Department. The amendment is a necessary and reasonable implementation of the statutory mandate contained in § 626.557, subd. 10(a), and does not involve a substantial change for purposes of 5 MCAR § 2.111.

42. James E. Abts, Chairman of the Rules Committee of the Minnesota Association of County Social Service Administrators suggested that the role of the local social services agency be clarified so that the local agency is assured that violations are corrected, and also suggested that the local agency be given flexibility to deal with violations and perhaps the authority to enter into written agreements with offending facilities to correct violations discovered. As noted by the Department in its posthearing comments, (p. 2.), the rule does not prohibit local agencies from entering into written agreements with facilities with respect to particular incidents of abuse or neglect. In that respect, the local agencies are given a considerable degree of discretion in determining what steps are necessary to protect vulnerable adults from further harm.

While the Rule does not specify the actions local welfare agencies must take to protect vulnerable adults, that failure is not unnecessary or unreasonable. It should be pointed out, again, however, that the agency should not adopt rules in the form of guidelines to regulate the practice, policy and procedures to be followed by local welfare agencies. The agency noted in its posthearing comments that matters pertaining to local discretion in this area would best be dealt with in the form of guidelines; however, as was mentioned previously, guidelines which state general policies and rules which local social service agencies must follow are themselves rules which should be properly promulgated under Chapter 15.

43. 12 MCAR § 2.221 C.3.h. This Part provides that as an incident to a local agency investigation of a facility, the inspection of the alleged victim's record must be made when necessary to make an accurate assessment of the reported abuse or neglect. This particular provision was subject to detailed comment by Marjorie Wherley, MSW, a representative of the Minnesota Association of Community Mental Health Programs. She suggested that access to client files and records should be granted only where the local social services agency has obtained a signed release from the victim involved, or, in the alternative, that access should be limited only to that data directly related to the report

in question. Section 626.557, subd. 10(a), provides that local welfare agencies shall have the right to enter facilities and inspect and copy records as a part of their investigations. The Department declined to amend this part of the Rule based on its belief that it had no authority to curtail the right of the local agencies to inspect records as authorized under subdivision 10(a) and because they feel that ready access to records is consistent with the purpose of the law to protect victimized vulnerable adults and that obtaining a waiver from elderly or retarded persons would require unnecessary expense and delays which could lead to superficial investigations.

Like Wherley, MAHCF suggested that the rule be amended to permit inspection of a victim's records only with the victim's consent. It argued that such consent is required by the Minnesota Government Data Practices Act, Minn. Stat. §§ 15.1611 et seq. That argument has no legal basis and the rule as proposed by the Department is necessary and reasonable to promote a prompt and thorough investigation of abuse to determine whether immediate emergency services are needed by a vulnerable adult.

44. The Data Practices Act is not specifically mentioned in Subdivision 10 (which pertains to local agency investigations) although investigations by licensing agencies under Subdivision 11, and their record-keeping duties under Subdivision 12, are both expressly subjected to the Data Practices Act. Nonetheless, the Data Practices Act does apply to the records maintained by facilities.

Under Minn. Stat. § 15.1691, welfare data, including medical data and other data collected or maintained by the welfare system (including facilities under contract with the state or its agencies) are subject to the provisions of the Data Practices Act. Likewise, under Minn. Stat. § 15.1698, medical data are also subject to the provisions of that Act. However, both welfare data (including medical welfare data) and medical data generally, are subject to disclosure pursuant to Minn. Stat. § 15.163. Subdivision 4(b) thereof provides that both public and confidential data may be disclosed to agencies specifically authorized by state law to have access to that data. In this case, Subdivision 10 specifically authorizes access by local agencies to such facility records and no prior consent or signed authorization is required.

The inspection of other "available" sources of information is required but access thereto is not specifically authorized. With respect to such other information, local agencies will be required to consult applicable laws to determine how access may be made. The scope of that access may be limited by the Data Practices Act or relevant court decisions. See, e.g., Whalen v. Roe, 429 U.S. 589 (1977) and Hawaii Psychiatric Society v. Ariyosha, 381 F.Supp. 1028 (D. Hawaii, 1979).

45. MAHCF suggested that a new subpart be added to Part C.3. requiring the investigating agency to immediately send a report of its findings to all other agencies notified concerning the complaint in question. The purpose of this suggestion was to prevent duplicative investigations by multiple agencies thereby saving time, money and effort and limiting intrusions upon the facilities and individuals involved. While § 626.557, subds. 10 and 11, may require some duplication, under subdivision 13(b), agencies are directed to coordinate their investigatory activities. The Department erroneously suggested that duplicative investigations are always required and argued that it is unnecessary

to adopt the notice provision recommended because subd. 10(b) already requires the local social services agency to report to the licensing agencies involved and provide them with a copy of its report and its investigative findings. However, subdivison 10(b) is ambiguous and does not appear to require the submittal of findings on reports found false or inconclusive. Nonetheless, those findings may be of benefit to the licensing agencies, and it is recommended that the Department adopt MAHCF's suggestion.

46. 12 MCAR § 2.221 C.4. This Part of the Rule pertains to investigations not related to a facility. MAHCF suggested that all of the requirements of Part C.3. (except C.3.b.) be incorporated by reference in Part C.4. The nature of the investigation undertaken for a facility-related complaint and an investigation of a non-facility-related complaint would differ, and the rules, as proposed by the Department are necessary and reasonable for that reason. However, it is recommended that the requirements of Part C.3.c. pertaining to discussions with the victim's physician or other professionals, and the provisions of Part 3.g. pertaining to the physical conditions and the psychological climate of the victim's home also be investigated, and in addition, that the agency determine whether or not the reported abuse or neglect places other vulnerable adults in jeopardy of being abused or neglected who may reside in a non-facility setting with the victim.

47. 12 MCAR § 2.221 C.5. This Part pertains to investigations by host counties. MAHCF suggested that this part incorporate by reference the standards set forth in Parts C.3. and C.4. to make it clear that the host county must investigate the complaint and further stated that it was not reasonable to exclude a complaint from investigation or to allow investigation not comparable to the type of investigation mandated under Parts C.3. or C.4. The Department does not feel it necessary to reference Part C.3. on the grounds that it is clear that the investigating agency has the responsibility to carry out an investigation in accordance with that Part. Nonetheless, the Hearing Examiner suggests that MAHCF's recommendation be adopted so that there is no uncertainty in this respect. This can be easily accomplished by adding the words "in accordance with ~~Part~~ C.3." immediately after the word investigate in Part C.3.5.a. It is true that it would not make sense to reference Part C.4. since it pertains only to investigations unrelated to a facility, whereas Part C.5. pertains only to investigations involving facilities. The proposed rule is necessary and reasonable, but it should be clarified.

48. 12 MCAR § 2.221 C.5.a. This provision requires the host county to determine whether the complaint is substantiated, unsubstantiated or unable to be substantiated. To be consistent with the Department's other proposed amendments, this Part should be amended to read as follows:

> a. Investigate the complaint and determine whether it is substantiated, inconclusive or false.

49. 12 MCAR § 2.221 C.5.b. This Part requires the host county to notify each relevant licensing agency, the police or sheriff in the county of financial responsibility. The Minnesota Association of County Social Service Administrators suggested that this Part be modified to require the state agency to notify the relevant licensing agencies. The Association believes that centralizing the notification function and responsibility will assure that the proper licensing agency is notified in a timely and uniform manner. The Department

has rejected this recommendation because of the provisions of Minn. Stat. § 626.557, subd. 3, specifically requires the local social service agency upon the receipt of a report to notify the local police department or the county sheriff and the appropriate licensing agencies. The rule, as proposed by the Department, is necessary and reasonable. However, the notification requirements contained in subdivision 3 pertain to all complaints received by local social services agencies and not simply to host counties. The rule should be amended to clarify that requirement. This can easily be done by adding the requirements of Part C.5.b. to Part C.1.

50. 12 MCAR § 2.221 C.5.c. This Part requires a host county to consult with the county of financial responsibility, if possible. MAHCF suggested that the words "if possible" be deleted. The Department rejected this suggestion stating that the language was necessary because there may be situations when the host county must take immediate emergency measures and may not be able to reach the financial responsible county in order to consult with them. While that is true, the Rule could be made more specific by stating what the host county is to consult the county of financial responsibility about, and the words "if possible" could be replaced with the words "unless the host county must take immediate emergency measures and representatives of the county of financial responsibility are not available."

51. 12 MCAR § 2.221 C.5.d. This Part requires a host county to take whatever measures are necessary to correct the situation or remove the adult from the facility. MAHCF suggested that this language be deleted and replaced with the words "take appropriate measures to remedy this situation." This recommendation is based on the assertion that it is not the responsibility of the host county to take action to remedy the situation, but the responsibility of the county of financial responsibility and on the proposition that § 626.557, subd. 10, only gives the agency authority to remove the vulnerable adult from the caretaker, a much narrower scope of authority than is contained in the Rule. The Department has rejected this suggestion on the grounds that this Part merely requires notice and does not give any particular authority to the county of financial responsibility to act on behalf of the vulnerable adult. Since the local social services agencies may have many tools available to them to protect vulnerable adults and since they have responsibility for taking those steps, the rule, as written, is necessary and reasonable. However, if the purpose of this provision is merely to notify the county of financial responsibility, immediately after the word facility, it is suggested that the following language be added to clarify the Department's intent: "and notify the county of financial responsibility of the actions taken to correct the situation or of the removal of the adult from the facility."

52. 12 MCAR § 2.221 C.6. This Part requires the local social services agency to consult with appropriate experts if it believes that it lacks the expertise necessary for making judgments pertaining to the allegations of abuse or neglect. Several persons suggested that local social services agencies be required to consult with experts in all cases. Consultation with experts in all cases was not shown to be necessary or reasonable, and the decision whether to retain the services of an expert can reasonably be left to the discretion of the investigating agency which, itself, will have some expertise of its own.

For that reason, the Rule as proposed by the Department is necessary and reasonable.

53. 12 MCAR § 2.221 C.7.b. This Part requires, after initial assessment of a report, that the local social services agency attempt to determine the current physical and emotional condition of the vulnerable adult, including an assessment of prior injuries. In response to comments from MAHCF, the Department proposes to amend this section to read as follows:

> The current physical and emotional condition of the vulnerable adult, including the history or pattern of abuse or neglect or related prior injuries.

added p. 7 10K

This is a necessary and reasonable change in the language which is not substantial for purposes of 9 MCAR § 2.111.

54. 12 MCAR § 2.221 D. This provision requires local social services agencies to classify complaints within 90 days of their receipt. For the reasons mentioned earlier, the last sentence should be amended to read as follows: 6K

> At the conclusion of the assessment, the alleged victim of maltreatment and the alleged perpetrator shall be notified in writing as to whether the complaint was substantiated, false, or inconclusive.

This is a necessary and reasonable amendment to the language originally proposed which brings the rule into conformity with the definitions proposed. It does not amount to a substantial change for purposes of 9 MCAR § 2.111.

55. 12 MCAR § 2.221 E. This Part specifies the actions a local social service agency must take on behalf of a vulnerable adult who refuses services. At the hearing, the Department proposed to add the words "who is the victim of abuse or neglect by a caretaker" after the fourth word in the first sentence. added p. 7 In response to comments from MAHCF, the agency also proposes to renumber Parts a.-d. to Parts 1.-4. The provision requires a local social services agency to intervene on behalf of an adult who refuses services where that adult's safety or welfare is in jeopardy. It gives the agency considerable discretion in seeking the help of the family of the victim to seek specified relief. The amendments proposed to this Part are technical in nature and do not involve substantial changes for purposes of 9 MCAR § 2.111. The Part, as amended, is necessary and reasonable.

56. The need and reasonableness of all rules not specifically mentioned in this Report was adequately supported in the Department's Statement of Need and Reasonableness or evidence presented during the course of the hearing. All changes in the rules proposed by the Department are not substantial for purposes of 9 MCAR § 2.111 and all duplication of statutory language was essential for their comprehension for purposes of Minn. Stat. § 15.0411.

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

C O N C L U S I O N S

1. That the Department of Public Welfare gave proper notice of the hearing in this matter.

2. That the Department has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) and all other procedural requirements of law or rule.

3. That the Department has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 3(4)(i) and (ii) (1980), except as noted at Finding 24.

4. That the Department has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980).

5. That the amendments and additions to the proposed rules which were suggested by the Department after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 15.0412, subd. 4d (1980) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusion 3 as noted at Finding 24.

7. That due to Conclusion 3, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 15.0412, subd. 4d (1980).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

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

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated this 10th day of December, 1981.

JON L. LUNDE
Hearing Examiner

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ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE ADMINISTRATION AND PROVISION OF PROTECTIVE SERVICES TO VULNERABLE ADULTS (12 MCAR § 2.221)

STATEMENT OF NEED AND REASONABLENESS

DPW Exh. No. 8
File No. DPW-82-006-A
Date 10/13/81

The purpose of this rule is to aid in the implementation of Subdivision 10 of Minn. Stat. §626.557, Reporting of Maltreatment of Vulnerable Adults. The statute became effective January 1, 1981.

The Department is committed to the need for establishing standards which will ensure the protection of those adults who are particularly vulnerable to abuse or neglect because of physical or mental disability or because of emotional factors which prevent their seeking assistance for themselves.

With the advent of child abuse and neglect reporting laws in recent years, we have become more fully aware of the scope of child abuse and neglect in this country. Similarly, as more states pass laws mandating the reporting of abuse or neglect of vulnerable adults, there is a growing awareness and concern about the amount and scope of adult abuse and neglect.

Minnesota has always prided itself on its commitment to providing social services to its citizens. It is in this spirit that our Department joins the demand sweeping across this nation to better protect those unable to protect themselves...the elderly, the disabled, and those persons too concerned about the consequences of reporting maltreatment to do anything about their plight without some assistance.

This Department, along with numerous representatives of the community and county agencies, believes that time and experience are needed to reveal the scope of the adult maltreatment problem in Minnesota as well as to reveal the capacity of local agencies to respond. Who <u>are</u> the adults in need, and which needs <u>can</u> present resources meet? In the interest of allowing time for learning from the experiences of local agencies, this rule has been kept as simple and as unprescriptive as possible. The definition of "vulnerable adult" has been allowed to remain broad since the tapes of legislative proceedings reveal the legislative intent that it be broad. The other statutory definitions have not been expanded upon. County agencies are given room for making judgments, for we trust in their commitment to providing services as best as they can. As experience teaches us what is reasonable, what is feasible, what we can or cannot do, then we will shape the program to address the realities of needs and resources. In short, the intent here is to be as responsive as possible to complaints of adult maltreatment, with the long range plan of modifying the rule when we know more about adult maltreatment and about our system's capacity to respond to the problem.

A. Applicability. The need for this statement is to make clear that the provisions of this rule govern only those particular protective services to adults which are required by Minn. Stat. §626.557. The proposed rule does <u>not</u> attempt to encompass the whole broad scope of an adult protective services program, a program which could be interpreted to include supportive services such as day care or homemaking services or recreation services, to name only a few.

B. Definitions

1. ABUSE: This definition is the one used in Minn. Stat. §626.557 and is duplicated in the rule because it is used frequently in the rule and it is crucial to the ability of a person affected by the rule to comprehend the rule's meaning and effect. It has been our experience that local agencies do not have ready access to the statutes and, therefore, the definitions are included in the rule. The phrases "related to prostitution" and "related to criminal sexual conduct" are added in order to familiarize the reader with the subject area of the statutes cited.

2. CARETAKER: The first sentence is the definition used in Minn. Stat. §626.557 and is duplicated in the rule because it is used frequently in the rule, and it is crucial to the ability of a person affected by the rule to comprehend the rule's meaning and effect. It has been our experience that local agencies do not have ready access to the statutes and, therefore, the definitions are included in the rule. The need for the second sentence is to reemphasize the fact that the law did not intend that there be intervention in relationships involving only financial dependency. The law is clear that an adult is a vulnerable adult due to either being a resident of or receiving services from certain facilities or due to impairment of mental or physical function or emotional status. Being financially supported by another person does not constitute impairment or vulnerability and, therefore, the person providing financial support is not a caretaker.

3. FACILITY: This definition is the one used in Minn. Stat. §626.557 and is duplicated in the rule because it is used frequently in the rule and is crucial to the ability of a person affected by the rule to comprehend the rule's meaning and effect. It has been our experience that local agencies do not have ready access to the statutes and, therefore, the definitions are included in the rule.

4. FALSE: The term "false" is used in the statute. The term "unsubstantiated" is used in the rule. The need for defining "false" is because the statute does not define the term and agencies must understand the term in order to carry out their responsibilities. The need for including the term "false" in the list of definitions is to make clear that "false" and "unsubstantiated" mean the same thing. The reason for using the term "unsubstantiated" in the rule is given in #12 (page 9) in the discussion of the definition of "unsubstantiated".

5. HOST COUNTY: The need for this definition is because this term is used in the rule, and it is necessary for the reader to understand the term in order to understand the rule requirements. The term is reasonable since it is the one traditionally used and understood by county agencies to mean that particular county in which a facility is located, and it would be confusing to county agencies to use any other term.

6. IMPAIRMENT OF MENTAL OR PHYSICAL FUNCTION OR EMOTIONAL STATUS: The statutory definition of "vulnerable adult" includes a person "who, regardless of residence, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status". It is necessary to provide this set of guides as to the meaning of impairment of mental or physical function or emotional status in order to clarify which adults come under the statute as "vulnerable adults" so that local agencies will investigate and provide protection for these adults.

To assure understanding of who the vulnerable adults are with whom the statute is concerned, the definition includes material from Department of Health, Education and Welfare (now DHHS) Federal Regulations entitled "Nondiscrimination on Basis of Handicap", (Federal Register, May 4, 1977), which implement Section 504 of P.L. 93-112, the Rehabilitation Act of 1973 as well as recommendations from mental health and social services professionals.

While there are some who might wish to define "emotional status" as meaning persons with present or past diagnosed "emotional or mental conditions" or "emotional or mental illness", the Department is convinced that there was clear intent by the legislature for using a broader approach. A review of the legislative tapes reveals discussions supporting this contention. In the March 4, 1980, meeting of the Criminal Law Subcommittee of the Senate Judiciary Committee, a question was asked about whether the definition of vulnerable adult is "overbroad". The response was that it <u>is</u> broad but that this is intentional because in the past, too many cases of abuse and neglect were not reported. The broad and extensive definition is to assure that maltreated adults who are unable to fend for themselves will not be "missed". When concern was raised in the committee about there being more "paperwork", the answer was given that too little paper has been generated because maltreatment has not been reported. Rather than the potential reporter deliberating as to whether a person is a vulnerable adult, thereby failing to report many maltreated persons, the intent of the authors and drafters of the bill was to err on the side of over-reporting rather than under-reporting. Further support for the author's intent can be inferred from the author's explanation to the committee that even though the functional definition for vulnerable adult in Minn. Stat. §626.557, subd. 2 (b)(3) would probably be sufficent to cover all vulnerable adults, the law defines all residents or users of facilities as vulnerable adults regardless of their condition in order to ensure broad coverage. The purpose of including all three parts of the definition was to make it easier for those receiving reports to have easy guidelines and ready justification for considering an adult as covered under the act.

Another reason for the broad definition being used here is that numerous county staff as well as many community advocates believe that we should allow ourselves the benefit of time and experience to learn what the real needs are and to learn the limits of our own capacity to respond. A broad definition accomplishes this by requiring local agencies as well as mandated reporters to report and respond to most allegations of adult maltreatment. This goal is necessary and reasonable because this gives our state the opportunity to learn what the needs are so that we can make future decisions about the program. Because the purpose of this law was to protect adults who cannot protect themselves, we want to learn who these individuals are and what our social services system can reasonably be expected to do to meet their needs. We know from the experiences of states which now have reporting laws similar to ours that there is an unanticipated amount of maltreatment of the elderly who are not in facilities and who are not physically or mentally impaired in the traditional sense. These elderly are in need of our services and it was the intent of the legislation that they have services.

The broad definition for "vulnerable adult" is, therefore, reasonable in that it carries out the legislative intent and assures that those adults in Minnesota who are being victimized and are in need of outreach by the social services system will be served. There are some who have expressed concern that there will be a deluge of "battered wife" reports, but there is not likely to be an outpouring of domestic disputes to be dealt with as a result of this law. The so-called "battered wife" is often capable of reporting abuse or neglect without assistance and would therefore not be classified as a "vulnerable adult". (Minn. Stat. §626.557, subd. 2 (b)(3) requires that to be a vulnerable adult, two factors must be in play: being unable or unlikely to report maltreatment without assistance <u>because of</u> impairment of mental or physical function or emotional status.) Our goal is to help those who are unable to seek assistance for themselves. If we were at this time to shape our definition of "vulnerable adult" to exclude the "battered wife" who is <u>not</u> able to seek assistance for herself, we would be excluding a large number of elderly victims as well.

7. LICENSING AGENCY: This definition is the one used in Minn. Stat. §626.557 and is duplicated in the rule because it is used frequently in the rule and because it is crucial to the ability of a person affected by the rule to comprehend the rule's meaning and effect. It has been our experience that local agencies do not have ready access to the statutes and, therefore, the definitions are included in the rule.

8. LOCAL SOCIAL SERVICES AGENCY: The need for this definition is because the term is used frequently in the rule and the reader must understand the meaning of the term in order to understand the rule requirements. It is necessary for county agencies to understand the rule requirements in order for them to fulfill their responsibilities as required by the law.

9. NEGLECT: With the exception of the phrase "or to ensure the supply of...", this definition is the one used in Minn. Stat. §626.557 and is duplicated in the rule because it is used frequently in the rule and because it is crucial to the ability of a person affected by the rule to comprehend the rule's meaning and effect. It has been our experience that local agencies do not have ready access to the statutes and, therefore, the definitions are included in the rule. The added phrase referred to above is needed because not all caretakers are responsible for the direct supply of the item(s) listed but remain responsible for ensuring that the item(s) are supplied, and failure to carry out this responsibility is neglect because the end result for the vulnerable adult is the same, absence of the supply of necessary food, clothing, shelter, health care or supervision.

10. REPORT: This definition is the one used in Minn. Stat. §626.557 and is duplicated in the rule because it is used frequently in the rule and because it is crucial to the ability of a person affected by the rule to comprehend the rule's meaning and effect. It has been our experience that local agencies do not have ready access to the statutes and, therefore, the definitions are included in the rule.

11. STATE AGENCY: This definition is included because the term is used frequently in the rule and the reader must understand the meaning of this term in order to understand the rule requirements. It is necessary for county agencies to understand the rule requirements in order for them to fulfill their responsibilities as required by the law.

12. UNSUBSTANTIATED: The reason for using the term "unsubstantiated" in the rule rather than the word "false", which is used in the statute, is because local agencies associate the word "false" with a determination of improper motive on the part of the reporter. It is clear from an examination of the statute that the legislature did not intend to require a finding of improper motive in order to label a report as false. The statutory inference is that "false" means disproved to the satisfaction of the agency without regard to the reporter's intent (See Minn. Stat. §626.557, subdivisions 4 and 12). Since reports which have been disproved by the agencies have traditionally been labelled as "unsubstantiated", the term "unsubstantiated" is used here.

13. VULNERABLE ADULT: This definition is the one used in Minn. Stat. §626.557 and is duplicated in the rule because it is used frequently in the rule and is crucial to the ability of a person affected by the rule to comprehend the rule's meaning and effect. It has been our experience that local agencies do not have ready access to the statutes and, therefore, the definitions are included in the rule.

C.1.: The law requires local agencies to investigate allegations of abuse or neglect. This requirement is needed in order to assure that counties understand whose responsibility it is to process complaints so that all complaints are investigated. It would be unfortunate if a resident of County "A", five miles from home in County "B", were not to have suspected maltreatment investigated because County "A" and County "B" were not clear as to which county is responsible. It is reasonable to require a county agency to accept those complaints which pertain to individuals allegedly maltreated within the geographic bounds of that particular county. It is reasonable because the county which is closest to the alleged incident can more quickly expedite the investigation. In addition, the jurisdication of local law enforcement agents, who are also mandated to investigate the complaint, is limited to the geographic area in which an incident occurs.

C.2.a., b., and c: The law requires prompt response to complaints of abuse or neglect, so it is necessary to set out specific time-lines in order to ensure that these duties will be carried out. The various time-frames are reasonable because county agencies have limited resources for conducting investigations and it would be impossible for them to investigate all complaints "immediately". The differentiation of the time-lines laid out is to ensure response to complaints which is proportionate to the severity of harm. The time-frames used are identical to those required in DPW Rule 207 (12 MCAR §2.207) for the reporting of child maltreatment. County agencies have requested that the same time-frames be used for responding to reports of adult maltreatment since counties have found these to be appropriate in responding to child maltreatment and believe that they are as appropriate for responding to alleged adult maltreatment.

C.3.: The reason for requiring an on-site visit where alleged maltreatment in a facility is reported is because it would be very difficult and perhaps impossible to ascertain the validity of this kind of complaint by any other means, such as by telephone. The alleged victim is unlikely to provide information to a stranger calling on the phone, especially since that vulnerable adult might be fearful of the consequences of revealing information about the facility or about a facility employee. There is a need for privacy if accurate information is to be obtained, and there are many situations where there is no opportunity for privacy for a phone conversation; in a facility there may never be a time when no staff person is in the building. A vulnerable adult might not ever be able to speak by phone and be sure that no one overhears the conversation. In addition, the on-site visit is necessary for determining whether other vulnerable adults are at risk, for it is just as impractical and difficult to conduct a facility-wide investigation by phone. The obtaining of accurate information is necessary for the local agency to carry out its responsibilities under the law. Therefore, the on-site visit to a facility is needed and reasonable.

The word "include" is used because the activities need not be limited to those listed.

The phrase "where necessary to make an accurate assessment" is needed to allow for discretion by the investigator; there are circumstances which would make it unnecessary to carry out all of the actions. For example: after discussion with the alleged victim, it might be determined that the allegation is unsubstantiated and no longer necessary to explore further, or discussion with the victim may prove that the allegation is substantiated and it is therefore unnecessary to examine any records. It is recognized that there may be situations in which only one action is appropriate or needed, while other situations may require all of the actions and more.

The listing of activities may not include all that may be done to determine whether a vulnerable adult has been abused or neglected, but it is reasonable because it includes the more customary activities for ascertaining the validity of a complaint. The list of activities is needed because many county staff often depend solely on statute and rule to guide their activities and the activities listed have proven to be the effective ones for performing an adequate investigation.

C.4.: The statute requires the local agency to investigate a complaint in order to offer emergency and protective social services for purposes of preventing abuse or neglect and for safeguarding and enhancing the welfare of the abused or neglected vulnerable adult. Unlike a complaint about alleged maltreatment in a licensed facility, this standard does not require that there be an on-site visit to investigate a complaint. The reason for this is that county staff have stated that, while they can see no way of adequately investigating a complaint about someone in a facility without an on-site visit, there are numerous situations regarding complaints of maltreatment outside of facilities in which counties have been able to screen out complaints by telephone, thereby saving themselves an on-site visit. Examples of this might include repeated calls from an overzealous neighbor or from a crank caller, or calls about domestic disputes in which the alleged victim may make it very clear by phone that outside intervention is not welcomed. The Department is confident that local agencies will not abuse this option and that local agencies will be sensitive to the many cases in which abused or neglected persons may be too fearful of the consequences of reporting to reveal information on the telephone. Consideration here has been given to the fact that local agencies have limited

resources, and it is hoped that this opportunity for screening may free their time for providing more in-depth services to those vulnerable adults in need of the agency's services. The fact that an on-site visit is not mandated here does not relieve agencies from the requirement in C.2.a. that mandates an immediate on-site visit when it is alleged that a vulnerable adult is life threatened and likely to experience physical injury due to abuse or abandonment.

C.4.a., b., and c.: This listing may not be inclusive of all that may need to be done to determine whether an allegation of maltreatment is valid, but it is necessary to outline what is included in an investigation because the law requires local agencies to investigate and directs the Commissioner to develop rules to implement this requirement. It is reasonable to include the obtaining of a first-hand account from the alleged victim, the alledged perpetrator, and the reporter in order to determine the validity of the allegation. It is necessary for the local agency to determine the validity of the allegation in order to carry out the agency's responsibility under the law.

C.5.: This is needed to assure that there is clear understanding as to which county is responsible for an investigation of a complaint so that all complaints are certain to be investigated as is required by the law. It is reasonable, for practical reasons of time and distance, that the county in which an allegation of maltreatment occurs to investigate the complaints. Frequently vulnerable adults reside hundreds of miles from their county of financial responsibility, and the county closest to the alleged incident can more quickly conduct the investigation. Because of distance, it may be impossible for the county of financial responsibility to investigate and take protective measures immediately. In addition, since the jurisdiction of local law enforcement agents is limited to the geographic area in which maltreatment occurs, it is reasonable and necessary for the host county to carry out all investigatory and protective responsibilities so that it may collaborate with local law enforcement. The use of the phrase, "shall then resume responsibility for ensuring ongoing planning and services for the vulnerable adult" means that the financially responsible county <u>is responsible</u> for the ongoing planning and services to the vulnerable adult, but may delegate these to the host county by mutual agreement. The authority behind the ongoing responsibility of the financially responsible county is in the Community Social Services Act in Chapters 256E.08, subd. 7 and 256E.08, subd. 1, as amended by the laws of Minnesota, 1981, Chapter 355. The delegation of the delivery of ongoing services to a county other than the one of financial responsiblity is a commonly used practice among county agencies.

C.6.: The law requires that a county agency investigate in order to determine whether there has been abuse or neglect. A county worker may not be able to do this alone. When the county worker has insufficient expertise to make an accurate determination of abuse or neglect, it may be necessary for the worker to consult an expert in order to carry out his or her responsibilities under the law. A county worker may lack sufficient knowledge in health sciences or specialized therapeutic treatment modes to make judgments as to what constitutes abuse or neglect. An example of this may be an allegation that a nursing home resident is neglected due to the nursing home staff giving medications at a time not exactly prescribed on the medication container. The county worker would most likely need to consult with a physician in order to ascertain neglect. Similarly, an

allegation that certain behavior modification techniques constitute abuse should be discussed with persons knowledgable about the field of behavior modification to gain a sense of whether or not the techniques fall within the parameters of acceptable behavior modification practices.

C.7.: This requirement is needed and reasonable because the information gained may help the county worker to know what steps to take to provide protection and services to the vulnerable adult, and this is necessary because the law requires the county agency to provide protection and to take measures to prevent further harm.

D.: This is identical to the requirement in 12 MCAR §2.207, the child protection rule. This 90-day requirement is reasonable because the investigation and classification of a complaint should be done with all due speed in order to allow for provision of protective services and to prevent further harm to a vulnerable adult, and this is necessary because the law requires the county agency to provide protection and to take measures to prevent further harm. Ninety days has, from experience with the child maltreatment reporting law, been a sufficient amount of time for the classification of a report.

It is reasonable that the subjects of a report - the alleged victim(s) and the alleged perpetrator(s) - know what the agency has determined regarding the complaints. Minn. Stat. §15.165, subd. 4, of the Minnesota Government Data Practices Act provides that a person can contest the accuracy or completeness of public or private data concerning himself. This rule requirement is reasonable because it assures that the subject of a report will know that there is data pertaining to him so that he can exercise his right under the Data Practices Act if he so chooses.

E.: The county agency's role is to protect the vulnerable adult from further abuse or neglect and to insure that the welfare of the abused or neglected vulnerable adult will be safequarded and enhanced. Subdivision 10 of the statute mandates the local agency to seek the authority to remove a vulnerable adult from a caretaker in whose care abuse or neglect occurs when necessary in order to protect the vulnerable adult from further harm. The various options listed provide guidance as to what avenues may be taken by a local agency to prevent further harm to a victim of maltreatment. Although some of these options don't involve removal from the caretaker, they accomplish the prevention of further harm by resorting to less drastic measures than the removal of the victim. If one of the options works to prevent further harm, then removal of the vulnerable adult would be unnecessary. The movement of an elderly person from one setting to another can be a drastic measure, and such persons are known to deteriorate with such action. If, as an example, the perpertrator can be removed utilizing the Domestic Abuse Act, this would act to prevent further harm and accomplish the same purpose: separating the caretaker from the vulnerable adult.

F.: The need for this requirement is to provide the state agency with statistical information so that the state agency and the Minnesota state legislature may establish standards and provide the necessary tools to meet identified needs. This is necessary in order to supervise county agencies and provide technical assistance so that they can carry out their responsibilities under the law. This 20-day requirement has been required in DPW Rule 207 (12 MCAR §2.207), and the Department has received reports on child maltreatment with few problems or complaints. The Social Services Division of the state agency is specified as the recipient of the report.

The reason and need for this is distinquish the reports sent to the state agency that are for statistical purposes only, (the report sent to the Social Services Division), from those sent to the state agency which are for other purposes, (the two reports sent to the Licensing Division of the state agency).

The 20-day requirement is reasonable because it provides the state information within a time-frame not too distant from the time of the particular case activity so that the state agency may offer and provide direction and technical assistance to the local agency.

F.2.: This requirement is needed and reasonable for it assures that the state agency will have accurate statistical data. Not all reports will be complete in 20 days. This allows county agencies to complete and, if necessary, correct reports.

F.3.: This is reasonable because the Minnesota Government Data Practices Act, Minn. Stat. §15.163, Subd. 3 requires that only information on individuals which is necessary for the administration of an authorized program should be collected. Since the state agency has no need for the names of alleged victims or perpetrators of maltreatment in order to carry out its supervisory responsibilites, it will not collect that additional data.

The Department does not plan to utilize any outside expert witnesses to testify on its behalf at the hearing.

Arth E Noot

ARTHUR E. NOOT
COMMISSIONER OF PUBLIC WELFARE

BS/gxt

IN THE MATTER OF THE PROPOSED ADOPTION OF THE DEPARTMENT OF PUBLIC WELFARE RULE GOVERNING THE ADMINISTRATION AND PROVISION OF PROTECTION SERVICES TO VULNERABLE ADULTS (12 MCAR 2.221)

STATE OF COMPLIANCE WITH RULE-MAKING PROCEDURES

I, Diane Masters, Special Assistant Attorney General, 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 Procedures Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Diane M. Masters

Special Assistant - Attorney General

Dated:

EM/bae

IN THE MATTER OF THE PROPOSED ADOPTION OF THE DEPARTMENT OF PUBLIC WELFARE RULE GOVERNING THE ADMINISTRATION AND PROVISION OF PROTECTIVE SERVICES TO VULNERABLE ADULTS (12 MCAR 2.221)

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Robert Hamper, being first duly sworn, deposes and says:

That on the 2nd day of March, 1982, 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 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 2 day of March, 1982.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

IN THE MATTER OF THE PROPOSED ADOPTION OF THE DEPARTMENT OF PUBLIC WELFARE RULE GOVERNING THE ADMINISTRATION AND PROVISION OF PROTECTIVE SERVICE TO VULNERABLE ADULTS (12 MCAR 2.221)

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, March 2, 1982, for review as to form and legality. Pursuant to 1 MCAR ç 1.206 B., the Attorney General will not approve the rules for at least ten 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 Zetta Feder at 296-4019.

EM/bed