

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MINNESOTA ASSOCIATION OF TREATMENT PROGRAMS
S276 Griggs-Midway Bldg., St. Paul, MN 55104
Phone (612) 644-4186

RECEIVED
NOV 30 1982
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

November 29, 1982

To: Office of the Attorney General
G-25 State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

From: H. Leonard Boche, Executive Director

Re: Proposed Adoption of the Department of Public Welfare Rule Governing Standards for Protection of Vulnerable Adults in Licensed Facilities (12 MCAR 2.010).

At the time of the public hearing, this Association through its testimony identified the conflict we perceive to exist between the reporting requirements of the proposed rule and the requirements of the federal confidentiality statutes as applied to alcohol and drug treatment programs.

In our judgment the hearing officer did not appreciate the magnitude of the legal problems faced by alcohol and drug treatment programs and therefore this conflict area was inadequately dealt with in the proposed rule.

Signed: H. Leonard Boche

HLB/rb

Our File No. 867

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 11-22-82
DATE FOR REVIEW 12-3-82
DATE DUE 12-13-82

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

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 11/23/82 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed see SR + attachment.

✓ Order Adopting 10.26.82 Date combined with F of F

✓ Notice of Intent to Solicit Outside Opinion + comments

✓ Order for rulemaking
6.15.82 date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificate

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

✓ Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
8.5.82 Approving H.E.'s Report
11.3.82 Approving agency action

✓ Agency's Findings of Fact combined with Order Adopting

N/A LCRAR Report or agency Affidavit

✓ 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

✓ Comment to Attorney General

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ARTHUR E. NOOT, Commissioner DATE: 12/13/82

Attn: Vicki Sleeper, Special Asst. Atty. General

FROM : TED A. MARTINEZ TAM
Special Assistant
Attorney General PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of the Department of Public Welfare Rule Governing the Standards for the Protection of Vulnerable Adults in Licensed Facilities (12 MCAR § 2.010)

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;

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/ls
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy

Department of Public Welfare

Support Services Bureau

Adopted Rule Concerning the Investigation and Reporting of Maltreatment of Vulnerable Adults in DPW Facilities (12 MCAR S 2.010)

Rule as Adopted

12 MCAR S 2.010 Reporting maltreatment of vulnerable adults in licensed facilities.

A. Applicability. Rule 12 MCAR S 2.010 applies to ~~residential and nonresidential programs providing services to adults and~~ programs required to be licensed pursuant to Minnesota Statutes, sections 245.781 to 245.812 to provide services to adults who are handicapped by reason of mental retardation, mental illness, chemical dependency, or physical handicap. HE 9,10

B. Definitions. As used in 12 MCAR S 2.010, the following terms have the meanings given them.

1. Abuse. "Abuse" means:

a. Any act which constitutes a violation of Minnesota Statutes, section 609.322, related to prostitution;

b. Any act which constitutes a violation of Minnesota Statutes, sections 609.342 to 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.

HE 14,

2. Agency. "Agency" means any individual, organization, association, or corporation which ~~regularly provides services to adults and is licensed by the Department of Public Welfare pursuant to Minnesota Statutes, sections 245.781 to 245.812~~, for gain or otherwise, regularly provides needed social service or counseling services for clients who may be living in their own homes or which receives clients unable to remain in their own HE 14,12

homes and places them in alternate living situations, and is required to be licensed to provide these services for adults pursuant to Minnesota Statutes, sections 245.781 to 245.812 who are handicapped by reason of mental retardation, mental illness, chemical dependency, or physical handicap. HE 14,15

3. Client. "Client" means ~~a vulnerable adult, as defined in 12~~ any person 18 years of age or older who is a resident of a facility or who receives services at or from a program. HE 24 FofF 4

4. Client representative. "Client representative" means any family member, legal guardian, or other interested person acting or speaking in place of a client or on behalf of a client.

5. Facility. "Facility" means a residential or nonresidential facility ~~providing services to adults and licensed by the Department of Public Welfare pursuant to Minnesota Statutes, sections 245.781 to 245.812~~ required to be licensed to provide services to adults who are handicapped by reason of mental retardation, mental illness, chemical dependency, or physical handicap. HE 17

6. Governing body. "Governing body" means the individual, corporation, partnership, voluntary association, or other public or private organization legally responsible for the operation of a day care or residential facility or service or agency.

7. Interdisciplinary team. "Interdisciplinary team" means the individuals from the various disciplines which are required by Department of Public Welfare licensing rules to be involved in program and treatment planning. ~~If only one person is designated by the rule under which the program is licensed to develop the individual program plan with the client, this person shall consult with members of other disciplines as required by that licensing rule to be involved in developing the individual program or treatment plan~~ If the licensing rule designates only one person to develop the individual program plan with the client, but requires that this person consult with members of other disciplines in developing the individual program or treatment plans, this designated person must also consult with HE 18

members of these disciplines in developing the individual abuse prevention plans. The designated person plus these consulting members shall be considered the "interdisciplinary team" for purposes of 12 MCAR S 2.010. HE 18

8. Investigative authority. "Investigative authority" means the local police department, county sheriff, local welfare agency, or appropriate licensing or certifying agency.

9. Mandated reporter. "Mandated reporter" means ~~each employee of a program and each person providing client-related services in or to a program~~ a person specified in Minnesota Statutes, section 626.557, subdivision 3. HE 20 FoF 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 client.

11. Program. "Program" means a residential or nonresidential facility or an agency ~~providing services to adults and licensed by the Department of Public Welfare pursuant to Minnesota Statutes, sections 245.781 to 245.812~~ required to be licensed pursuant to Minnesota Statutes, sections 245.781 to 245.812 to provide services to adults who are handicapped by reason of mental retardation, mental illness, chemical dependency, or physical handicap. HE 24 FoF 3

~~12. Vulnerable adult. "Vulnerable adult" means any person 18 years of age or older who is a resident of a facility or who receives services at or from a program.~~ HE 25 FoF 4

C. Program abuse ~~and neglect~~ prevention plan.

1. Requirement. The program's governing body shall establish and enforce a written abuse ~~and neglect~~ prevention plan. This plan shall be completed within 60 days of the effective date of this rule. HE 27-30

2. Plan contents. The plan must contain the following information:

a. An assessment of the population, ~~the~~ environment and physical plant ~~for~~ of each facility and ~~for~~ of each site ~~when~~ where living arrangements are provided by an agency, ~~and its environment,~~ identifying the factors which may encourage or HE 31 FoF 6

permit abuse ~~or neglect~~;

b. ~~A description of the specific steps which will be or have been taken to minimize the risk of abuse or neglect identified in any of the assessed areas, including physical plant repairs and modifications responsive to problems in the program's environment where necessary~~ A description of any identified corrective action that will be taken, based on the assessment, including training staff, adjusting staffing patterns, or initiating new procedures or any needed modifications of the physical plant or environment that have been identified as a result of the assessment; and

c. A timetable for the implementation of any identified corrective actions that ~~will~~ need to be taken, ~~such as training staff, initiating new procedures, or adjusting staffing patterns~~ to minimize the risk of abuse.

3. Assessment factors.

a. The assessment of the population shall include an evaluation of the following factors: the age, sex, mental functioning, physical and emotional health or behavior of clients, the need for specialized programs of care for clients, the need for training of staff to meet identified resident needs, ~~and the existence of a documented history of abuse or neglect of clients~~ and the knowledge a program may have regarding previous abuse that is relevant to minimizing risk of abuse for clients.

b. The assessment of the physical plant, ~~if required,~~ for each facility and for each site when living arrangements are provided by an agency shall include an evaluation of the following factors: the condition and design of the building as ~~it relates~~ they relate to the safety of the clients and the existence of areas in the building which are difficult to supervise.

c. The assessment of the environment, ~~if required,~~ for each facility and for each site when living arrangements are provided by the agency shall include an evaluation of the following factors: the location of the program in a particular

HE 32 FoF 7 FoF 7 HE 38 FoF 8 HE 39 FoF 9

neighborhood or community, the type of grounds surrounding the building, the type of internal programming, and the program's staffing patterns~~, and the existence of a documented history of abuse or neglect by staff~~.

4. Plan review. The program's governing body shall review the plan at least annually using the assessment factors in the plan and any reports of abuse ~~or neglect~~ that have occurred. The governing body shall revise the plan, if necessary, so that it reflects the results of the review.

HE 41

5. Plan orientation for clients. ~~The program shall provide for its clients a general orientation to the program abuse and neglect prevention plan. Client representatives shall have the opportunity to be included in the orientation. The program shall provide this initial orientation within 60 days after the effective date of this rule, and, thereafter, for each new client within 24 hours of admission~~ The program shall provide for its clients in a means familiar to them, a general orientation to the program abuse prevention plan, unless a determination has been made that a client is unable to comprehend the orientation and the reason is documented in the individual abuse prevention plan. Client representatives shall have the opportunity to be included in the orientation, and for clients unable to comprehend, client representatives shall have the opportunity to receive the orientation in place of the client. When their identities are known, client representatives must be notified when the orientation will take place. The program shall provide this initial orientation within 60 days after the effective date of this rule, and thereafter, for each new client within 24 hours of admission or for clients who would benefit more from a later orientation, the orientation may take place within 72 hours. The need for this delay shall be documented at the time of admission.

HE 41, 42, 43, 44, 45
F of F 11

6. Plan distribution. The program shall post a copy of the plan in a prominent location in the facility and at each site when living arrangements are provided by an agency and have a copy available for review by clients, client representatives,

and mandated reporters upon request.

D. Individual abuse ~~and neglect~~ prevention plan.

1. Requirement. The client's interdisciplinary team shall develop an individual abuse ~~and neglect~~ prevention plan, and this plan shall be implemented for each client. The team shall develop a plan for each current client within 60 days after the effective date of this rule and, thereafter, for each new client as part of the initial individual program plan, as required by the Department of Public Welfare rule under which the program is licensed.

2. Plan contents. The plan must be a part of the client's individual program plan and must include the following information:

a. An assessment of the client's susceptibility to abuse, including self-abuse ~~and neglect~~;

b. A statement of the ~~specific~~ measures which will be taken to minimize the risk of abuse ~~and neglect~~ to the individual client when the individual assessment indicates the need for ~~specific~~ measures in addition to the general measures specified in the program abuse ~~and neglect~~ prevention plan. The program has the responsibility to take all reasonable measures to minimize the risk of abuse to its clients. These measures shall include specific actions the program will take if the client is susceptible to abuse within the scope of licensed services. These measures shall also include referrals the program may reasonably make if the client is susceptible to abuse outside the scope of licensed services; and

HE 50 FOF 12

c. Documentation of results of the individual assessment when it does not indicate the need for specific measures in addition to the general measures specified in the program abuse ~~and neglect~~ prevention plan.

3. Plan review. The review and evaluation of the individual abuse ~~and neglect~~ prevention plan shall be done as part of the review of the client's individual program plan. The interdisciplinary team shall review the abuse ~~and neglect~~ prevention plans at least annually, utilizing the individual

assessment and any reports of abuse ~~or neglect~~ relating to the client. The plan shall be revised to reflect the results of this review.

4. Client participation. Whenever possible, the client shall participate in the development of the individual abuse ~~and neglect~~ prevention plan. The client shall have the right to have a client representative participate with or for the client in the development of the plan. If the client or client representative does not participate, the reasons shall be documented by the team in the plan.

E. Internal reporting and investigation system and records.

1. Establishment. The program's governing body shall establish and enforce internal written reporting and investigating policies and procedures for abuse and neglect, including suspected or alleged abuse and neglect. The same policies and procedures shall apply in all cases, regardless of the results of the internal investigation. The program shall develop the internal reporting and investigation system within 60 days after the effective date of 12 MCAR S 2.010. HE 51

2. Reporting. The policies and procedures must include a process for the mandatory reporting of abuse or neglect of ~~vulnerable adults~~ clients. The policies and procedures must specify how reports are to be made and provide for all reports to be made promptly when a mandated reporter has reasonable cause to believe that a client is being or has been abused or neglected, or has knowledge that a client has sustained a physical injury which is not reasonably explained by the client's history of injuries. The policies and procedures shall also contain a provision that persons other than mandated reporters may and should report incidents of abuse or neglect and shall identify the persons to whom internal reports should be made. The procedure shall specify that reports may be made directly to the outside investigative authorities or to the person designated by the program or both. The person responsible for forwarding internal reports to outside authorities shall be clearly identified. All mandated reporters

shall be informed of their responsibility to ensure that their report reaches the appropriate outside investigative authorities. Reporters shall be informed when a report has been forwarded and to whom it has been forwarded. Reports shall include the following information:

a. The name and location of the client and the program;

b. The nature of the abuse or neglect;

c. Pertinent dates and times;

d. Any history of abuse or neglect;

e. The name and address of the reporter;

f. The name and address of the alleged perpetrator; and

g. Any other information that might be helpful in investigating the abuse or neglect.

3. Investigation. The policies and procedures shall include identification of the person responsible for the internal review and investigation of abuse or neglect. However, if the person responsible for the review and investigation is suspected of committing the abuse or allowing the neglect, another person shall be designated to conduct the review and investigation.

4. Records. The policies and procedures shall include a provision requiring that records are maintained regarding the internal review and investigation of cases of abuse and neglect. These records shall contain a summary of the findings, persons involved, persons interviewed, persons and investigating authorities notified, conclusions and any actions taken. The records shall be dated and authenticated by signature and identification of the person doing the review and investigation.

5. Communication. The policies and procedures shall include a provision requiring the communication of all knowledge and written information regarding incidents of abuse or neglect to the Department of Public Welfare.

6. Cooperation. The policies and procedures shall include a provision requiring the cooperation of the program with the department in the course of the investigation.

7. Orientation for clients. ~~The program shall provide for its clients an orientation to the internal reporting system. Client representatives shall have the opportunity to be included in the orientation. The program shall provide this initial orientation within 60 days after the effective date of this rule and, thereafter, for each new client within 24 hours of admission~~ The program shall provide for its clients, in a means familiar to them, an orientation to the internal reporting system, unless a determination has been made that a client is unable to comprehend the orientation and the reason is documented in the individual abuse prevention plan. Client representatives shall have the opportunity to be included in the orientation, and for clients unable to comprehend, client representatives shall have the opportunity to receive the orientation in place of the client. When their identitities are known, client representatives must be notified when the orientation will take place. The program shall provide this initial orientation within 60 days after the effective date of this rule, and thereafter for each new client within 24 hours of admission or for clients who would benefit more from a later orientation, the orientation may take place within 72 hours. The need for this delay shall be documented at the time of admission.

8. Distribution of copies. The program shall post a copy of the internal reporting policies and procedures in a prominent location in the facility or at the offices of an agency and have it available upon request to mandated reporters, clients, and client representatives.

F. Personnel requirements.

1. Orientation of reporters. Within 60 days after the effective date of this rule, the program shall inform mandated reporters about the requirements of Minnesota Statutes, section 626.557, the provisions of 12 MCAR S 2.010, and all internal policies and procedures related to ~~vulnerable adults~~ clients. All staff shall be informed that individuals, other than those mandated to report, may report suspected cases of abuse or neglect to the appropriate investigative authorities and that

staff must provide information to those requesting it regarding the procedure for contacting the authorities. Thereafter, the program shall provide this orientation for new mandated reporters ~~no later than during the first shift worked~~ within 72 hours of employment. HE54

2. Training. The program shall conduct in-service training at least annually for mandated reporters to review Minnesota Statutes, section 626.557, the provisions of 12 MCAR S 2.010, and all internal policies and procedures related to ~~vulnerable adults~~ clients.

3. List of persons providing services. The program shall establish and maintain a current list of persons who provide services in ~~or to~~ the program who meet the definition of a mandated reporter.

APPROVED AS TO LEGALITY

12 - 13 1982

WARREN SPANNAUS, ATTORNEY GENERAL

BY

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 15 1982
Joan Anderson Growe
Secretary of State

10:06 AM

Rec'd 4/19/82

Rule as Proposed (all new material)

12 MCAR S 2.010 Reporting maltreatment of vulnerable adults in licensed facilities.

A. Applicability. Rule 12 MCAR S 2.010 applies to residential and nonresidential programs providing services to adults and licensed pursuant to Minn. Stat. SS 245.781-245.812.

B. Definitions. As used in 12 MCAR S 2.010, 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. Agency. "Agency" means any individual, oganization, association, or corporation which regularly provides services to adults and is licensed by the Department of Public Welfare pursuant to Minn. Stat. SS 245.781-245.812.

3. Client. "Client" means a vulnerable adult, as defined in 12.

4. Client representative. "Client representative" means any family member, legal guardian, or other interested person acting or speaking in place of a client or on behalf of a client.

5. Facility. "Facility" means a residential or nonresidential facility providing services to adults and licensed by the Department of Public Welfare pursuant to Minn. Stat. SS 245.781-245.812.

6. Governing body. "Governing body" means the individual, corporation, partnership, voluntary association, or other public or private organization legally responsible for the operation of a day care or residential facility or service or agency.

7. Interdisciplinary team. "Interdisciplinary team" means the individuals from the various disciplines which are

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rjh

required by Department of Public Welfare licensing rules to be involved in program and treatment planning. If only one person is designated by the rule under which the program is licensed to develop the individual program plan with the client, this person shall consult with members of other disciplines as required by that licensing rule to be involved in developing the individual program or treatment plan.

8. Investigative authority. "Investigative authority" means the local police department, county sheriff, local welfare agency, or appropriate licensing or certifying agency.

9. Mandated reporter. "Mandated reporter" means each employee of a program and each person providing client-related services in or to a program.

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 client.

11. Program. "Program" means a residential or nonresidential facility or an agency providing services to adults and licensed by the Department of Public Welfare pursuant to Minn. Stat. SS 245.781-245.812.

12. Vulnerable adult. "Vulnerable adult" means any person 18 years of age or older who is a resident of a facility or who receives services at or from a program.

C. Program abuse and neglect prevention plan.

1. Requirement. The program's governing body shall establish and enforce a written abuse and neglect prevention plan. This plan shall be completed within 60 days of the effective date of this rule.

2. Plan contents. The plan must contain the following information:

a. An assessment of the population, the physical plant for each facility and for each site when living arrangements are provided by an agency, and its environment, identifying the factors which may encourage or permit abuse or neglect;

b. A description of the specific steps which will be or have been taken to minimize the risk of abuse or neglect

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identified in any of the assessed areas, including physical plant repairs and modifications responsive to problems in the program's environment where necessary; and

c. A timetable for the implementation of corrective actions that will be taken, such as training staff, initiating new procedures, or adjusting staffing patterns.

3. Assessment factors.

a. The assessment of the population shall include an evaluation of the following factors: the age, sex, mental functioning, physical and emotional health or behavior of clients, the need for specialized programs of care for clients, the need for training of staff to meet identified resident needs, and the existence of a documented history of abuse or neglect of clients.

b. The assessment of the physical plant, if required, shall include an evaluation of the following factors: the condition and design of the building as it relates to the safety of the clients and the existence of areas in the building which are difficult to supervise.

c. The assessment of the environment, if required, shall include an evaluation of the following factors: the location of the program in a particular neighborhood or community, the type of grounds surrounding the building, the type of internal programming, the program's staffing patterns, and the existence of a documented history of abuse or neglect by staff.

4. Plan review. The program's governing body shall review the plan at least annually using the assessment factors in the plan and any reports of abuse or neglect that have occurred. The governing body shall revise the plan so that it reflects the results of the review.

5. Plan orientation for clients. The program shall provide for its clients a general orientation to the program abuse and neglect prevention plan. Client representatives shall have the opportunity to be included in the orientation. The program shall provide this initial orientation within 60 days

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after the effective date of this rule, and, thereafter, for each new client within 24 hours of admission.

6. Plan distribution. The program shall post a copy of the plan in a prominent location in the facility and at each site when living arrangements are provided by an agency and have a copy available for review by clients, client representatives, and mandated reporters upon request.

D. Individual abuse and neglect prevention plan.

1. Requirement. The client's interdisciplinary team shall develop an individual abuse and neglect prevention plan, and this plan shall be implemented for each client. The team shall develop a plan for each current client within 60 days after the effective date of this rule and, thereafter, for each new client as part of the initial individual program plan, as required by the Department of Public Welfare rule under which the program is licensed.

2. Plan contents. The plan must be a part of the client's individual program plan and must include the following information:

a. An assessment of the client's susceptibility to abuse, including self-abuse and neglect;

b. A statement of the specific measures which will be taken to minimize the risk of abuse and neglect to the individual client when the individual assessment indicates the need for specific measures in addition to the general measures specified in the program abuse and neglect prevention plan; and

c. Documentation of results of the individual assessment when it does not indicate the need for specific measures in addition to the general measures specified in the program abuse and neglect prevention plan.

3. Plan review. The review and evaluation of the individual abuse and neglect prevention plan shall be done as part of the review of the client's individual program plan. The interdisciplinary team shall review the abuse and neglect prevention plans at least annually, utilizing the individual assessment and any reports of abuse or neglect relating to the

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client. The plan shall be revised to reflect the results of this review.

4. Client participation. Whenever possible, the client shall participate in the development of the individual abuse and neglect prevention plan. The client shall have the right to have a client representative participate with or for the client in the development of the plan. If the client or client representative does not participate, the reasons shall be documented by the team in the plan.

E. Internal reporting and investigation system and records.

1. Establishment. The program's governing body shall establish and enforce internal written reporting and investigating policies and procedures for abuse and neglect, including suspected or alleged abuse and neglect. The same policies and procedures shall apply in all cases, regardless of the results of the internal investigation.

2. Reporting. The policies and procedures must include a process for the mandatory reporting of abuse or neglect of vulnerable adults. The policies and procedures must specify how reports are to be made and provide for all reports to be made promptly when a mandated reporter has reasonable cause to believe that a client is being or has been abused or neglected, or has knowledge that a client has sustained a physical injury which is not reasonably explained by the client's history of injuries. The policies and procedures shall also contain a provision that persons other than mandated reporters may and should report incidents of abuse or neglect and shall identify the persons to whom internal reports should be made. The procedure shall specify that reports may be made directly to the outside investigative authorities or to the person designated by the program or both. The person responsible for forwarding internal reports to outside authorities shall be clearly identified. All mandated reporters shall be informed of their responsibility to ensure that their report reaches the appropriate outside investigative authorities. Reporters shall be informed when a report has been forwarded and to whom it has

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OFFICE BY:

been forwarded. Reports shall include the following information:

a. The name and location of the client and the program;

b. The nature of the abuse or neglect;

c. Pertinent dates and times;

d. Any history of abuse or neglect;

e. The name and address of the reporter;

f. The name and address of the alleged perpetrator; and

g. Any other information that might be helpful in investigating the abuse or neglect.

3. Investigation. The policies and procedures shall include identification of the person responsible for the internal review and investigation of abuse or neglect. However, if the person responsible for the review and investigation is suspected of committing the abuse or allowing the neglect, another person shall be designated to conduct the review and investigation.

4. Records. The policies and procedures shall include a provision requiring that records are maintained regarding the internal review and investigation of cases of abuse and neglect. These records shall contain a summary of the findings, persons involved, persons interviewed, persons and investigating authorities notified, conclusions and any actions taken. The records shall be dated and authenticated by signature and identification of the person doing the review and investigation.

5. Communication. The policies and procedures shall include a provision requiring the communication of all knowledge and written information regarding incidents of abuse or neglect to the Department of Public Welfare.

6. Cooperation. The policies and procedures shall include a provision requiring the cooperation of the program with the department in the course of the investigation.

7. Orientation for clients. The program shall provide for its clients an orientation to the internal reporting system. Client representatives shall have the opportunity to be included in the orientation. The program shall provide this

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REVISOR OF STATUTES
OFFICE BY:
RJH

initial orientation within 60 days after the effective date of this rule and, thereafter, for each new client within 24 hours of admission.

8. Distribution of copies. The program shall post a copy of the internal reporting policies and procedures in a prominent location in the facility or at the offices of an agency and have it available upon request to mandated reporters, clients, and client representatives.

F. Personnel requirements.

1. Orientation of reporters. Within 60 days after the effective date of this rule, the program shall inform mandated reporters about the requirements of Minn. Stat. S 626.557, the provisions of 12 MCAR S 2.010, and all internal policies and procedures related to vulnerable adults. All staff shall be informed that individuals, other than those mandated to report, may report suspected cases of abuse or neglect to the appropriate investigative authorities and that staff must provide information to those requesting it regarding the procedure for contacting the authorities. Thereafter, the program shall provide this orientation for new mandated reporters no later than during the first shift worked.

2. Training. The program shall conduct in-service training at least annually for mandated reporters to review Minn. Stat. S 626.557, the provisions of 12 MCAR S 2.010, and all internal policies and procedures related to vulnerable adults.

3. List of persons providing services. The program shall establish and maintain a current list of persons who provide services in or to the program who meet the definition of a mandated reporter.

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rjh

OFFICE OF THE REVISOR OF STATUTES
PROPOSED RULES

RECEIVED
APR 19 1982
ADMINISTRATIVE HEARINGS

RD33
4-2-82

Agency Department of Public Welfare

Division Licensing Division

Agency Contact Vivian Miller Phone Number 296-2852

Title: Reporting Maltreatment of Vulnerable Adults in Licensed Facilities

Type of Rules: Permanent X Temporary ____

Incorporations by References: None except those permitted under statute.

Rule Number Material Incorporated
Author
Title
Place
Publisher
Date
Cost
Places Available

See Additional references on back Yes ____ No X

Duplication of Statutory Language

Rule Number Statutory Section Duplicated

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: Roger J. Helder, Jr.

Title: Assistant Revisor

Phone: 297-2948

STATE OF MINNESOTA
COUNTY OF RAMSEY

ARTHUR E. NOOT, COMMISSIONER
DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of the Department of Public Welfare Rule Governing the Standards for the Protection of Vulnerable Adults in Licensed Facilities (12 MCAR §2.010)

ORDER ADOPTING RULE

The above entitled matter came before Jon L. Lunde, duly appointed Hearing Examiner, on Tuesday, June 15, 1982, commencing at 9:00 a.m. in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota. The Department of Public Welfare served proper notice as required by Minn. Stat. § 15.0412, subd. 4 (1980), upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

At said hearing, the proposed rule as published in 6 State Register 1846-1850 on Monday, May 10, 1982, was considered. Diane Masters, Special Assistant Attorney General, appeared as counsel for the Department of Public Welfare and Marge Wherley, Residential Program Consultant for Hennepin County and Chairperson of the Department's rule-drafting committee, testified on behalf of the Department. John S. Buzzell, Director of the Department's Licensing Division, Cheryl Nyhus, Supervisor of Residential Licensing and Vivian Miller, staff member in the Licensing Division, were available at the hearing to answer public inquiries. The hearing continued until all interested persons present had an opportunity to be heard. Pursuant to the order of the Hearing Examiner, the record was held open for twenty (20) days for submission of written comments and statements.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner issued a report on August 5, 1982 which includes Findings of Fact, Conclusions and Recommendation. This report is attached as Exhibit A.

Pursuant to the requirements of Minn. Stat. §15.0412, subd. 4. d. (Supp. 1981), this report was available on request to all affected parties for at least five (5) days.

Having considered all of the evidence adduced and upon the records, files and proceedings herein, the applicable statutory standards and criteria, and having confirmed the need for the adoption 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, with exceptions or modifications as noted below, are hereby adopted and incorporated herein. In addition, in accordance with the Recommendation of the Hearing Examiner, the Commissioner makes the following additional:

FINDINGS OF FACT

1. In Finding 14 the Hearing Examiner finds that the proposed amendment to 12 MCAR §2.010 B.2. is not an accurate description because there is a comma left out between the word "individual" and the word "organization" in the Department's response to the Hearing Examiner. (The comma, however, is in the part of this definition retained in the proposed rule.) The Commissioner agrees with this. In addition, the Commissioner finds that to be consistent with other definitions in this rule and with Minn. Stat. §245.781-245.812, the last word in this definition should be changed to "handicap". Therefore, the Commissioner amends part B.2., consistent with Finding 25, to read:

> 2. Agency. "Agency" means any individual, organization or corporation which for gain or otherwise regularly provides needed social service or counseling services for clients, who may be living in their own homes or receives clients unable to remain in their own homes, and places them in alternate living situations and is required to be licensed to provide these services for adults, pursuant to Minn. Stat. §245.781-245.812, who are handicapped by reason of mental retardation, mental illness, chemical dependency or physical handicap.

The Commissioner finds this amendment to be necessary and reasonable and does not constitute a substantial change since it is for the purpose of consistency and clarification.

2. In Finding 20 the Hearing Examiner finds that part B.9. violates substantive provisions of law. He offers three options to correct this defect. The Commissioner accepts this finding and selects the third option. Therefore, the Commissioner amends part B.9. to read:

> 9. Mandated Reporter. "Mandated reporter" means ~~each employee of a program and each person providing client related services in or to a program.~~ those persons specified in Minn. Stat. §626.557, subd. 3.

In addition the Commissioner finds that to be consistent with Hearing Examiner's Finding 20 regarding the definition of mandated reporter that it is necessary to delete the words "or to" in part F.3. Therefore, the Commissioner amends part F.3. to read:

> 3. List of persons providing services. The program shall establish and maintain a current list of persons who provide services in ~~or to~~ the program who meet the definition of a mandated reporter.

The Commissioner finds these amendments to be necessary and reasonable to correct the inconsistency between the rule and Minn. Stat. §626.557, subd. 3.

3. In Finding 24 the Hearing Examiner finds the proposed amendment is acceptable. The Commissioner agrees with this except the Commissioner finds that the comma following "chemical dependency" in the Hearing Examiner's report is not consistent with the definitions of "Agency" and "Facility" in this rule and is therefore deleted.

The Commissioner finds this is not a substantial change.

4. In Finding 25 the Hearing Examiner recommends that the word "clients" be used exclusively in the rule and that the current definition of "client" contained in §2.010 B.3. be replaced with the definition proposed for B. 12. for "vulnerable adult". The Commissioner accepts these recommendations and deletes definition B.12. Vulnerable Adult and all references to "vulnerable adults" in the proposed rule or amendments are replaced by "clients", and the Commissioner amends B.3. to read:

> 3. Client. "Client" means ~~a vulnerable adult as defined in 12.~~ any person 18 years of age or older who is a resident of a facility or who receives services at or from a program.

The Commissioner agrees that the amendments are necessary and reasonable to ensure consistency with other rules applying to vulnerable adults and to reduce public confusion and uncertainty in complying with various rules that are adopted to implement the statute. The Commissioner finds this is not a substantial change.

5. In Findings 28, 29 and 30 the Hearing Examiner finds the inclusion of "neglect" in the program prevention plans and the individual prevention plans under 12 MCAR §2.010 C. and D. is contrary to Minn. Stat. §15.012, subd. 4.c. The Commissioner agrees with the Hearing Examiner and therefore amends 12 MCAR 2.010 C. and D. by deleting all references to "neglect".

The Commissioner finds these deletions to be necessary and reasonable, since it is beyond the scope of the Department's delegated authority to add requirements the legislature intentionally omits or inadvertantly overlooks.

6. In Finding 31 the Hearing Examiner advises that the proposed amendment to part C.2.a. is outside the scope of the Department's delegated authority for purposes of Minn. Stat. §15.0412, subd. 1. He recommends rewriting part C.2.a. The Commissioner accepts the recommendation and amends part C.2.a. as originally proposed to read as follows:

> a. An assessment of the population, environment and ~~the~~ physical plant ~~for~~ of each facility and ~~for~~ of each site ~~when~~ where living arrangements are provided by an agency, ~~and its environment,~~ identifying the factors which may encourage or permit abuse ~~or neglect~~;

The Commissioner finds this is necessary and reasonable to comply with Minn. Stat. §15.0412, subd. 1.

7. In Finding 32 the Hearing Examiner finds the proposed amendments C.2.b. and c. acceptable with the exception of two typographical errors. The word "has" in the last line of C.2.b. following the word "that" is changed to "have". In C.2.c. the words "time table" in the first line are changed to "timetable".

The Commissioner finds this is not a substantial change since it is simply correcting typographical errors.

8. In Finding 38 the Hearing Examiner finds the proposed amendment to C.3.a., clarifying responsibility to consider prior client abuse, is acceptable. The Commissioner agrees with the Hearing Examiner with these exceptions: "and" should be "an", as in the original proposal; "the" should be inserted between "resident needs" and "knowledge"; "neglect" is deleted, consistent with Finding 30; "abuse" as a typographical error is deleted; "relevant" is spelled correctly; "client" is changed to "clients" for consistency. Therefore, the Commissioner amends C.3.a. to read:

> a. The assessment of the population shall include an evaluation of the following factors: the age, sex, mental functioning, physical and emotional health or behavior of clients, the need for specialized programs of care for clients, the need for training of staff to meet identified resident needs~~, and the existence of a documented history of abuse or neglect of clients.~~ and the knowledge a program may have regarding previous abuse that is relevant to minimizing risk of abuse for clients.

The Commissioner finds these corrections to be needed and reasonable and not a substantial change because it is correcting typographical errors and clarifying the language.

9. In Finding 39 the Hearing Examiner finds the proposed amendments to C.3.b. and c. acceptable with the exceptions of the typographical error on the word "plant" and the grammatical error indicated below. Therefore, the Commissioner amends C.3.b. to read:

> b. The assessment of the physical plant~~, if required,~~ for each facility and for each site when living arrangements are provided by the agency shall include an evaluation of the following factors: the condition and design of the building as ~~it~~ they relate~~s~~ to the safety of the clients and the existence of areas in the building which are difficult to supervise.

The Commissioner finds this amendment is needed and reasonable and is not a substantial change.

10. In Finding 40 the Hearing Examiner recommends as one option that the language "and the existence of a documented history of abuse or neglect by staff" be excluded from part C.3.c. proposed amendment. The Commissioner accepts this recommendation and amends C.3.c. to read:

> c. The assessment of the environment~~, if required,~~ for each facility and for each site when living arrangements are provided by the agency shall include an evaluation of the following factors: the location of the program in a particular neighborhood or community, the type of grounds surrounding the building, the type of internal programming~~,~~ and the program's staffing patterns~~,~~. ~~and the existence of a documented history of abuse or neglect by staff.~~

The Commissioner finds this amendment to be necessary and reasonable and agrees with the Hearing Examiner's rationale that the language now deleted is redundant. The Commissioner finds this is not a substantial change.

11. In Findings 42, 43 and 45 the Hearing Examiner makes two recommendations involving changes in part C.5. The Commissioner accepts these recommendations. In addition, the Hearing Examiner includes a third recommendation in Finding 52 relating to C.5. The Commissioner accepts this recommendation. However, because of the many changes proposed and recommended it would be confusing to amend both original and proposed lanugage. Therefore, the Commissioner amends part C.5. by deleting both language as originally proposed and subsequently amended, and adding language to read as follows:

> 5. Plan orientation for clients. The program shall provide for its clients, in a means familiar to them, a general orientation to the program abuse prevention plan, unless a determination has been made that a client is unable to comprehend the orientation and the reason is documented in the individual abuse prevention plan. Client representatives shall have the opportunity to be included in the orientation, and for clients unable to comprehend, client representatives shall have the opportunity to receive the orientation in place of the client. When their identities are known, client representatives must be notified when the orientation will take place. The program shall provide this initial orientation within 60 days after the effective date of this rule, and thereafter, for each new client within 24 hours of admission or for clients who would benefit more from a later orientation, the orientation may take place within 72 hours. The need for this delay shall be documented at the time of admission.

The Commissioner finds this amendment necessary and reasonable since it addresses concerns and clarifies questions raised at the public hearing and by the Hearing Examiner. The Commissioner finds this is not a substantial change and adopts the Hearing Examiner's rationale.

12. In Finding 50 the Hearing Examiner finds that part D., in its present form, is not sufficiently clear and that the scope of a facility's responsibility for outpatients must be clarified. He finds this is a substantive violation of the law for purposes of Minn. Stat. §15.0412, subd. 4.c. The Commissioner accepts this finding. In addition, the Commissioner finds that a clarification of an outpatient facility's scope of responsibility would not necessarily cure this defect, since in all programs there are times when the client is not at the facility or under its control. Therefore, the Commissioner amends part D.2.b. to read:

> b. A statement of the ~~specific~~ measures which will be taken to minimize the risk of abuse ~~and neglect~~ to the individual client when the individual assessment indicates the need for ~~specific~~ measures in addition to the general measures specified in the program abuse ~~and neglect~~ prevention plan~~, and~~. The program has the responsibility to take all reasonable measures to minimize the risk of abuse to its clients. These measures shall include specific actions the program will take if the client is susceptible to abuse within the scope of licensed services. These measures shall also include referrals the program may reasonably make if the client is susceptible to abuse outside the scope of licensed services.

The Commissioner finds this amendment is necessary and reasonable to clarify the program's scope of responsibility and accepts the Hearing Examiner's rationale.

13. In Finding 52 the Hearing Examiner recommends a change in the last sentence of the Department's proposed amendment to part E.7. (Note: Error in the Hearing Examiner's report indicated E.8.) and he recommends additional language regarding documentation if no orientation is given to clients. The Commissioner accepts these recommendations and amends part E.7. by deleting language as originally proposed and subsequently amended, and adding language to read as follows:

> 7. Orientation for clients. The program shall provide for its clients, in a means familar to them, an orientation to the internal reporting system, unless a determination has been made that a client is unable to comprehend the orientation and the reason is documented in the individual abuse prevention plan. Client repre-sentatives shall have the opportunity to be included in the orientation, and for clients unable to comprehend, client repre-sentaties shall have the opportunity to receive the orientation in place of the client. When their identities are known, client representatives must be notified when the orientation will take place. The program shall provide this initial orientation within 60 days after the effective date of this Rule, and thereafter, for each new client within 24 hours of admission or for clients who would benefit more from a later orientation, the orientation may take place within 72 hours. The need for this delay shall be documented at the time of admission.

The Commissioner finds this change and added language is needed and reasonable to ensure the rule deals consistently with similar situations. (See Commissioner's Finding 11.)

14. In Finding 54 the Hearing Examiner suggests the Department consider a 72 hour requirement for orientation of new employees. The Commissioner accepts this suggestion and amends the last sentence of part F.1. to read:

> Thereafter, the program shall provide this orientation for new mandated reporters ~~no later than during the first shift worked~~ within 72 hours of employment.

The Commissioner finds this amendment to be a necessary and reasonable extension of the time requirement and not a substantial change, and accepts the Hearing Examiner's rationale.

IT IS FURTHER ORDERED, that this Rule, identified as 12 MCAR §2.010 - the Department of Public Welfare Rule Governing the Standards for the Protection of Vulnerable Adults in Licensed Facilities - is adopted this 26 day of Oct, 1982 and after this day, Rule 10 shall read in its entirety as set forth in the attached Exhibit C. pursuant to the authority vested in me.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

DATED: 10-26-82

Arthur E. Noot
Commissioner

ET-01

Attachments

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

RECEIVED
MAY 18 1982
ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of a Department of Public Welfare (DPW) Rule Concerning the Investigation and Reporting of Maltreatment of Vulnerable Adults in DPW Facilities, 12 MCAR 2.010

NOTICE OF HEARING

A public hearing concerning the above entitled matter will be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota 55155 on June 15, 1982, commencing at 9:00 a.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 ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, 612/341-7645, either before the hearing or within five working days after the public hearing ends. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§15.0411-15.0417 and 15.052, and by 9 MCAR §§2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

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. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Rule 10 (12 MCAR 2.010) establishes standards for the protection of vulnerable adults in facilities licensed by the Department of Public Welfare as established in Minn. Stat. §626.557 (1980), "Reporting of Maltreatment of Vulnerable Adults."

This rule applies to all residential and nonresidential programs providing services to adults and licensed pursuant to Minn. Stat. §245.78 to 245.812.

This rule contains the following:

1. A list of definitions;

Agency Exh. No. A
File No. DPW-82-047-JL
Date 6-15-82

2. The contents required in the program abuse and prevention plan; in the individual plan, and in the internal reporting and investigating policies and procedures;

3. The time frames for: developing the plan; orientation of clients to the plan; developing the individual abuse and neglect prevention plan for each vulnerable adult; review and revision of the individual plan; orientation for clients to the internal reporting system and orientation of reporters to requirements of Minn. Stat. §626.557 and 12 MCAR §2.010; and

4. The requirements for review and revision of the plan; for distribution of the plan; for the involvement of the client and/or client representative in developing the plan; for the posting of policies and procedures relating to Rule 10; for conducting in-service training for mandated reports at least annually; and for establishing and maintaining a current list of persons who provide services in or to the facility who meet the definition of a mandated reporter.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. §626.557. 4

The adoption of this rule will not require expenditure of public monies by local public bodies totaling or exceeding $100,000 in either of the two years immediately following adoption of the rule. 10

The programs required to meet the provisions of this rule will be developing their program abuse and neglect prevention plans within their existing administrative/program staff. The individual abuse and neglect prevention plans will be developed by the existing interdisciplinary team as a part of the clients individual program plan.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Vivian Miller, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-2852. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule contact Vivian Miller. 36

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. 8

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, 1979 supp., as any individual:

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

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

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

Dated: April 13, 1982

Arthur E. Noot
Commissioner of Public Welfare

ES/gfh

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

RECEIVED
MAY 18 1982
ADMINISTRATIVE HEARINGS

In the matter of the Proposed Adoption of a Department of Public Welfare (DPW) Rule Concerning the Investigation and Reporting of Maltreatment of Vulnerable Adults in DPW Facilities, 12 MCAR 2.010

ORDER FOR HEARING

IT IS ORDERED this 14th day of April, 1982, that a public hearing on the proposed rules captioned above be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota 55155, on June 15, 1982, commencing at 9:00 a.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

ES/gfk

Agency Exh. No. B
File No. DPW-82-047-JL
Date 6/15/82

RECEIVED
MAY 18 1982
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of a Department of Public Welfare (DPW) Rule Concerning the Investigation and Reporting of Maltreatment of Vulnerable Adults in DPW Facilities, 12 MCAR 2.010

AFFIDAVIT OF MAILING

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

That on the 7th day of May, 1982, 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 10 day of May, 1982.

Margaret Holt

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

Agency Exh. No. C
File No. DPW-82-047-JL
Date 6/15/82

RECEIVED
MAY 18 1982
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of a Department of Public Welfare (DPW) Rule Concerning the Investigation and Reporting of Maltreatment of Vulnerable Adults in DPW Facilities, 12 MCAR 2.010

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 7th day of May, 1982, 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:

227 Residential & Non-Residential Facilities
County Welfare Agencies
Human Services Agencies
145 Developmental Achievement Centers

Wendy Johnson

Subscribed and sworn to before me

this 10 day of May, 1982.

Margaret Holt

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

Agency Exh. No. D
File No. DPW-82-047-JL
Date 6/15/82

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

RECEIVED
MAY 18 1982
ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of a Department of Public Welfare (DPW) Rule Concerning the Investigation and Reporting of Maltreatment of Vulnerable Adults in DPW Facilities, 12 MCAR 2.010

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 4:00, P.M., this 7th day of May, 1982.

Agency Exh. No. E
File No. DPW-82-047-JL
Date 6/15/82

RECEIVED
MAY 18 1982
ADMINISTRATIVE HEARINGS

cathods, in carload lots, f.o.b. Port Colborne, Ontario, Canada, United States import duty (if any) included, as reported in said journal. The average market price of other metals and of mineral products per pound for each month shall be that quoted for their usual and customary shipping quantities, f.o.b. the usual and customary place of shipment, United States import duty (if any) included, as reported in said journal. If said journal or its successors ceases to furnish such quotations, or its quotations cease to be recognized in the trade, or a particular metal or mineral product is not listed, then the quotations of such other source as the parties may agree upon shall govern.

(10)-(15) Renumber as 10.-15.

(16) (aa)-(ee) Renumber and reletter as 16. a.-e.

(17)-(34) Renumber as 17.-34.

~~(h) [Section 8.] Effective date. These rules and regulations shall become effective upon filing of same in the offices of the secretary of state and commissioner of administration in accordance with Minnesota Statutes, 1965, Section 15.0413, and shall remain in full force and effect until modified, amended, or revoked.~~

Department of Public Welfare
Support Services Bureau

Proposed Rule Concerning the Investigation and Reporting of Maltreatment of Vulnerable Adults in DPW Facilities (12 MCAR § 2.010)

Notice of Hearing

A public hearing concerning the above entitled matter will be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota 55155 on June 15, 1982, commencing at 9:00 a.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 ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, 612/341-7645, either before the hearing or within five working days after the public hearing ends. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

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. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Rule 10 (12 MCAR § 2.010) establishes standards for the protection of vulnerable adults in facilities licensed by the Department of Public Welfare as established in Minn. Stat. § 626.557 (1980), "Reporting of Maltreatment of Vulnerable Adults."

This rule applies to all residential and nonresidential programs providing services to adults and licensed pursuant to Minn. Stat. §§ 245.78 to 245.812.

This rule contains the following:

1. A list of definitions;

2. The contents required in the program abuse and prevention plan; in the individual plan, and in the internal reporting and investigating policies and procedures;

3. The time frames for: developing the plan; orientation of clients to the plan; developing the individual abuse and neglect prevention plan for each vulnerable adult; review and revision of the individual plan; orientation for clients to the internal reporting system and orientation of reporters to requirements of Minn. Stat. § 626.557 and 12 MCAR § 2.010; and

4. The requirements for review and revision of the plan; for distribution of the plan; for the involvement of the client and/or

Agency Exh. No. I
File No. DPW-82-047-JL
Date 6/15/82

RECEIVED
MAY 18 1982
ADMINISTRATIVE HEARINGS

client representative in developing the plan; for the posting of policies and procedures relating to Rule 10; for conducting in-service training for mandated reports at least annually; and for establishing and maintaining a current list of persons who provide services in or to the facility who meet the definition of a mandated reporter.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. § 626.557.

The adoption of this rule will not require expenditure of public monies by local public bodies totaling or exceeding $100,000 in either of the two years immediately following adoption of the rule.

The programs required to meet the provisions of this rule will be developing their program abuse and neglect prevention plans within their existing administrative/program staff. The individual abuse and neglect prevention plans will be developed by the existing interdisciplinary team as a part of the clients individual program plan.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Vivian Miller, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-2852. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule contact Vivian Miller.

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, 1979 supp., as any individual:

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

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

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

April 22, 1982

Arthur E. Noot
Commissioner of Public Welfare

Rule as Proposed (all new material)

12 MCAR § 2.010 Reporting maltreatment of vulnerable adults in licensed facilities.

A. Applicability. Rule 12 MCAR § 2.010 applies to residential and nonresidential programs providing services to adults and licensed pursuant to Minn. Stat. §§ 245.781-245.812.

B. Definitions. As used in 12 MCAR § 2.010, 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. Agency. "Agency" means any individual, organization, association, or corporation which regularly provides services to adults and is licensed by the Department of Public Welfare pursuant to Minn. Stat. §§ 245.781-245.812.

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.

3. Client. "Client" means a vulnerable adult, as defined in 12.

4. Client representative. "Client representative" means any family member, legal guardian, or other interested person acting or speaking in place of a client or on behalf of a client.

5. Facility. "Facility" means a residential or nonresidential facility providing services to adults and licensed by the Department of Public Welfare pursuant to Minn. Stat. §§ 245.781-245.812.

6. Governing body. "Governing body" means the individual, corporation, partnership, voluntary association, or other public or private organization legally responsible for the operation of a day care or residential facility or service or agency.

7. Interdisciplinary team. "Interdisciplinary team" means the individuals from the various disciplines which are required by Department of Public Welfare licensing rules to be involved in program and treatment planning. If only one person is designated by the rule under which the program is licensed to develop the individual program plan with the client, this person shall consult with members of other disciplines as required by that licensing rule to be involved in developing the individual program or treatment plan.

8. Investigative authority. "Investigative authority" means the local police department, county sheriff, local welfare agency, or appropriate licensing or certifying agency.

9. Mandated reporter. "Mandated reporter" means each employee of a program and each person providing client-related services in or to a program.

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 client.

11. Program. "Program" means a residential or nonresidential facility or an agency providing services to adults and licensed by the Department of Public Welfare pursuant to Minn. Stat. §§ 245.781-245.812.

12. Vulnerable adult. "Vulnerable adult" means any person 18 years of age or older who is a resident of a facility or who receives services at or from a program.

C. Program abuse and neglect prevention plan.

1. Requirement. The program's governing body shall establish and enforce a written abuse and neglect prevention plan. This plan shall be completed within 60 days of the effective date of this rule.

2. Plan contents. The plan must contain the following information:

a. An assessment of the population, the physical plant for each facility and for each site when living arrangements are provided by an agency, and its environment, identifying the factors which may encourage or permit abuse or neglect;

b. A description of the specific steps which will be or have been taken to minimize the risk of abuse or neglect identified in any of the assessed areas, including physical plant repairs and modifications responsive to problems in the program's environment where necessary; and

c. A timetable for the implementation of corrective actions that will be taken, such as training staff, initiating new procedures, or adjusting staffing patterns.

3. Assessment factors.

a. The assessment of the population shall include an evaluation of the following factors: the age, sex, mental functioning, physical and emotional health or behavior of clients, the need for specialized programs of care for clients, the need for training of staff to meet identified resident needs, and the existence of a documented history of abuse or neglect of clients.

b. The assessment of the physical plant, if required, shall include an evaluation of the following factors: the condition and design of the building as it relates to the safety of the clients and the existence of areas in the building which are difficult to supervise.

c. The assessment of the environment, if required, shall include an evaluation of the following factors: the location of the program in a particular neighborhood or community, the type of grounds surrounding the building, the type of internal programming, the program's staffing patterns, and the existence of a documented history of abuse or neglect by staff.

4. Plan review. The program's governing body shall review the plan at least annually using the assessment factors in the plan and any reports of abuse or neglect that have occurred. The governing body shall revise the plan so that it reflects the results of the review.

5. Plan orientation for clients. The program shall provide for its clients a general orientation to the program abuse and neglect prevention plan. Client representatives shall have the opportunity to be included in the orientation. The program shall provide this initial orientation within 60 days after the effective date of this rule, and, thereafter, for each new client within 24 hours of admission.

6. Plan distribution. The program shall post a copy of the plan in a prominent location in the facility and at each site when living arrangements are provided by an agency and have a copy available for review by clients, client representatives, and mandated reporters upon request.

D. Individual abuse and neglect prevention plan.

1. Requirement. The client's interdisciplinary team shall develop an individual abuse and neglect prevention plan, and this plan shall be implemented for each client. The team shall develop a plan for each current client within 60 days after the effective date of this rule and, thereafter, for each new client as part of the initial individual program plan, as required by the Department of Public Welfare rule under which the program is licensed.

2. Plan contents. The plan must be a part of the client's individual program plan and must include the following information:

a. An assessment of the client's susceptibility to abuse, including self-abuse and neglect;

b. A statement of the specific measures which will be taken to minimize the risk of abuse and neglect to the individual client when the individual assessment indicates the need for specific measures in addition to the general measures specified in the program abuse and neglect prevention plan; and

c. Documentation of results of the individual assessment when it does not indicate the need for specific measures in addition to the general measures specified in the program abuse and neglect prevention plan.

3. Plan review. The review and evaluation of the individual abuse and neglect prevention plan shall be done as part of the review of the client's individual program plan. The interdisciplinary team shall review the abuse and neglect prevention plans at least annually, utilizing the individual assessment and any reports of abuse or neglect relating to the client. The plan shall be revised to reflect the results of this review.

4. Client participation. Whenever possible, the client shall participate in the development of the individual abuse and neglect prevention plan. The client shall have the right to have a client representative participate with or for the client in the development of the plan. If the client or client representative does not participate, the reasons shall be documented by the team in the plan.

E. Internal reporting and investigation system and records.

1. Establishment. The program's governing body shall establish and enforce internal written reporting and investigating policies and procedures for abuse and neglect, including suspected or alleged abuse and neglect. The same policies and procedures shall apply in all cases, regardless of the results of the internal investigation.

2. Reporting. The policies and procedures must include a process for the mandatory reporting of abuse or neglect of vulnerable adults. The policies and procedures must specify how reports are to be made and provide for all reports to be made promptly when a mandated reporter has reasonable cause to believe that a client is being or has been abused or neglected, or has knowledge that a client has sustained a physical injury which is not reasonably explained by the client's history of injuries. The policies and procedures shall also contain a provision that persons other than mandated reporters may and should report incidents of abuse or neglect and shall identify the persons to whom internal reports should be made. The procedure shall specify that reports may be made directly to the outside investigative authorities or to the person designated by the program or both. The person responsible for forwarding internal reports to outside authorities shall be clearly identified. All mandated reporters shall be informed of their responsibility to ensure that their report reaches the appropriate outside investigative authorities. Reporters shall be informed when a report has been forwarded and to whom it has been forwarded. Reports shall include the following information:

a. The name and location of the client and the program;

b The nature of the abuse or neglect;

c. Pertinent dates and times;

d. Any history of abuse or neglect;

e. The name and address of the reporter;

f. The name and address of the alleged perpetrator; and

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.

g. Any other information that might be helpful in investigating the abuse or neglect.

3. Investigation. The policies and procedures shall include identification of the person responsible for the internal review and investigation of abuse or neglect. However, if the person responsible for the review and investigation is suspected of committing the abuse or allowing the neglect, another person shall be designated to conduct the review and investigation.

4. Records. The policies and procedures shall include a provision requiring that records are maintained regarding the internal review and investigation of cases of abuse and neglect. These records shall contain a summary of the findings, persons involved, persons interviewed, persons and investigating authorities notified, conclusions and any actions taken. The records shall be dated and authenticated by signature and identification of the person doing the review and investigation.

5. Communication. The policies and procedures shall include a provision requiring the communication of all knowledge and written information regarding incidents of abuse or neglect to the Department of Public Welfare.

6. Cooperation. The policies and procedures shall include a provision requiring the cooperation of the program with the department in the course of the investigation.

7. Orientation for clients. The program shall provide for its clients an orientation to the internal reporting system. Client representatives shall have the opportunity to be included in the orientation. The program shall provide this initial orientation within 60 days after the effective date of this rule and, thereafter, for each new client within 24 hours of admission.

8. Distribution of copies. The program shall post a copy of the internal reporting policies and procedures in a prominent location in the facility or at the offices of an agency and have it available upon request to mandated reporters, clients, and client representatives.

F. Personnel requirements.

1. Orientation of reporters. Within 60 days after the effective date of this rule, the program shall inform mandated reporters about the requirements of Minn. Stat. § 626.557, the provisions of 12 MCAR § 2.010, and all internal policies and procedures related to vulnerable adults. All staff shall be informed that individuals, other than those mandated to report, may report suspected cases of abuse or neglect to the appropriate investigative authorities and that staff must provide information to those requesting it regarding the procedure for contacting the authorities. Thereafter, the program shall provide this orientation for new mandated reporters no later than during the first shift worked.

2. Training. The program shall conduct in-service training at least annually for mandated reporters to review Minn. Stat. § 626.557, the provisions of 12 MCAR § 2.010, and all internal policies and procedures related to vulnerable adults.

3. List of persons providing services. The program shall establish and maintain a current list of persons who provide services in or to the program who meet the definition of a mandated reporter.

Waste Management Board

Proposed Rules Governing Supplementary Review

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Waste Management Board proposes to adopt the above-entitled rules without a public hearing. The Waste Management Board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0412, subd. 4(h) (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes § 15.0412, subds. 4-4(f).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Waste Management Board
Attention: Sharon Decker
123 Thorson Building
7323-58th Avenue North
Crystal, Minnesota 55428
(612) 536-0816

Proposed Amendment
to 12 MCAR § 2.010

A. Applicability. Rule 12 MCAR S 2.010 applies to ~~residential and nonresidential~~ programs providing services to adults and licensed pursuant to Minn. Stat. SS 245.781-245.812.

Agency Exh. No. K
File No. DPW 82-04-JL
Date 6-15-82

Appendix A

DPW-82-047-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing the Standards for the Protection of Vulnerable Adults in Licensed Facilities (12 MCAR § 2.010).

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Jon L. Lunde, duly appointed Hearing Examiner on Tuesday, June 15, 1982, commencing at 9:00 a.m. in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota, pursuant to a Notice of Hearing dated April 22, 1982. 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.

Diane Masters, Special Assistant Attorney General, 515 Transportation Building, St. Paul, Minnesota 55155, appeared as counsel on behalf of the Minnesota Department of Public Welfare (hereinafter the "Department"). Marge Wherley, a Residential Program Consultant for Hennepin County and a member of the Department's rule-drafting committee, testified on behalf of the Department. John S. Buzzell, Director of the Department's Licensing Division, and Cheryl Nyhus, and Vivian Miller, staff members in the Licensing Division, were also available at the hearing to answer public inquiries.

Approximately 50 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. Prior to the close of the 20-day comment period authorized by the Hearing Examiner, 12 written comments were filed with the Office of Administrative Hearings.

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 Commissioner 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 April 19, 1982, 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.

2. On Monday, May 10, 1982, more than 30 days prior to hearing,, a Notice of Hearing and a copy of the proposed rules were published at 6 State Register 1846-1850.

3. On May 7, 1982, 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 May 18, 1982, more than 25 days prior to hearing,, the Department filed the following documents at the Office of Administrative Hearings:

(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.
(e) The names of Department personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(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 1469 on Monday March 16, 1981.

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, July 6, 1982 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. The 20-day comment period would normally have expired on Monday, July 5, 1982. However, that day was a legal holiday and is not included in the computation of the 20-day comment period pursuant to Minn. Stat. § 645.15.

Introduction.

6. The purpose of the proposed rules is to implement the provisions of Minn. Stat. § 626.557, subds. 14 and 15 (1980), which provide as follows:

> Subd. 14. Abuse prevention plans. (a) Each facility shall establish and enforce an ongoing written abuse prevention plan. The plan shall contain an assessment of the physical plant, its environment, and its population identifying factors which may encourage or permit abuse, and a statement of specific measures to be taken to minimize the risk of abuse. The plant shall comply with any rules governing the plan as are promulgated by the licensing agency.
>
> (b) Each facility shall develop an individual abuse prevention plan for each vulnerable adult residing there. Facilities designated in subdivision 2, clause (b)(2), shall develop plans for any vulnerable adults receiving services from them. The plan shall contain an individualized assessment of a person's susceptibility to abuse, and a statement of the specific measures to be taken to minimize the risk of abuse to that person. For the purposes of this clause, the term "abuse" includes self-abuse.
>
> Subd. 15. Internal reporting of abuse and neglect. Each facility shall establish and enforce an ongoing written procedure in compliance with the licensing agency's rules for ensuring that all cases of suspected abuse or neglect are reported promptly to a person required by this section to report abuse and neglect and are promptly investigated.

7. Minn. Stat. § 626.557 (the so-called Vulnerable Adults Act), pertains to adults who, because of physical or mental disability or dependency on institutional services are particularly vulnerable to abuse or neglect. In order to protect such vulnerable adults, the law requires the reporting and investigation of suspected abuse and neglect and the adoption of abuse prevention plans. The Department has adopted rules implementing the requirements of subdivision 10 governing the investigation of suspected abuse and neglect and the providing of protective services. See, 6 SR 1748 (April 19, 1982). The rules now proposed deal with the responsibilities of licensed facilities in adopting abuse prevention plans and internal procedures for reporting suspected abuse and neglect.

Except as may be specifically found to the contrary herein, the need and reasonableness of each rule was supported by an affirmative presentation of facts and those rules not specifically discussed are necessary and reasonable for purposes of Minn. Stat. § 15.0412, subd. 4c (1980).

8. The Department's authority to adopt rules implementing subdivisions 14 and 15 is contained in Minn. Stat. § 626.557, subd. 16(b), which provides as follows:

> 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). . . .

Minn. Stat. § 626.557, subd. 2(g)(2), defines a "licensing agency" to include the Commissioner of Public Welfare, for facilities required to be licensed by §§ 245.781 to 245.813. These statutory provisions delegate to the Commissioner of Public Welfare the authority to adopt the rules proposed and, except as is discussed later in this Report, the rules are within the scope of that delegation.

Substantive Provisions.

9. 12 MCAR § 2.010 A. As originally proposed, the scope of Rule 10 was described as follows:

> A. Applicability. Rule 12 MCAR § 2.010 applies to residential and non-residential programs providing services to adults and licensed pursuant to Minn. Stat. §§ 245.781-245.812.

At the hearing, the Department proposed to delete the words "residential and non-residential" as redundant. In either form, this part was subject to a great deal of adverse criticism. Generally speaking, the criticisms were that the services provided by many of these agencies are provided to adults who are not vulnerable and are provided to such a great number of adults that the costs of compliance would be unjustified and financially burdensome. The comments submitted by the Minnesota Association of Voluntary Social Service Agencies (MAVSSA) were typical. MAVSSA's executive director noted as follows:

> In writing this rule, it would appear that the drafters had in mind exactly those adults who are somehow impaired -- the mentally retarded, the mentally ill, the physically handicapped.... But the rule itself is much, much broader in its coverage than simply residential programs for the handicapped. It covers every day program, every residential program, and every agency licensed by the Department of Public Welfare under a number of different licensing rules. Every adult served by anyone holding a license from the Department must be covered by an individual abuse and neglect prevention plan.
>
> At first blush, this may seem reasonable, but it leads to some absurdities. Some adult clients are simply not in need of protection and perhaps would feel their privacy invaded if an agency were to suggest evaluating them for vulnerability. Some examples would be applicants for adoption, people calling an agency for information or referral, couples desiring marriage or family counseling. Agencies often provide workshops or seminars to large groups. But the rule says any adult who "receives services at or from an agency" is a vulnerable adult. And even when the adult is assessed as not vulnerable, the agency must still provide documentation of this. . . .

MAVSSA estimated the initial costs of compliance with the rule to be $119,944 for Lutheran Social Service and $108,588 for the Children's Home Society of Minnesota. All the commentors questioned the Legislature's intent to require the preparation of individual abuse prevention plans for all those adults receiving incidental counseling.

Substantive Provisions.

Scope

10. In its posthearing comments, the Department proposes to exclude any program that is not specifically licensed to provide services to adults, in order to exclude agencies licensed under DPW Rule 4 (12 MCAR § 2.004), which are only licensed to provide child placement and child welfare services. In order to limit the scope of the rules, the Department proposes to amend 12 MCAR § 2.010 A. to read as follows:

> Applicability: Rule 12 MCAR § 2.010 applies to programs required to be licensed pursuant to Minn. Stat. § 245.781-245.812 to provide services to adults who are handicapped by reason of mental retardation, mental illness, chemical dependency or physical handicap.

As originally proposed, the scope of part A. was unreasonably broad. Section 626.557 was enacted to protect certain vulnerable adults. It is highly unlikely that the Legislature intended its provisions to apply to the incidental services rendered to adults by the child welfare and child protection agencies mentioned by MAVSSA. Thus, the Department's proposal to restrict the application of its rule only to those programs that are specifically required to be licensed to provide services to adults is necessary and reasonable. The limitation in the scope of the rule was discussed during the course of the hearing. It does not affect a class of persons who were unrepresented at the hearing, raise a new subject matter of significant substantive effect or result in a rule that is fundamentally different from that originally proposed. Consequently, it is determined that the language changes proposed to restrict the scope of the rule's applicability do not constitute a substantial change in the rules for purposes of 9 MCAR § 2.111.

Definitions.

11. 12 MCAR § 2.010 B.1. This part defines the word "abuse." The proposed definition of abuse is consistent with the definition contained in 12 MCAR § 2.221 B.1., which implements Minn. Stat. § 626.557, subd. 10, and it is very similar to the definition contained in Minn. Stat. § 626.557, subd. 2(d). The definition does, however, clarify the types of criminal activities 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 it to comprehend its meaning and effect the purposes of Minn. Stat. § 15.0412, subd. 1, and the definition is otherwise necessary and reasonable.

12. Range Center Inc. objected to the definition proposed noting that some methods of training could result in mental or emotional distress, such as when an adult in a Rule 34 facility is required to clean his bedroom as part of a training program for community living. While not intended to cause mental or emotional distress, it was argued that such requirements might do so. Therefore, Range Center recommended that the last clause of Part B.1.c. be amended to read ". . . or any persistent non-prescribed course of conduct primarily intended to produce mental or emotional distress." The Department rejected the proffered amendment because it was unclear who would "prescribe" a course of conduct and because the recommendation appeared to sanction a prescribed course of conduct even if primarily intended to produce distress. Furthermore, since the proposed amendment seemed to border on aversive/deprivation procedures not intended to be addressed by the Rule, the Department declined to adopt the language changes proposed.

In prior rulemaking proceedings, the Department has not clarified the statutory language pertaining to a "persistent course of conduct intended to produce mental or emotional distress." It has taken the position that the statutory definition adequately states the intent of the Legislature to get at ongoing "harassment, bullying and hounding." See, Report of the Hearing Examiner, Docket No. DPW-82-006-JL, December 10, 1981. Although it might be preferable for the Department to adopt standards clarifying the relationship between aversive/deprivation procedures and abuse under § 626.557, the Department is not required to do that in these rules and the Hearing Examiner is persuaded that the statutory definition is not unreasonably vague without further clarification. The statutory language, itself, indicates that therapeutic actions do not constitute abuse. Until such time as more detailed rules are formulated, what is or is not therapeutic must be determined on a case-by-case basis taking account of all the facts involved in the particular situation. At the present time, adoption of the same definition of "abuse" that was adopted by the Department in implementing other subdivisions of the statute is preferable because the various rules implementing § 626.557 must be uniform unless compelling reasons for a different definition exist.

13. Lois Zimmerman, Program Compliance Officer for Cambridge State Hospital, questioned the language in proposed Part B.1.c. stating that the words "intentional infliction of physical pain or injury" are ambiguous because it is difficult to determine whether injuries inflicted by a mentally ill or profoundly retarded person were inflicted intentionally. The Department has declined to define the word "intentional" on the grounds that a definition would not provide mandated reporters with a method to determine the motivation of the perpetrator. The language proposed is necessary and reasonable. The rules are obviously meant to protect patients from abuse at the hands of fellow patients or from other persons. Even if the patient committing the abusive act is severely retarded, or mentally ill, the victim is still abused and steps must be taken to protect him.

14. 12 MCAR § 2.010 B.2. This part defines the word "agency." In its posthearing comments, the Department proposes to amend the definition of this term to clarify the agencies that are covered. The amendment is consistent with the Department's proposed amendments to § 2.010 A. The definition is also consistent with the definitions of "agency" and "person" found in Minn. Stat. § 245.782 and is necessary and reasonable. Furthermore, for the reasons stated in connection with the discussion of the amendment to § 2.010, the language change proposed does not constitute a substantial change for purposes of 9 MCAR § 2.111.

As amended, Part B.2. will read as follows:

> 2.A. Agency: "Agency" means any individual, organization or corporation which for gain or otherwise regularly provides needed social service or counseling services for vulnerable adults, who may be living in their own homes or receives vulnerable adults unable to remain in their own homes, and places them in alternate living situations and is required to be licensed to provide these services for adults, pursuant to Minn. Stat.

§ 245.781-245.812, who are handicapped by reason of mental retardation, mental illness, chemical dependency or physical handicaps.[1]

15. Mr. Albert Hanzal, Director of the Blue Earth County Human Services Department, questioned whether county board operated mental health programs are covered by the proposed rule. The Department has taken the position that county board operated mental health programs are not covered by the proposed rule because Minn. Stat. § 245.782, subd. 4, defining the word "agency" excludes local welfare agencies or agencies sponsored by community mental health boards under Minn. Stat. § 245.66 and because the Department is only authorized to adopt rules regulating facilities which must be licensed by it under the provisions of Minn. Stat. § 245.781 to 245.813. Although community-operated mental health programs may receive funds under Minn. Stat. § 245.61 and are, therefore, facilities as defined in Minn. Stat. § 626.557, subd. 2(a), the Hearing Examiner agrees with the Department's conclusion that it is without authority to adopt rules with respect to those facilities funded pursuant to Minn. Stat. § 245.61. Consequently, its conclusion that such facilities are not governed by the proposed rules is correct. The failure to delegate authority to the Department to adopt rules governing county-operated mental health programs may have been a legislative oversight, but at the present time, the Agency must proceed under the scope of the delegation contained in § 626.557, subd. 2(g)(2).

16. 12 MCAR § 2.010 B.4. This part defines the word "client representative" as "any family member, legal guardian, or other interested person acting or speaking in place of a client or on behalf of a client." Lynn Hagenson, of Thomas House, Inc., suggested that the words "with the client's current or previous permission" be added to the end of the proposed definition. That change was proposed because the current rule leaves the client with no voice in encouraging or discouraging "interested persons" from acting or speaking for the client. The Department rejected the proffered amendment on the grounds that the rule only requires that the client have a right to have a client representative participate. The definition originally proposed by the Department is necessary and reasonable.

The rule does not purport to determine the identity of those persons who may act as client representatives. It merely requires that such representatives be enabled to participate with the client in various procedures specified in the rules. The question of who may or may not act as a client representative must be determined by other rules and statutes. The rule is not intended to give any "interested person" the absolute right to act or speak on behalf of a client. On the contrary, it must be construed to mean that a client has a right to such representation and that any person authorized to act or speak for that client may participate. Therefore, the definition proposed is necessary and reasonable.

- -

[1] The definition currently speaks about individual organizations or corporations. This is not an accurate description because the definition of "agency" in Minn. Stat. § 245.782 addresses individuals, organizations or corporations. Therefore, a comma should be inserted between the word individual and the word organization in the amended language of the proposed definition.

OK/P.1

17. 12 MCAR § 2.010 B.5. In its posthearing comments, the Department proposes to amend the definition of a "facility" under this part. The amendment proposed is intended to make it clear that only those facilities providing services to vulnerable adults are covered by the proposed rules. The amendment is consistent with the other amendments made by the Department to § 2.010 A. and B.2. and does not constitute a substantial change for purposes of 9 MCAR § 2.111. As amended, this part will read as follows:

> B.5. Facility: "Facility" means a residential or non-residential facility required to be licensed to provide services to adults who are handicapped by reason of mental retardation, mental illness, chemical dependency or physical handicap.

ok p.2

18. 12 MCAR § 2.010 B.7. In response to comments made by MAVSSA and Bar-None Residential Treatment Services, the Department proposes to amend the definition of the term "interdisciplinary team" contained in this part. The definition originally proposed did not make it clear whether one person could develop individual abuse and neglect plans without consulting other persons. To clarify the meaning of the term, Part B.7. will be amended to read as follows:

> 7. Interdisciplinary team. "Interdisciplinary team" means the individuals from the various disciplines which are required by Department of Public Welfare licensing rules to be involved in program and treatment planning. If the licensing rule designates only one person to develop the individual program plan with the client, but requires that this person consult with members of other disciplines in developing the individual program or treatment plans, this designated person must also consult with members of these disciplines in developing the individual abuse and neglect prevention plans. The designated person plus these consulting members shall be considered the "interdisciplinary team" for purposes of this rule.

ok p.2,3

The amendment proposed to the language of this part is necessary and reasonable and does not constitute a substantial change for purposes of 9 MCAR § 2.111.

19. 12 MCAR § 2.010 B.9. This part originally defined a mandated reporter as "each employee of a program and each person providing client-related services in or to a program." Range Center, Inc. objected to the definition as unnecessarily vague and noted that a licensed facility has no control over many persons who provide client-related services, such as local community resources, including barbers and drivers. In its posthearing comments, the Department clarified the scope of the definition, noting that if the barber gives services in his own place of business and is not employed by or under contract to the program, the barber would not be a mandated reporter. However, if a bus driver is employed by the program, that bus driver would be a mandated reporter since he is providing client-related services in or to the program. The Department feels the current definition is clear and no further amendment is needed.

20. The Hearing Examiner agrees with Mary Martin, Staff Counsel for the Minnesota Association of Health Care Facilities (MAHCF) that the Department's proposed definition is different from and inconsistent with the definition of a mandated reporter contained in Minn. Stat. § 626.557, subd. 3. The statutory definition is more specific than the rule and conditions the definition of a mandated reporter on the individual's knowledge or reasonable cause to believe that abuse or neglect has occurred. The definition in the rule is not only inconsistent with the statutory definition, but does not clarify and make specific the provisions of the law as required by Minn. Stat. § 15.0411, subd. 3.

The general rule is that an administrative officer may not make a rule that alters or enlarges the terms of the legislative enactment. 1 Cooper, State Administrative Law, p. 256 n.61 (1965). The statute does not mention persons who provide services "to a program", but speaks only of certain professionals or their delegates and employees of or persons providing services in a facility. The inconsistency between the language of the rule and that of the statute is not within the Department's delegated authority for purposes of Minn. Stat. § 15.0412, subd. 1, and does not make specific the laws enforced by the Department but only confuses the definition of the term. This constitutes a substantive violation of law for purposes of Minn. Stat. § 15.0412, subd. 4c. To correct this defect, the Department must either eliminate Part B.9., replace it with the statutory definition, or amend the definition to read as follows:

9. Mandated reporter. "Mandated reporter" means those persons specified in Minn. Stat. § 626.557, subd. 3.

so amended P. 3

21. Range Center, Inc. also proposed that there be an additional definition for "internal investigative reporters" who would have the added responsibility for forwarding internal reports to outside authorities to clarify that specific duty. The Department does not believe that an additional definition of this term is needed or reasonable because each mandated reporter has responsibility to ensure that reports are actually submitted to outside authorities and have an option under the rules to make reports directly to outside authorities or to staff members. (See, Part E.2.). Under the circumstances, it is concluded that the Rule, as proposed, is necessary and reasonable without adding a definition of internal investigative reporters.

22. 12 MCAR § 2.010 B.10. This part defines the word "neglect" as the "failure by a caretaker to supply or to ensure the supply of necessary food, clothing, shelter, health care, or supervision for a client." The definition proposed is substantially and substantively the same as that contained in Minn. Stat. § 626.557, subd. 2(e), and is the same as that adopted by the Department in rules implementing other subdivision 10 of the statute. Therefore, it is concluded that the definition proposed is necessary and reasonable, and to the extent that it duplicates the statutory definition of the term, that duplication 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.

23. Range Center, Inc. suggested that the word "supervision" in the proposed definition needed to be further defined because, in community based programs, the concept of self-dependence is an integral part of program planning and implementation, and since the rule could be interpreted as requiring constant supervision of all adults receiving services, those program planning goals could be thwarted. In response to this comment, the Department has noted that the word " supervision" is modified by the word "necessary" and that the degree of an individual's need for supervision should be specified in the individual program plan, and in conjunction with the individual abuse prevention plan, and no amendment or clarification of the word "supervision" is necessary. The Hearing Examiner agrees that no further clarification is required and concludes that the definition, as proposed, is necessary and reasonable. It is clear that constant supervision of all adults is not required and that where a

lack of supervision is part of the program plan for training or treating the particular adult, constant supervision would not be necessary or required.

24. 12 MCAR § 2.010 B.11. This part defines the word "program." In its posthearing comments, the Department proposes to amend the language of this definition to be consistent with the amendments to § 2.010 A. and the definitions of "agency" and "facility". As amended, Part B.11. will read as follows:

> 11. Program. "Program" means a residential or non-residential facility or an agency required to be licensed pursuant to Minn. Stat. § 245.781-245.812 to provide services to adults who are handicapped by reason of mental retardation, mental illness, chemical dependency, or physical handicap.

The definition now proposed is necessary and reasonable and does not constitute a substantial change for purposes of 9 MCAR § 2.111, as was previously discussed in connection with the change in the scope of the rules under § 2.010 A.

While some persons questioned the need to define a "program" when both facilities and agencies are defined by the rules, the Hearing Examiner is persuaded that the use of an "umbrella term" covering both agencies and facilities is reasonable and appropriate.

25. 12 MCAR § 2.010 B.12. This part defines a "vulnerable adult" as "any person 18 years of age or older who is a resident of a facility or who receives services at or from a program." MAHCF pointed out that the definition of a vulnerable adult in this part is different than the definition contained in Minn. Stat. § 626.557, subd. 2(b), and in 12 MCAR § 2.221 B.14. This different was pointed out not so much because of the substantive impact, but as an example of the confusion that may arise as more and more agencies implement their rules under § 626.557. MAHCF believes that this is a good example of why joint rulemaking under the statute is necessary.

The Department's Statement of Need and Reasonableness (p. 2) explains that the definition of a vulnerable adult is different from that contained in the statute because part of the statutory definition is inapplicable for rules adopted under the subdivisions involved here. The definition proposed is reasonable and consistent with the statute. However, it is desirable to avoid different definitions of the same term in implementing various provisions of the statute. If at all possible, the definitions adopted should be consistent from rule to rule to reduce public confusion and uncertainty in complying with the various rules that are adopted to implement the statute. In this case, that confusion can be eliminated by deleting any definition of the term "vulnerable adult." In its proposed Rule, the Department has primarily referred to "vulnerable adults" as "clients." It is recommended that the word "clients" be used exclusively in the rules and that the current definition of client contained in § 2.010 B.3. be replaced with the definition proposed in Part B.12. for a vulnerable adult. Thus, a client would be defined as "any person 18 years of age or older who was a resident of a facility or who receives services at or from a program." The definition of the term "vulnerable adult" would be eliminated and that word would be replaced by the word "client" in Part E.2. and Part F.1. In the alternative, the statutory definition of a vulnerable adult should be used.

eliminated p. 3.

26. The Minnesota Association of Treatment Programs (MATP), which represents 14 free-standing primary chemical dependency treatment programs in the

state of Minnesota, questioned whether residents of those facilities are really "vulnerable" for purposes of Minn. Stat. § 626.557, noting that their clients are rarely physically or mentally disabled or dependent on institutional services. It argued that adult residents in those facilities generally stay only 28 days and that a 28-day time period is far too short a time for the clients to become dependent upon institutional services. It recommended that chemical dependency treatment programs be required to report only that abuse and neglect which occurs within the facility and that the rule be limited to those adults who reside in a chemical dependency treatment facility for more than 45 days.

Although the policy statement in Minn. Stat. § 626.557 may not cover individuals in short-term chemical dependency treatment, those individuals are vulnerable adults as defined in § 626.557. subd. 2(b), because they are either residents or patients of a facility or receive services from a facility as defined in the statute. Given this language, the Department would be without authority to exclude adults receiving services for less than 45 days as MATP proposed. Furthermore, the Department may not limit the responsibility of chemical dependency treatment programs to report only abuse that occurs within their facilities. Minn. Stat. § 626.557, subd. 3, requires a report when the mandated reporter has knowledge of the abuse or neglect of a vulnerable adult or has reasonable cause to believe that such an adult has been or is being abused or neglected or has knowledge that a vulnerable adult sustained an injury which is not reasonably explained. That duty is not restricted to abuse or neglect occurring in a facility. It would be inconsistent with the public policy expressed in the statute if any abuse they know or have reasonable cause to believe has occurred went unreported. Therefore, it is concluded that the Department's refusal to adopt the recommendations of MATP is necessary and reasonable.

Program Abuse and Neglect Prevention Plans.

27. 12 MCAR § 2.010 C.1. Every program's governing body must establish a written abuse and neglect prevention plan within 60 days of the effective date of the Rule. Minn. Stat. § 626.557, subd. 14, requires each facility to establish and enforce an ongoing written abuse prevention plan. Subdivision 16 provides that a facility that has not complied with this requirement within 60 days of the effective date of passage of temporary rules is ineligible for license renewal. The 60-day time period for adoption of an abuse prevention plan under Part C.1. is clearly consistent with existing law.

28. However, Minn. Stat. § 626.557, subd. 14, only requires an abuse prevention plan while the proposed rule requires both an abuse and neglect prevention plan. The reasons for this are explained in the Department's Statement of Need and Reasonableness as follows (p. 2):

> . . . The law requires each program to develop a written abuse prevention plan. Although the law does not specifically require a neglect prevention plan, it is necessary and reasonable to include neglect in the requirement for the plan. The Vulnerable Adults Act focuses on both abuse and neglect throughout the Act. Neglect is a reportable offense, requires investigation, and carries penalties for commission and failure to report. Therefore, extending prevention plans to include an assessment and plan for minimizing the risk of neglect is consistent with the Act.

> Requiring prevention planning in the area of neglect protects the clients of the program. The failure of a caretaker to ensure that clients receive necessary food, clothing, shelter, health care and supervision can result in a life-threatening situation. Examples of such situations may include: a client who is not monitored in the time-out room according to the policies and procedures developed by the program, a client who refuses medication and is not helped to deal with the situation, or a client who frequently wanders from the program and sometimes is found in the middle of the street or other hazardous areas.
>
> Under Section 1, Subd. 11, licensing agencies have the authority to issue orders and take actions, with respect to the license of the program, that are designed to prevent further abuse or neglect of vulnerable adults. Since the licensing orders or actions may include the requirement that individual programs address issues of neglect in writing, it is reasonable to require that neglect be addressed in the initial prevention plan. It has been our experience that issues of neglect are identified far more frequently than issues of actual abuse, and that neglect may indeed lead to instances of abuse.

29. There is no question that neglect would be a necessary and reasonable factor to include in the prevention plans required by Minn. Stat. § 626.557, subd. 14. However, the issue is not whether the rule is necessary or reasonable but whether it is within the scope of the Department's delegated authority. Minn. Stat. § 15.0412, subd. 1, requires state agencies to adopt rules only pursuant to authority delegated by law. In exercising such delegated authority, it is well settled that an agency may not adopt rules which exceed the authority conferred, conflict with the governing statute, or extend or modify the statute. 1 Cooper, State Administrative Law, pp. 251-255 (1965).

In Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588, 594 (1971), the Supreme Court held:

> It is well established that the legislature may confer discretion on the commissioner in the execution or administration of the law. It may not give him authority to determine what the law shall be or to supply a substantive provision of the law which he thinks the legislature should have included in the first place.

The issue then is whether subdivision 14 should be construed to include neglect. In construing the law, the object is to ascertain and effectuate the intent of the Legislature. Minn. Stat. § 645.16 (1980). That statute also provides that when the words of a law are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing its spirit.

30. In this case, it is concluded that the language of subdivision 14 is clear and unambiguous and that the Department's proposed modification of the requirement for abuse prevention plans to abuse and neglect prevention plans is unauthorized and outside the scope of its delegated authority. Although the Vulnerable Adults Act does deal with abuse and neglect, the Legislature was quite cognizant of that fact. When it chose to include both abuse and neglect in statutory requirements, it did so; for example, in subdivision 15, written procedures for reporting abuse and neglect are required. However, neglect is not included in subdivision 14. The Legislature's inclusion of abuse in some plans and its exclusion in others must be interpreted as a deliberate limitation on the Department's authority. Cf., State, by Spannaus v. Lloyd A. Fry Roof. Co., 246 N.W.2d 696 (Minn. 1976). It is not within the authority of the Department to add requirements the Legislature intentionally omits or inadvertently overlooks.

Inclusion of neglect in the program prevention plans and the individual prevention plans under 12 MCAR § 2.010 C. and D. is, therefore, contrary to Minn. Stat. § 15.012, subd. 4c. To correct this defect, all references to neglect in Parts C. and D. must be removed.

31. 12 MCAR § 2.010 C.2. Part C.2.a. requires an assessment of each facility's population, physical plant and environment which identifies factors that may encourage or permit abuse and a statement of specific measures to be taken to minimize the risk of abuse. These requirements are the same as those set forth in Minn. Stat. § 626.557, subd. 14(a), and are necessary and reasonable as proposed. Range Center, Inc. suggested that this part be amended to exclude assessments covered by other existing rules. The Department has declined to alter the language proposed because the assessment required under Rule 10 is intended to focus on factors not specifically covered in other rules. Its decision is reasonable and within the scope of its legitimate discretion.

However, the Department does propose to amend Part C.2.a. to read as follows:

> a. Prevention measures based on an assessment of the population, the physical plant for each facility and for each site when living arrangements are provided by an agency, and its environment, identifying the factors which may encourage or permit abuse or neglect. [The words "or neglect" must be deleted.]

The words "prevention measures based on" were added to the beginning of this part in order to make it clear that the Department did not intend that information on a facility's history of client abuse be posted. Under the original definition, that information was required to be posted under Part C.6. The intent of the amended language is to allow the program to do an assessment and post only the prevention measures that may be necessary as a result of that assessment. However, the amendment renders Part C.2.a. redundant because "corrective actions" based on the assessments must be included in the plan under Part C.2.b. Apparently, the "prevention measures" under Part C.2.a. are no different than the "corrective actions under Part C.2.b. In addition, § 626.557, subd. 14, requires that the assessment be part of the abuse prevention plan. The amendment appears to excuse compliance with that statutory mandate. For these reasons, it is concluded that the amendment to Part C.2.a. is outside the scope of the Department's delegated authority for purposes of Minn. Stat. § 15.0412, subd. 1. To correct this defect, Part C.2.a. should be rewritten to read as follows:

> a. An assessment of the population, environment and physical plant of each facility and of each site where living arrangements are provided by an agency, identifying the factors which may encourage or permit abuse.

so rewritten p. 3, 4

This language, which is essentially the same as that originally proposed by the Department, clarifies the language in the part and eliminates the redundancy caused by the amendment. If the Department wishes to exclude the facility's history of abuse or neglect from the posting requirements, the language in Part C.6. can be amended to exclude information relating to the facility's history of abuse from the posting requirements.

32. 12 MCAR § 2.010 C.2.b. and c. In response to recommendations made by Range Center, Inc., the Department proposes to amend Part C.2.b. and c. to read as follows:

b. A description of any identified corrective action that will be taken, based on the assessment, including training of staff, adjusting staffing patterns, initiating new procedures; or any needed modifications of the physical plant or environment that has [sic] been identified as a result of the assessment.

so amended p.4

c. A time table [sic] for the implementation of any identified corrective actions that need to be taken to minimize the risk of abuse or neglect.

The amendments to these parts merely clarify statutory requirements and are necessary and reasonable. Furthermore, the amended language does not result in any substantive difference between the rules, as originally proposed, and the rule the Department intends to implement. Therefore, it is determined that the amended language does not constitute a substantial change for purposes of 9 MCAR § 2.111.

The amended language also eliminates the requirement that the plan contain a description of the specific steps that have been taken in each facility to minimize the risk of abuse or neglect. MAHCF had questioned this language because it was unclear how long the facility must note corrective actions taken in the past in its current plan. Under the new language, actions taken in the past need not be documented.

33. MAHCF also questioned the reasonableness of requiring a facility, such as a nursing home, to make capital improvements to minimize the risk of abuse or neglect if the costs of those improvements are not reimbursable. The Department's failure to consider the costs of compliance in this rule is not unreasonable. Minn. Stat. § 626.557, subd. 14, requires that facilities make an assessment of the risks of abuse to vulnerable adults and state the specific measures that will be taken "to minimize" that risk. Part C. merely repeats that unequivocal statutory mandate. The reasonableness of that mandate and the rule which restates it is not subject to review in this proceeding. The statute is binding on the Department and the facilities to which it applies. For purposes of Minn. Stat. § 15.0412, subd. 4c, rules which merely restate statutory mandates and which do not add additional duties or requirements are reasonable per se. The Administrative Procedure Act does not require that statutory requirements be shown to be reasonable or permit them to be disregarded by the agency even if it believes they are unreasonable. Johnson v. Robison, 415 U.S. 361, 368 (1974); 3 Davis, Administrative Law Treatise, § 20.04 (1958 and 1976 Supp.).

34. In this case, the Rule, like the statute, requires that abuse prevention plans be adopted based on an assessment of specified factors and that the plans state specific steps to be taken to minimize risks identified, Failure to comply can result in criminal sanctions under subdivision 19, and corrective orders under subdivision 11. No exemptions are authorized because the costs of compliance are high or because they are not reimbursed, reduce profits or increase costs.

MAHCF did not establish that the costs of complying with the Rule are not reimbursable. Even if it had, it does not follow that this Rule is unreasonable. The rules under consideration here do not relate to the proper levels of nursing home reimbursement or the mechanism for setting nursing home rates. If these rules impact on nursing home costs or profits, that impact should be considered in connection with rules pertainin to reimbursement (i.e., Rule 49).

If unreasonableness results, it is in the rate structures and reimbursement provisions of rules or statutes. They are not subject to review in this proceeding.

35. MAHCF also questioned how facilities are to balance the costs of corrective actions against the "utility value" of implementing them. It is unclear to the Hearing Examiner what MAHCF means by the "utility value" and the Department did not respond to this written inquiry. If MAHCF was questioning the applicability of cost/benefit methodologies in determining what corrective actions must be taken, no definite answer can be made. Under subdivision 14, corrective actions are required to "minimize the risk of abuse." The word "minimize" usually means to reduce to the smallest possible degree. Webster's New Collegiate Dictionary, p. 732 (1975). Therefore, it appears that the primary consideration that should guide the facilities is risk reduction and that the costs of compliance will be a relevant factor only in unusual cases, if ever.

36. It would have been preferable for the Department to have specified in greater detail the criteria to be used in determining when a risk has been minimized and what levels of risk would be permitted. However, its failure to do so does not render the rules unreasonable. The Vulnerable Adults Act is a recent enactment designed to cover a broad range of facilities and circumstances. The Department has had little experience dealing with it. The usual rule is that an agency is not required to fashion detailed rules implementing a new statute covering a wide variety of situations an agency has little experience dealing with. Cf., Can Mfrs. Institute, Inc. v. State, 289 N.W.2d 416 (Minn. 1979).

37. In response to a question from Harold Tapper concerning the qualitative judgments the Department might make on the adequacy of a prevention plan based on assessment factors, the Department responded as follows:

> If all of the specified factors have been assessed and the plan addresses the need for any corrective action that may be necessary, the program shall be considered to be in substantial compliance with this rule.

If other qualitative policies are adopted in the future, they should be reflected in amendments to these rules or adopted in rules implementing subdivision 11. It will be essential to have clear guidelines authorizing adverse license action.

38. 12 MCAR § 2.010 C.3. Part C.3.a. lists the assessment factors that must be considered by the facility in more detail. For the most part, the factors listed were not subject to adverse public comment and they are found to be necessary and reasonable.

The Department proposes to amend Part C.3.a. to clarify the facility's responsibilities to consider the prior abuse or neglect of its clients. The Department intends that the facilities' assessments consider only the known history of previous abuse. It is not intended that programs seek out information not otherwise known. To make that clear, Part C.3.a. will be amended to read as follows:

> a. The assessment of the population shall include and evaluation of the following factors: the age, sex, mental functioning, physical and emotional health or behavior of clients, the need for specialized programs of care for clients, the need for training of staff to meet identified resident needs and knowledge

So amended p. 4, with editorial corrections

a program may have regarding previous abuse or neglect that is relavent [sic] to minimizing risk of abuse ~~or abuse~~ [sic] for the client.

The amended language of this part is necessary and reasonable and does not constitute a substantial change for purposes of 9 MCAR § 2.111.

39. 12 MCAR § 2.010 C.3.b. and c. As originally proposed, these parts of the Rule contained ambiguous language. Both parts stated that the assessment "if required" should include a consideration of specific factors. Several parties questioned when such an assessment would not be required. Since the rules require assessments at each facility, the Department has proposed to amend the language to read as follows:

b. The assessment of the physical plan [sic] for each facility and for each site when living arrangements are provided by an agency shall include an evaluation of the following factors: the condition and design of the building as it [sic] relates to the safety of the clients and the existence of areas in the building which are difficult to supervise.

c. The assessment of the environment for each facility and for each site when living arrangements are provided by the agency shall include an evaluation of the following factors: the location of the program in a particular neighborhood or community, the type of grounds surrounding the building, the type of internal programming, the program''s staffing patterns, and the existence of a documented history of abuse or neglect by staff.

so amended with editorial corrections p.4

As amended, Part C.3.b. and c. are necessary and reasonable to clarify the Department's intent. The changes in language adopted do not result in substantive changes and are not substantial for purposes of 9 MCAR § 2.111.

40. MAHCF questioned the meaning of a "documented history" of abuse or neglect by staff in Part C.3.c. Since facilities must consider prior client abuse and neglect that they have knowledge of under Part C.3.a., a similar requirement under Part C.3.c. does appear redundant. For that reason, it is recommended that the language "and the existence of a documented history of abuse or neglect by staff" be excluded from Part C.3.c. If the Department is attempting to draw some unexplained distinction between consideration of prior client abuse and neglect known to it and a "documented history of abuse or neglect by staff", the rule should be rewritten to clarify the distinction. Furthermore, if the language in Part C.3.c. is to be retained, the word "documented" should be clarified. Consistent with the definitions used in 12 MCAR § 2.221, it would be preferable for the word "documented" to be replaced with the words "substantiated or inconclusive". That would require the facilities to consider prior abuse or neglect by the staff which was either proved to the satisfaction of the facility or incidents which could not be substantiated or disproved to the satisfaction of the facility.

so excluded p.5

41. 12 MCAR § 2.010 C.4. This part requires that the program governing body annually review the program's plan and to revise it to reflect the results of that review. Range Center, Inc. suggested that governing bodies, themselves, cannot be expected to review the many factors that must be considered in the plan and recommended that that obligation be placed on the program itself rather than upon the governing body. The Department has declined to accept that amendment on the grounds that the governing body has the ultimate responsibility for operation of the program. Placing responsibility for annual

plan review on the governing body is reasonable, and, as noted by the Department, the Rule itself is not intended to preclude the delegation of that responsibility to specific employees. The Department did agree, however, to require a revision of the plan only "if necessary." Therefore, it proposes to amend Part C.4. to read as follows:

> 4. Plan review. The program's governing body shall review the plan at least annually using the assessment factors in the plan, and any reports of abuse or neglect that have occurred. The governing body shall revise the plan, if necessary, so that it reflects the results of the review.

so amended p.5.

This is a necessary and reasonable amendment and does not constitute a substantial change for purposes of 9 MCAR § 2.111.

42. 12 MCAR § 2.010 C.5. This part requires the program to provide clients with an orientation to the program's abuse and neglect prevention plan and requires that client representatives shall have an opportunity to be included in the orientation. The initial orientation must be held within sixty days after the effective date of the Rule, and thereafter for each new client within 24 hours of admission. The various requirements of this part were questioned and challenged by many public commentors.

Blue Earth County argued that since the law does not require an orientation for the client to the facility's abuse prevention plan, that none should be required by the Department because the various orientations clients are subjected to, taken collectively, become almost traumatic for them. Range Center, Inc. also noted that many adults would not understand such an orientation and might be confused by it. The Department has taken the position that clients and client representatives should know and understand that there is a plan available and that the orientation requirement should not be deleted. However, the Department does agree that a client's ability to comprehend the orientation should be considered. Therefore, it proposes to amend the first sentence of Part C.5. to read as follows:

> 5. The program shall provide for its clients, in a means familiar to them, a general orientation to the program [sic] abuse ~~and neglect~~ prevention plan, unless a determination has been made by the interdisciplinary team that a client is unable to comprehend the orientation.

see p.5.

This is a necessary and reasonable amendment and does not constitute a substantial change for purposes of 9 MCAR § 2.111. However, it leaves unanswered the question whether a client representative must be orientated to the plan, even if the client is unable to understand the orientation. In its answer to questions raised by Lois Zimmerman, the Department indicated that client representatives must be notified of the time of the orientation and that staff should inform those client representatives of the posted plan. If no orientation is held because the client is unable to understand it, nothing in the rules, as currently written, requires an orientation for the client representative. If the Department intends that client representatives be informed of the plan, some language should be added to the Rule which requires that.

43. Furthermore, it is recommended that the second sentence of Part C.5. be amended to make it clear that client representatives must be notified of the time and place of the orientation where their identity is known. The second sentence could read as follows:

Client representatives shall have the opportunity to be included in the orientation and when their identity is known they must be notified when the orientation will take place.

44. The time limits in Part C.5., which require the initial orientation within sixty days after the effective date of the Rule and thereafter for each new client within 24 hours of admission, were criticized by many commentators. Most of those objections have been cured by proposed amendments exempting Rule 4 agencies from the Rule. Since Minn. Stat. § 626.557, subd. 16, contemplates speedy compliance with its provisions and agency rules adopted to implement it, as is evinced by the 60-day time period set forth therein, the Department's use of a 60-day time period for compliance with the orientation requirement is a reasonable one, especially in view of the fact that the adults mentioned by MAVSSA are not covered by the scope of the rules.

45. The Department does agree, however, that the requirement that each new client be oriented within 24 hours of admission to be excessive and as recommended by Thomas House, Inc., it proposes to enlarge the 24-hour time period to 72 hours in some cases. The proposed enlargement of the orientation time for new clients is reasonable in view of the concerns mentioned and does not constitute a substantial change for purposes of 9 MCAR § 2.111.

As amended, the last sentence of Part C.5. will be expanded to read as follows:

> The program shall provide this initial orientation within 60 days after the effective date of this rule, and thereafter, for each new client within 24 hours of admission or for clients who would benefit more from a later orientation, the orientation may take place within 72 hours. The need for this delay shall be documented at the time of admission.

46. 12 MCAR § 2.010 C.6. This part requires each program to post a copy of its plan in a prominent location in the facility and at each site when living arrangements are provided by an agency and that the programs have a copy of the plan available for review by clients, client representatives and mandated reporters. MAVSSA questioned the meaning of the words "living arrangements are provided by an agency" and requested clarification. The Department has not elected to amend the language originally proposed but has, in its posthearing comments, noted that the "living arrangements" referred to in this part are those covered by DPW Rule 18. The Hearing Examiner concludes that the Rule, as clarified, is necessary and reasonable.

47. The Minnesota Association of Treatment Programs (MATP) questioned the need for individual abuse prevention plans for those persons receiving chemical dependency treatment. The law requires that such individual plans be made but the Department has indicated, in its posthearing comments, that it will not apply this provision in an inflexible manner. The Department stated (p. 11):

> The program abuse ~~and~~ prevention plan would likely suffice for clients in chemical dependency programs. The individual abuse and neglect prevention plan would only need to be written in the event the client needed additional protective measures, i.e., for clients with different vulnerabilities than the population as a whole.
>
> The various rules the chemical dependency programs are licensed under all require an assessment of the clients [sic] needs or an individual treatment plan with specific goals. The documentation that the assessment does not identify additional vulnerabilities

and that the program abuse and neglect prevention plan is sufficient to meet that clients [sic] needs can be part of this process.

Proposed DPW Rule 10, D.2.c. allows this procedure. This was included in the rule because the Department recognized the fact that for programs that had a homogeneous population, the program abuse or neglect prevention plan may be sufficient for most clients. However, there still may be clients who need additional measures to minimize the risk of abuse or neglect. Therefore, we maintain our position that an assessment must be done and documented in the clients [sic] plan.

Individual Abuse Prevention Plans.

48. 12 MCAR § 2.010 D.1. Part D.1. requires the interdisciplinary team to develop an individual abuse and neglect prevention plan for each client within 60 days after the effective date of the Rule, and thereafter, for each new client as part of the client's individual program plan. MAVSSA, noting that Lutheran Social Service has 11,000 clients, and that the Children's Home Society of Minnesota has 9,000, argued that the 60-day time limit is unreasonable. However, since the proposed Rule has been amended to delete services provided to adoptive parents, foster parents, and other adult services, such as marriage counseling, provided by entities licensed under DPW Rule 4, an unreasonably large number of adults are no longer covered by the Rule, and the concerns expressed by MAVSSA are no longer accurate. Since Minn. Stat. § 626.557 contemplates timely (60-day) compliance with the provisions of that law and the provisions of any temporary rules adopted pursuant to it, it is concluded that the Department's selection of a 60-day time period for the preparation of individual abuse prevention plans is necessary and reasonable.[2]

49. Range Center, Inc. suggested that the abuse and neglect prevention plan should not be part of the individual's regular program plan under other applicable Departmental Rules. However, the Department has determined that the two plans should be integrated as part of a comprehensive program for optimal independence and well being. This is an area that is peculiarly within the Department's discretion and is found to be necessary and reasonable as proposed.

50. MAHCF stated that the rules pertaining to individual abuse prevention plans are unclear in defining a licensed facility's responsibility for abuse in various settings. It noted that residents of many licensed facilities are living in a semi-independent situation and take frequent trips outside the facility and that other clients are served only on an outpatient basis. MAHCF argued that Part D. should specify whether the facility is responsible for out-patients while they are only on the premises or whether it is contemplated that some broader responsibility is intended.

The Hearing Examiner agrees that Part D., in its present form, is not sufficiently clear and that the scope of a facility's responsibility for outpatients must be clarified. Minn. Stat. § 15.0412, subd. 1, requires that rules make specific the laws administered and enforced by an agency. Part D. does not contain reasonable specificity for purposes of that provision. This is a substantive violation of the law for purposes of Minn. Stat. § 15.0412, subd.

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[2] Of course, as was mentioned in connection with Part C., any reference to individual neglect prevention plans must be eliminated from Part D.

4c. To cure this defect, the Department must adopt some language defining the scope of a facility's responsibility for outpatients when not on the facility's premises or under its control.

Internal Reporting and Investigation System.

51. 12 MCAR § 2.010 E. This part contains the internal reporting and investigation system that each program must develop and the records that each program must keep. As initially proposed, no time limit was set on the adoption of the reporting and investigation system adopted. In its posthearing comments, the Department has proposed to adopt a 60-day time period by adding to the end of Part E.1. the following sentence:

> The program shall develop the internal reporting and investigation system within 60 days after the effective date of this rule.

This does not constitute a substantial change because an orientation to the system adopted by each program is required to be made within 60 days, and it would follow that the program would have to be in effect by that period of time. As such, the new language is a mere clarification of what was otherwise obvious and is necessary and reasonable.

52. 12 MCAR § 2.010 E.7. In response to comments from Lois Zimmerman, the Department proposes to amend this part to eliminate the need to orient clients where they would be unable to comprehend the orientation. To that end, it proposes to amend Part E.7. to read as follows:

> The program shall provide for its clients, in a means familiar to them, an orientation to the internal reporting system, unless a determination has been made by the interdisciplinary team that a client is unable to comprehend the orientation. . . .

This is not a substantial change for purposes of 9 MCAR § 2.111 and is necessary and reasonable as proposed. Where a client is unable to understand an orientation, it is senseless to continue with it. The Department has not specifically stated its intention to amend the third sentence of this part which requires initial orientation of all clients within 60 days after the effective date of the Rule, and thereafter for each new client within 24 hours of admission. Under Part C.5., the Department amended the Rule to permit orientation for up to 72 hours after admission for those clients who would benefit more from a later orientation. It is recommended that Part E.8. be amended in a similar manner and that the last sentence be changed as follows:

> The program shall provide this initial orientation within 60 days after the effective date of this Rule, and thereafter, for each new client within 24 hours of admission or for clients who would benefit more from later orientation, the orientation may take place within 72 hours. The need for this delay shall be documented at the time of admission.

Such an amendment would not constitute a substantial change for purposes of 9 MCAR § 2.111 and would make the Rules internally consistent in dealing with similar situations. It is also recommended that the Department consider what documentation should be made if no orientation, and not a mere delay, occurs here and under Part C.5.

53. MATP raised an issue of considerable significance pertaining to the conflict between the confidentiality of information concerning individuals in chemical dependency treatment under federal law (42 USCS § 4582, 21 USCS § 1175, and 42 C.F.R. § 2 et seq.), and the reporting requirements contained

in the Vulnerable Adults Act and Part E. of the proposed rules. The Department has admitted that a conflict exists and noted that an inter-agency task force is now studying the problem.

In spite of this conflict, the Department is not precluded from adopting the Rules as proposed. However, to the extent that those rules are inconsistent with federal laws or regulations, treatment centers must necessarily follow federal law.

Personnel Requirements.

54. 12 MCAR § 2.010 F. This part requires an orientation for mandatory reporters under Minn. Stat. § 626.557. Among other things, it requires the program to provide this orientation for new mandated reporters no later than during the first shift worked. Donald Skillings of Brainerd State Hospital stated that requiring orientation during the first shift worked was excessive; however, the Department wants these employees, at the earliest occasion, to be aware of the requirements imposed upon them and their responsibilities under the law so that all cases of abuse and neglect are properly reported. For that reason, it is concluded that the first shift requirement is necessary and reasonable. Of course, in the exercise of its discretion, the Department could have selected a longer time period, and the Hearing Examiner would suggest that it consider a 72-hour requirement for new employees. The reason for this is that an orientation on the first shift might not be as effective as an orientation which takes places several days later after the new employee is more familiar with his or her surroundings.

changed to ≥ "72"

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

CONCLUSIONS

1. That the Department of Public Welfare gave proper notice of the 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 Findings 20, 30, 31 and 50.

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 Findings 20, 30, 31 and 50.

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 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 3rd day of August, 1982.

Jon L. Lunde

JON L. LUNDE
Hearing Examiner

Appendix B.

DPW-82-047-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing the Standards for the Protection of Vulnerable Adults in Licensed Facilities (12 MCAR § 2.010).

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 defects have been corrected and whether the modifications in the rules are substantial changes.

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: August 5, 1982, 1982.

DUANE R. HARVES
Chief Hearing Examiner

DPW-82-047-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing the Standards for the Protection of Vulnerable Adults in Licensed Facilities (12 MCAR S 2.010).

ORDER OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on Tuesday, June 15, 1982, 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 Welfare and;

WHEREAS, the 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: November 3, 1982.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

RECEIVED
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ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE STANDARDS FOR THE PROTECTION OF VULNERABLE ADULTS IN LICENSED FACILITIES (12 MCAR §2.010)

STATEMENT OF NEED AND REASONABLENESS

A. Applicability. The need for this statement is to make clear that the provisions of this rule govern only those programs i.e., agencies, nonresidential and residential facilities providing services to adults which are required to be licensed by the Department of Public Welfare. The proposed rule does not encompass programs licensed by the Department which serve children or programs that are not under the jurisdiction of the Public Welfare Licensing Act.

B. Definitions:

1. a., b. and c. 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. The phrases "related to prostitution" and "related to criminal sexual conduct" are added to familiarize the reader with the subject area of the statutes cited.

2. AGENCY: This definition is needed to clearly identify those programs which are required to be licensed by the Department of Public Welfare that provide services to clients but may not provide services in a specific physical plant that is operated by the agency. The term is used in the rule when the requirement applies only to agencies.

3. CLIENT: This term is necessary to define because it is used in the rule to indicate those persons who are receiving services at or from a licensed program. The term is reasonable because it is commonly used by programs to describe such persons, is commonly used in other rules, and it makes the rule more readable than repeating vulnerable adult throughout the rule.

4. CLIENT REPRESENTATIVE: This term needs to be defined because it is a generic term which is used in place of a variety of terms such as relative, family member and guardian; using "client representative" eliminates the need to repeat all the words it includes whenever the term is used in the rule.

5. FACILITY: This definition is needed to clearly identify those programs which are required to be licensed by DPW that provide services in a specific physical plant operated by that program. The term is used in the rule when a requirement applies only to facilities.

6. GOVERNING BODY: This definition is necessary to account for the variety of organizational structures affected by this rule.

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7. INTERDISCIPLINARY TEAM: This definition is needed to specify the disciplines or persons who are to be involved, according to the program rule under which a program is licensed, in developing individual program or treatment plans. There are variations among the program rules in the requirements for who is involved in such plans. By relating the definition to the program rule, consistency in responsibility for the individual abuse and neglect prevention plans and the program or treatment plans can be achieved.

8. INVESTIGATIVE AUTHORITY: This definition is needed because it is used in the rule to indicate those agencies and departments who need to be notified and who have investigating responsibilities. It is reasonable to use this term because it makes the rule more readable than repeating local police department, or county sheriff, social service agency, licensing agency, or certifying agency.

9. MANDATED REPORTER: This definition is needed because it clarifies for the program which mandated reporters are affected by the provisions of this rule. It excludes those persons defined in Minn. Stat. §626.557, Section 1, Subd. 3, who are not employees of a program or who are not providing services in or to a program.

10. NEGLECT: With the exception of the phrase "or ensure the provision 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. The added phrase referred to above is needed because not all caretakers are responsible for the direct supply of the items 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.

11. PROGRAM: This definition is needed because it is used in the rule to indicate that all agencies and facilities which are required to be licensed by the Department of Public Welfare and which are subject to the provisions of the Vulnerable Adults Act are under the umbrella term program. It is used in the rule when facility and agency requirements are the same.

12. VULNERABLE ADULT: This definition is the one used in Minn. Stat. §626.557, except that it excludes Section 1, Subd. 2, (b) (3) because that part does not pertain to this rule.

C.1.: The law requires each program to develop a written abuse prevention plan. Although the law does not specifically require a neglect prevention plan, it is necessary and reasonable to include neglect in the requirement for the plan. The Vulnerable Adults Act focuses on both abuse and neglect throughout the Act. Neglect is a reportable offense, requires investigation, and carries penalties for commission and failure to report. Therefore, extending prevention plans to include an assessment and plan for minimizing the risk of neglect is consistent with the Act.

Requiring prevention planning in the area of neglect protects the clients of the program. The failure of a caretaker to ensure that clients receive necessary food, clothing, shelter, health care and supervision can result in a life-threatening situation. Examples of such situations may include: a client who is not monitored in the time-out room according to the policies and procedures developed by the program, a client who refuses medication and is not helped to deal with the situation, or a client who frequently wanders from the program and sometimes is found in the middle of the street or other hazardous areas.

Under Section 1, Subd. 11, licensing agencies have the authority to issue orders and take actions, with respect to the license of the program, that are designed to prevent further abuse or neglect of vulnerable adults. Since the licensing orders or actions may include the requirement that individual programs address issues of neglect in writing, it is reasonable to require that neglect be addressed in the initial prevention plan. It has been our experience that issues of neglect are identified far more frequently than issues of actual abuse, and that neglect may indeed lead to instances of abuse.

The governing body is responsible for the operation of the program and for compliance with this rule. By specifically charging this body with the plan development, it places the responsibility at the highest level of authority.

Minnesota Statues §626.557, Section 1, Subd. 16, states that programs that have not complied with Section 1 within 60 days after the effective date of this rule are ineligible for licensure. Although the language of the statute does not prohibit setting timelines in excess of 60 days for compliance with specific items of the rule, the intent of the law seems to be that all provisions of the rule be accomplished within that time period. Based on the experience of the Division of Licensing in regard to the development and implementation of such items as policies, procedures, and training, 60 days is a reasonable requirement for meeting this item of the rule.

C.2.a., b. and c.: The law requires that the plan includes an assessment of the physical plant, the environment and the population, and a description of the specific measures to be taken to minimize the risk of abuse. The requirement for the assessment of the physical plant for each facility and each site when living arrangements are provided by an agency is reasonable because these physical plants are under the control of the program.

The timetable for implementing corrective action is added to ensure that when corrections are necessary they be done in a timely manner. This is reasonable because programs are accustomed to time frames for corrective action from local and state licensing and monitoring agencies. The use of timetables is also reasonable because it clearly sets forth the obligations and expectations of all parties. No specific timelines are established in the rule because of the wide variety of modifications which may be necessary to minimize abuse or neglect. The program is expected to establish reasonable timelines and to document the rationale for those timelines.

C.3.a., b. and c.: The assessment factors are needed and reasonable to include because they clarify what must be covered, at minimum, in the assessment. Because of the many situations and circumstances represented by the different types of programs affected by this rule, there is no attempt to identify all factors that must be addressed by an individual program. The factors listed may be helpful in stimulating discussions which will identify additional factors which are pertinent to the individual program.

The specific minimum factors included in this section were chosen because, in the judgment of the Department of Public Welfare, these factors are common to all programs, can reasonably be assessed, and should provide a minimum base for determining a client's vulnerability. Abuse or neglect of clients is frequently related to one or more of these factors.

C.4.: The governing body is responsible for the operation of the program and for compliance with this rule. By specifically charging this body with the plan review, it places the responsibility at the highest level of authority.

This requirement for plan review is needed to account for changes which may occur during the year and to reaffirm the program's commitment to the plan. It is reasonable to expect a program to address any changes through appropriate revisions since the plan is designed to provide a comprehensive method to prevent neglect and abuse of clients.

C.5.: This provision is needed to provide opportunities for clients and client representatives to know and understand, as fully as possible, that there is a plan, its purpose and how they can use it to minimize the risk of abuse and neglect to clients. Minn. Stat. §626.557, Section 1, Subd. 16 states that programs that have not complied with Section 1 within 60 days after the effective date of this rule are ineligible for licensure. Although the language of the statute does not prohibit setting timelines in excess of 60 days for compliance with specific items of the rule, the intent of the law seems to be that all provisions of the rule be accomplished within that time period. Based on the experience of the Division of Licensing in regard to the development and implementation of such items as policies, procedures, and training, 60 days is a reasonable requirement for meeting this item of the rule. The 24-hour requirement for new clients is reasonable to assure that the initial orientation is given promptly.

C.6.: This is needed so that staff, clients, client representatives as well as volunteers and visitors have ready access to the plan and can refer to it to minimize risk to clients. It is reasonable to have it posted, in sites controlled by the program, because this plan of distribution is less cumbersome and less expensive than providing a copy to each person.

D.1.: The law requires the program to develop an individual abuse prevention plan. The need for and reasonableness for adding neglect to the individual plan requirements is the same as the reasons for adding neglect to the program plan as identified in Section C.1.

The requirement to implement plans is necessary and reasonable to assure more than paper compliance with the provisions of the rule and to meet the intent of the Law.

By specifically charging the interdisciplinary team with development of the individual abuse and neglect prevention plan, it places the responsibility on the same persons responsible for the development of the individual program plan. It is reasonable to expect the interdisciplinary team to develop the individual neglect and abuse prevention plan because of their knowledge of the client and their involvement in the development of the individual program plan.

For clients already receiving services at or from a program on the effective date of this rule it is reasonable to set timelines for compliance. Minn. Stat. §626.557, Section 1, Subd. 16 states that programs that have not complied with Section 1 within 60 days after the effective date of this rule are ineligible for licensure. Although the language of the statute does not prohibit setting timelines in excess of 60 days for compliance with specific items of the rule, the intent of the law seems to be that all provisions of the rule be accomplished within that time period. Based on the experience of the Division of Licensing in regard to the development and implementation of such items as individual program plans, 60 days is a reasonable requirement for meeting this item of the rule.

For clients who begin receiving services at or from a program after the effective date of the rule, it is necessary to have a time frame for the development of the individual plan to minimize the risk of abuse and neglect. It is reasonable to set the time frame for the plan development to coincide with the development of the client's initial individual program plan to help ensure coordination with that plan and also for administrative efficiency.

D.2.a., b. and c.: Minn. Stat. §626.557, Section 1, Subd. 14 (b) requires the individual abuse prevention plan to include an assessment of the client's susceptibility to abuse and a statement of the specific measures to be taken to minimize the risk of abuse, including self-abuse. Requiring the plan to be a part of the individual program plan is needed to help ensure consistency in development of the plans. This requirement will help ensure implementation since staff will be using a single plan and staff are already familiar with implementing individual program plans.

There may be clients for whom the program abuse and neglect prevention plan may be sufficient to minimize the risk of abuse or neglect. For such clients, it is reasonable that no specific measures need to be included in the individual program plan. The documentation is needed to provide evidence to substantiate that all clients were individually assessed, and to provide evidence to substantiate the findings of the assessment for inspectors, licensors and so forth.

D.3.: Requiring a review, evaluation and revision is necessary and reasonable to help ensure continued appropriateness of the plan for each client. The requirement that the review and evaluation be done as part of the review of the clients individual program plan helps achieve efficient administration and deployment of resources by avoiding a separate review and evaluation.

The annual review by the interdisciplinary team ensures continued involvement by persons knowledgeable about the client's needs.

D.4.: Requiring the client, whenever possible, to be involved in plans affecting the client is consistent with current practice in many human services. It is consistent with program rules that require such participation in the development of the individual program plans. Through such involvement, the client is more likely to cooperate with the implementation of the plan because he or she helped to develop the plan. The client representative may provide additional information about the client's needs and advocacy for the client in the development of the plan. Greater accountability by the program may be achieved through the client representative's involvement with and knowledge of the plan. This is particularly important when the client cannot participate in developing the plan.

Documentation is needed to substantiate for inspectors, licensors and so forth, the reason why it was not possible for a client or client representative to participate in the development of the plan.

E.1.: The law requires that each program shall establish and enforce a written procedure for ensuring that all cases of suspected abuse or neglect are reported promptly and for ensuring that all cases of suspected abuse and neglect are promptly investigated.

The governing body is responsible for the operation of the program and for compliance with this rule. By specifically charging this body with the establishment and enforcement of these written procedures, it places the responsibility at the highest level of authority.

To meet the requirements of Minn. Stat. §626.557, Section 1, Subd. 15 it is necessary that the written policies and procedures include suspected or alleged cases of abuse and neglect to clarify what must be reported by mandated reporters, regardless of whether the results of the internal investigation and review indicate that actual abuse or neglect occurred.

E.2.: Because of the various types of programs that must comply with this rule, reporting processes may differ. However, it is reasonable and necessary to require that the process be in writing, including how and when to report, so that all program staff will know their responsibilities. Minn. Stat. §626.557, Section 1, Subd. 3 requires a mandated reporter to report when he or she has reasonable cause to believe that a client is being or has been abused or neglected, or has knowledge that a client has sustained a physical injury which is not reasonably explained by the client's history of injuries. This information is duplicated in the rule because it is crucial to the ability of a person affected by the rule to clearly understand the requirements of when to report.

The law provides that persons other than mandated reporters may report voluntarily. It is reasonable to include such information in policies and procedures to ensure that staff, as mandated reporters, are aware of the law and may be in a position to provide appropriate information to non-mandated reporters.

It is necessary to specify that reports may be made directly to investigative authorities and that mandated reporters are aware of their responsibility for making reports to ensure that mandated reporters comply with the law regardless of the action taken by the facility.

Minn. Stat. §626.557, Section 1, Subd. 15 requires that "all cases of suspected abuse or neglect are reported promptly to a person required by this section to report abuse and neglect..." It is necessary to require identification of the person so that the Division of Licensing can verify that the person is a mandated reporter. Identification of the person who is to forward reports is needed and reasonable to clearly specify responsibility for that action to help ensure that such action is taken. Notifying the initial reporter of that action is needed to assure the reporter that his responsibility to report has been fulfilled.

The requirements for the content of the report are the same as the requirements of Minn. Stat. §626.557, Section 1, Subd. 4 with the additional requirements of the name and address of the alleged perpetrator and the pertinent dates and times. These additional requirements are needed to help ensure the Division of Licensing has appropriate and complete information on which to base its investigation.

E.3.: Minn. Stat. §626.557, Section 1, Subd. 15 requires each program to have written procedures to ensure that all reports are promptly investigated. The intent of the law seems to be that each program do its own investigation, since a program could not ensure that other authorities charged with investigating would act promptly.

Identification of the person is needed to clearly specify responsibility for action to help ensure that such action is taken.

It is necessary to require that a person, other than one suspected of abuse or neglect, do the investigation to avoid conflict of interest which may affect the accuracy and objectivity of that investigation.

E.4.: It is reasonable to require that the records as specified are maintained to document that appropriate action has been taken by the program to minimize abuse and neglect. Further, these records should be useful in the revision of the abuse and neglect prevention plans. Availability of such records will assist investigative authorities in determining if appropriate action has been taken.

E.5. and 6.: These requirements are needed to help ensure that the Department will be provided with all necessary and pertinent information to complete its responsibilities as specified in Minn. Stat. §626.557.

E.7.: This requirement is needed to provide opportunities for clients and client representatives to know and understand, as fully as possible, that there is an internal reporting system, its purpose and how it is implemented to minimize the risk of abuse and neglect.

Minn. Stat. §626.557, Section 1, Subd. 16 states that facilities that have not complied with Section 1 within 60 days after the effective date of this rule are ineligible for licensure. Although the language of the statute does not prohibit setting timelines in excess of 60 days for compliance with specific items of the rule, the intent of the law seems to be that all provisions of the rule be accomplished within that time period. Based on the experience of the Division of Licensing in regard to the development and implementation of such items as policies, procedures, and training, 60 days is a reasonable requirement for meeting this item of the rule.

It is reasonable to specify a time frame of 24-hours to ensure that the orientation is given and is given promptly. The 24-hours is designated because clients are admitted to facilities at various times of the day. For instance, if a client is admitted in the evening hours, it may well be more practical that the orientation take place during day time hours. However, it is necessary to assure that the client receives the orientation as soon after admission as possible in order to minimize the risk of abuse or neglect.

E.8.: The requirement that the program post copies of the internal reporting policies and procedures at each site it controls is needed to ensure mandated reporters, clients and client representatives have continued access to the information, and the requirement is reasonable because it eliminates the expense of making unnecessary copies. Having copies available upon request provides opportunities for a more extensive review of the policies and procedures so that they know how to report abuse or neglect.

F.1. and 2.: Orientation of reporters is needed because of the complexities of the reporting requirements and the penalties for failing to report. Minn. Stat. §626.557, Section 1, Subd. 16 states that programs that have not complied with Section 1 within 60 days after the effective date of this rule are ineligible for licensure. Although the language of the statute does not prohibit setting timelines in excess of 60 days for compliance with specific items of the rule, the intent of the law seems to be that all provisions of the rule be accomplished within that time period. Based on the experience of the Division of Licensing in regard to the development and implementation of such items as policies, procedures, and training, 60 days is a reasonable requirement for meeting this item of the rule. New mandated reporters are required to have the orientation no later than the first shift worked to ensure that reporters are aware of the requirements of the law and the responsibilities involved so that all cases of abuse and neglect are promptly reported. Informing staff that persons not mandated to report suspected abuse and neglect and requiring staff to provide information is reasonable for helping ensure that suspected abuse and neglect is properly reported.

Training is needed and reasonable because changes may occur during the year and also, the complexities of the materials demand a refresher course. An annual requirement is reasonable because programs are accustomed to an annual review of policies and procedures and an annual training and development plan.

F.3.: The law states that all persons providing services in or to a program are mandated to report. A list of persons providing service will identify who, in addition to employees, must receive orientation and training, and will provide appropriate documentation for inspectors, licensors and so forth.

The Department plans to have Marge Wherley, Residential Program Consultant, Mental Health Division, Hennepin County, testify as an expert witness. Ms. Wherley served as chairperson of the Task Force which advised the Department in developing the rule. Ms. Wherley will testify on common practices and experiences in the human service field as they relate to provisions in the rule.

Date: May 18 1982

Arthur E. Noot

ARTHUR E. NOOT
COMMISSIONER

CL-01

In the Matter of the Proposed Adoption of the Department of Public Welfare Rule Governing the Standards for the Protection of Vulnerable Adults in Licensed Facilities (12 MCAR §2.010)

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Vicki Sleeper, do hereby declare that I have examined the rule and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Vicki Sleeper
Special Assistant Attorney General

Dated: 11/22/82

In the Matter of the Proposed Adoption of the Department of Public Welfare Rule Governing the Standards for the Protection of Vulnerable Adults in Licensed Facilities (12 MCAR §2.010)

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

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

That on the 22 day of November, 1982, in the City of St. Paul, County of Ramsey, State of Minnesota, she 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.

CONNIE THOMAS
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES SEPTEMBER 21, 1989

Wendy Johnson

Subscribed and sworn to before me this 22 day of November, 1982.

Connie Thomas

In the Matter of the Proposed Adoption of the Department of Public Welfare Rule Governing the Standards for the Protection of Vulnerable Adults in Licensed Facilities (12 MCAR §2.010)

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, November 22, 1982 for review as to form and legality. Pursuant to 1 MCAR §1.206 B., the Attorney General will not approve the rules for at least 10 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after the hearing/publication in the State Register and before submission to the Attorney General, you may contact Vivian Miller, 1st Floor Centennial Building, St. Paul, Minnesota, 55155, telephone (612) 296-2852.