

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 883

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 1/25/83
DATE FOR REVIEW 2/7/83
DATE DUE 2/14/83

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

Approved 2/7/83 Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State Revisor approved 1/26/83 disapproved

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✓ Rule as Adopted

✓ Rule as Proposed See SR.

✓ Order Adopting 1.24.83 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
6.30.82 date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Affidavit of Additional Mailing

✓ Mailing list Certificate

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

✓ Hearing Examiner's Report

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

✓ Agency's Findings of Fact incorporated into Order Adopting

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

✓ Petition for Adoption of a Rule See letter from LCRAR requesting hearing

? 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

not submitted.

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA
Office Memorandum

TO : LEONARD W. LEVINE, Commissioner DATE: 2/7/83

attn: DIANE MASTERS, Special Assistant Attorney General

FROM : LARRY D. STARNS
Special Assistant
Attorney General PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Amendment to the Department of Public Welfare Rule Governing the Standards for the Licensing of Private Child-Caring or Child Placing Agencies.

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.

Encs.

LDS/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

Department of Public Welfare

Adopted Rule Governing Standards for the Licensing of Private Child-Care or Child-Placing Agencies, (12 MCAR S 2.004)

Rule as Adopted

12 MCAR S 2.004 Standards for the licensing of private child-caring or placing agencies.

A.-C. [Unchanged.]

D. Organization and administration.

1.-5. [Unchanged.]

6. Qualifications of personnel.

a. The executive or director shall have had training and responsible experience in work with children and their families and demonstrated executive ability.

b. The ~~case-work~~ social work supervisor shall hold a master's degree in social work from an accredited school of social work. In addition, the ~~case-work~~ social work supervisor must have had a minimum of two years experience in a ~~family-and children's-agency,-or-in-a-children's-agency,~~ child-caring or placing agency as a case worker or ~~case-worker~~ social work supervisor. In agencies not having a ~~case-work~~ social work supervisor, the executive or case worker shall meet these qualifications.

c. Case workers shall be at least college graduates.

d. Where an agency currently licensed does not meet these requirements, future changes in personnel shall conform to these requirements.

E.-I. [Unchanged.]

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Public Welfare AR0208

Division: Division of Licensing

Agency Contact: John Buzzell

Rule Numbers: 12 MCAR S 2.004

Title: Adopted Rules Governing Qualifications of Social Work Supervisors in Private Child-caring or Placing Agencies

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Theresa M. Lauterbach
Assistant Deputy Revisor
Phone: 296-0956
Date: January 26, 1983

APPROVED AS TO LEGALITY

February 7, 19 83

HUBERT H. HUMPHREY, III ATTORNEY GENERAL

BY Jerry D. Jones

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB - 8 1983
Joan Anderson Growe
Secretary of State

10:55
A.M.

STATE OF MINNESOTA

COUNTY OF RAMSEY

LEONARD W. LEVINE, COMMISSIONER

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Amendment to the Department of Public Welfare Rule Governing the Standards for the Licensing of Private Child-Caring or Child-Placing Agencies

ORDER ADOPTING RULE 4

The above entitled matter came before Thomas J. Triplett, duly appointed Hearing Examiner, on Wednesday, June 30, 1982, commencing at 10:30 a.m. in Room D, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, MN. The Department of Public Welfare served proper notice as required by Minn. Stat. § 15.0412, subd. 4 (Supp. 1981), 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 2018 on May 31, 1983, was considered. Dianne Masters, Special Assistant Attorney General, appeared as counsel for the Department of Public Welfare. John S. Buzzell, Director of the Department's Division of Licensing, Ruth Weidell, Supervisor, Adoption Unit, Department of Public Welfare, Roger Toogood, Executive Director, Children's Home Society and Patricia Eldridge, Supervisor of Adoptions, Lutheran Welfare Society of Minnesota, appeared on behalf of the Department. Cheryl J. Nyhus, Supervisor, Residential Licensing Section, Division of Licensing, Department of Public Welfare, was 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 16, 1982, which includes Findings of Fact, Conclusions and a 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 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 accordance with the Recommendation of the Hearing Examiner, the Commissioner also makes the additional Findings of Fact contained herein:

FINDINGS OF FACT

In conclusion 4 of the Report of the Hearing Examiner, the Hearing Examiner finds the Department has affirmatively demonstrated the need for and reasonableness of the proposed rule. However, the Hearing Examiner urges the Department to consider the

recommendations contained in paragraphs 16 through 22 and 31 of the Report. Accordingly, the Commissioner has considered the Hearing Examiner's recommendations and makes the additional Findings of Fact:

1. In Finding 16 the Hearing Examiner finds that adoption and foster care agencies are clearly under the scope of the rule as per Minn. Stat. 245.782, but that the terms "private child-caring or placing" agencies are not defined per se. He recommends that in amendments to Rule 4 that DPW attempt to use consistent, defined terminology when referring to covered agencies.

In (D) 6 (b) of Rule 4 the term agency is used four times. We believe the term is consistent with the definition of agency given in part B. Although, as the Hearing Examiner points out, the terms "child-caring or placing" are not used in the current rule, an examination of part E. further defines the function of an agency. E. 1 through 7 pertain to both child caring and placing in either foster homes or adoption homes. The Commissioner agrees that in future amendments to Rule 4 there is a need to more clearly define the terms "child-caring or placing" when used in conjunction with the term agency.

2. In Finding 17 the Hearing Examiner finds that the terms "family and children's agency" and "children's agency" within the Rule 4 subparagraph proposed to be amended are not defined elsewhere in the rule, nor are they defined in statute. The Commissioner accepts this Finding and proposes to amend part (D) 6 (b) to read: "In addition, the casework supervisor must have had a minimum of two years' experience in a ~~family-and-children's-agency,-or-in-a-children's-agency~~ child-caring or placing agency, as a case worker or case-work supervisor." Further defining of these terms, as discussed in Finding 16, will await a comprehensive review and revision of Rule 4.

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.

3. In Finding 18 the Hearing Examiner notes that the qualifications for the positions of executive or director, case-work supervisor and caseworker are not clearly stated. He states that it is possible to infer from the context of the rule that there be at least an executive and a caseworker for each agency. The Hearing Examiner recommends that the Department make this inference clear in this or future rulemaking proceedings. The Commissioner accepts this Finding and selects the option of clarifying this question in future revisions of the rule.

4. In Finding 19 the Hearing Examiner addresses the issue of several agencies sharing a case-work supervisor. He recommends that, if DPW intends to permit sharing of case-work supervisors, that the standards and limitations for such sharing be defined in rule.

The rule is intended to set forth both the broader guidelines under which a facility may be permitted to operate as well as some specific requirements. The Commissioner rejects the recommendation on the basis that to specify the minimum time that a case-work supervisor may spend with one or more agencies on a shared time arrangement would be unduly prescriptive. Because child-caring and/or placing agencies vary in size from a staff of one combined agency director/case-work supervisor and a caseworker to very large multipurpose agencies, the Department believes agencies should be allowed a wide latitude in how they structure themselves. This type of arrangement has not posed a problem in the past, nor is a problem with time sharing expected to be a problem in the foreseeable future.

5. In Finding 20, the Hearing Examiner states that the "representative" listing of case-work supervision duties submitted by the Department adequately characterizes those duties, but indicates that the Department may want to consider specifying the duties in rule. Rather than specifying the duties of a case-work supervisor in a rule, the Department proposes to make available to agencies applying for a license a suggested position description for the position of case-work supervisor. The suggested position description would also be available to any currently licensed Rule 4 agency as a model for developing a position description that will best fit the needs of the agency. To mandate, in a binding rule, a fixed description of the position of case-work supervisor's position would not allow the flexibility needed by small and large agencies alike.

6. In Finding 21 the Hearing Examiner recommends that the term "case-worker supervisor" be changed to case-work supervisor as used in the balance of the rule. However, in Finding 22 the Hearing Examiner recommends that the term "case-work supervisor" be changed to "social worker supervisor". The Commissioner accepts the recommendation as stated in Finding 22 thus making the change recommended in Finding 21 moot.

7. In Finding 22 the Hearing Examiner recommends that the Department consider changing the term "case-work supervisor" to "social worker supervisor". The Commissioner accepts this recommendation and amends (D) 6 (b) to read as follows:

> The social worker supervisor shall ~~be-a-graduate-or~~ hold a master's degree in social work from an accredited school of social work ~~or-have-successfully completed-two-years-in-such-a-school~~. In addition, the ~~case-work~~ social worker supervisor must have had a minimum of two years experience in a family and children's agency, or in a children's agency as a caseworker or a ~~case-worker~~ social worker supervisor. In agencies not having a ~~case-work~~ social worker supervisor, the executive or case worker shall meet these qualifications.
>
> The Commissioner finds that this is not a substantial change.

8. In Finding 28 the Hearing Examiner refers to testimony from various individuals who commented that the skills needed by a case-work supervisor can be ontained through work experience and that a graduate degree was therefore not needed. Testimony from DPW staff and some of the larger agency representatives concurred that there was no guarantee that a MSW would insure competence, but they stressed the increasing complexity of modern day adoptions and the consequent need for a comprehensive education program that combines the theory of placement services with practical experience.

In his Statement of Need the Commissioner addresses the requirement for a MSW. "The master of social work programs stresses a common base of general knowledge and skills with concentration at the second level in clinical practice or administration and planning. The degree holder must have completed a sequence of course work at the graduate level in human growth and development, principles of social casework, interviewing and principles of family therapy. The typical degree program also includes field instruction that is primarily focused on direct service to individuals, families and small groups. A master's degree program must be completed within a prescribed period of time in order to preserve the continuity of the program.

The requirement for a master's degree for case-work supervisors developed because of the complex nature of child-caring and child-placing agencies. Agencies licensed under the provisions of Rule 4 provide care and supervision to children who may, besides requiring basic care, exhibit behavioral and emotional problems. The supervision and direction of the staff who provide the care and service to these children and their families is of extreme inportance so that proper placement may be made, suitable treatment plans developed and continuity of care preserved. The master's of social work degree, through the specialized curriculum and field instruction, is designed to prepare individuals for supervisory positions.

Child-caring and placing agencies licensed under Rule 4 provide social case work services to parents, foster parents and children, select and recommend for licensing foster homes and place children for adoption. These are complex and sensitive processes which require that difficult judgments about such matters as the suitability of a home for a foster care license or the appropriateness of a family for an adoption placement be made by the line staff who are required only to be college graduates. Their recommendations must be carefully reviewed by the agency case-work supervisor. The requirement of a master's degree for the case-work supervisor will help ensure that the decisions that are made will be in the best interests of the children, parents and foster parents."

9. In his Finding 29 the Hearing Examiner responds to the contention by a director of family services for a private child-caring and child placing facility that other disciplines such as psychiatry, psychology, sociology, family social science or counseling could provide comparable skills and experience for case-work supervisors. However, there was considerable testimony at the hearing that this is not the case. Only graduate training in social work specifically prepares an individual for the kind of work that is done by a case-work supervisor. The testimony of John Bower was particularly pertinent to this issue. He testified that he supports the notion that for the kind of professional responsibility that a supervisor has for child caring and child placing agencies, it is a reasonable criteria that someone holding such a position ought to be prepared at the masters level minimally. He further testified that undergraduate social work programs do not prepare graduates for specialty roles and that he considers supervision of this nature to be a specialty rule. This was in the context of social work training.

10. In his Finding 30 the Hearing Examiner discusses the problem perceived by some out-state agencies in recruiting case-work supervisors with MSW's. The Commissioner acknowledges that it is sometimes difficult to obtain qualified personnel in some areas of the state. However, as the Commissioner discusses in his Statement of Need, the rule does not require that all of the professional staff of the agency hold a master's degree. It only requires that the case-work supervisor have such a degree. The director of the agency may be in an administrative position which does not require an advanced degree. For the case-work supervisor, who is more directly involved in the agency's work with children and their parents, it is essential that the individual have the necessary advanced training so that a high level of supervision be maintained.

11. The Hearing Examiner has acknowledged that the concerns expressed in Findings 28 through 30 do not challenge either the need or reasonableness of the rule. In his Finding 31 the Hearing Examiner suggests that DPW consider amending the proposed rule or establishing a variance procedure to accommodate those agencies that, after

diligent efforts to secure an MSW to serve as a case-work supervisor, have been unable to do so but have located a person who:

has an MSW and is able and willing to share his or her services with two or more agencies (within limits prescribed by DPW);
has substantial experience as a case worker with demonstrated supervisory skills; or
has a graduate degree in a related field with relevant work experience.

The first option of sharing a case-work supervisor between two agencies is already possible under the rule as discussed in Finding 19.

Based upon the rationale put forth in the Statement of Need and the testimony of the Department staff and representative from the agencies that testified at the hearing, the Commissioner does not accept the latter two suggestions of the Hearing Examiner related to accepting experience in lieu of a MSW or accepting a graduate degree in a related field in lieu of an MSW.

IT IS FURTHER ORDERED, that this Rule, identified as 12 MCAR § 2.004 - the Department of Public Welfare Rule Governing the Standards for the Licensing of Private Child-Caring or Placing Agencies - is adopted this 24 day of June, 1983, and after this day, Rule 4 shall read in its entirety as set forth in the attached Exhibit A, pursuant to the authority vested in me.

Dated: 6/24/83

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

LEONARD W. LEVINE
COMMISSIONER

Attachments

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed
Amendment to the Department of
Public Welfare's Rule Governing
Standards for the Licensing of
Private Child-Care or Child-
Placing Agencies, Rule 4

ORDER FOR HEARING

IT IS ORDERED this 14 day of May, 1982, that a public hearing on the proposed rule captioned above be held in Room D, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota 55155, on June 30, 1982, commencing at 10:30 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

ETH/bdg

STATE OF MINNESOTA

RECEIVED
JUN 28 1982
ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Amendment to the Department of Public Welfare's Rule Governing Standards for the Licensing of Private Child-Care or Child-Placing Agencies, Rule 4 (12 MCAR 2.004)

NOTICE OF HEARING

A public hearing concerning the above-entitled matter will be held in Room D, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota 55155, on June 30, 1982 commencing at 10:30 a.m. and continuing until all interested persons have an opportunity to be heard. The proposed amendment may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed amendment, 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 Thomas J. Triplett, Hearing Examiner, Office of Administrative Hearings, 618 East 22nd Street, Minneapolis, Minnesota 55404, (612) 870-4700 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 or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Rule 4 governs the operation of agencies engaged in, or seeking to engage in, child placement or other child-welfare services in Minnesota and sets forth the requirements necessary for such agencies to be licensed.

Rule 4 contains the procedures for licensure of such agencies; organizational and administrative standards for such agencies; social service, health service and educational standards for such agencies, and standards for how expense reimbursement from families who receive children for adoption is handled.

The proposed amendment to Rule 4 is in D.6.b. The amendment makes specific that the case work supervisor in such an agency shall hold a master's degree in social work from an accredited school of social work.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. §245.802.

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.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to John Buzzell, Director, Division of Licensing, Department of Public Welfare, First Floor Centennial Building, St. Paul, Minnesota 55155, telephone (612) 296-2539. Additional copies will be available at the hearing. If you have any questions on the content of the proposed amendment, contact John Buzzell.

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.

Dated: May 14, 1982

Arthur E. Noot
Commissioner of Public Welfare

ETH/bdi

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Amendment to the Department of Public Welfare's Rule Governing Standards for the Licensing of Private Child-Care or Child-Placing Agencies, Rule 4 (12 MCAR 2.004)

AFFIDAVIT OF MAILING

Bob Hamper, being first duly sworn, deposes and says:

That on the 26th day of May, 1982, at the City of St. Paul, County of Ramsey, State of Minnesota, he 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 amendment of rules by this Department.

Bob Hamper

Subscribed and sworn to before me

this 28 day of May, 1982.

Margaret Holt

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

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Amendment to the Department of Public Welfare's Rule Governing Standards for the Licensing of Private Child-Care or Child-Placing Agencies, Rule 4 (12 MCAR 2.004)

AFFIDAVIT OF ADDITIONAL MAILING

Bob Hamper, being first duly sworn, deposes and says:

That on the 26th 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 amendment of rules by this Department, he also served the attached Notice by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following agencies:

County Welfare - Human Service Agencies
Child Care & Placement Agencies

Bob Hamper

Subscribed and sworn to before me

this 28 day of May, 1982.

Margaret Holt

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

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Amendment to the Department of Public Welfare's Rule Governing Standards for the Licensing of Private Child-Care or Child-Placing Agencies, Rule 4 (12 MCAR 2.004)

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 amendment of rules by this Department is accurate and complete as of 4:00, P.M., this 26th day of May, 1982.

Robert J. Hansen

15. Small Business Investment Companies	Debenture bonds, promissory notes, and other obligations	15 USC § 687(e)
16. Washington Metropolitan Area Transit Authority (WMATA)	Bonds	40 USC §§ 651-671
17. Federal Financing Bank	Obligations issued by the bank	12 USC § 2283 and 31 USC § 742
18. Federal Reserve banks	Obligations	12 USC § 502 and 12 USC § 531

Department of Public Safety
State Fire Marshal Division

Notice of Withdrawal of Rules Governing Amendments to the *Uniform Fire Code*

The rules proposed and published at *State Register*, Volume 6, Number 43, pp. 1781, April 26, 1982 (6 S.R. 1781) are withdrawn in their entirety by the Department of Public Safety. The department intends to propose for adoption more recent editions of the *Uniform Fire Code* and the *National Fire Codes*, and will publish such notice within the next few months.

Department of Public Welfare
Mental Health Bureau

Extension of Temporary Rule Concerning Grants for Services to Adult Mentally Ill Persons in Residential Facilities

Notice is hereby given that Temporary Rule 1 (12 MCAR § 2.001 Temporary), Grants for Services to Adult Mentally Ill Persons in Residential Facilities, effective December 30, 1981 and published in the *State Register* as adopted at Volume 6, Number 31, pages 1370 and 1371 is being continued in effect for an additional 180 days. This continuation is in accordance with Chapter 562, 1982 Laws of Minnesota.

The new expiration date for Temporary Rule 1 will be December 25, 1982, or the date Temporary Rule 1 is replaced by permanent rules; whichever date is earlier.

Department of Public Welfare

Proposed Rule Governing Standards for the Licensing of Private Child-Care or Child-Placing Agencies, (12 MCAR § 2.004)

Notice of Hearing

A public hearing concerning the above-entitled matter will be held in Room D, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota 55155, on June 30, 1982 commencing at 10:30 a.m. and continuing until all interested persons have an opportunity to be heard. The proposed amendment may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed amendment, 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 Thomas J. Triplett, Hearing Examiner, Office of Administrative Hearings, 618 East 22nd Street, Minneapolis, Minnesota 55404, (612) 870-4700 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 or rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Rule 4 governs the operation of agencies engaged in, or seeking to engage in, child placement or other child-welfare services in Minnesota and sets forth the requirements necessary for such agencies to be licensed.

Rule 4 contains the procedures for licensure of such agencies; organizational and administrative standards for such agencies; social service, health service and educational standards for such agencies, and standards for how expense reimbursement from families who receive children for adoption is handled.

The proposed amendment to Rule 4 is in D.6.b. The amendment makes specific that the case work supervisor in such an agency shall hold a master's degree in social work from an accredited school of social work.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. § 245.802.

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.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to John Buzzell, Director, Division of Licensing, Department of Public Welfare, First Floor Centennial Building, St. Paul, Minnesota 55155, telephone (612) 296-2539. Additional copies will be available at the hearing. If you have any questions on the content of the proposed amendment, contact John Buzzell.

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.

May 14, 1982

Arthur E. Noot
Commissioner of Public Welfare

Rule as Proposed

12 MCAR § 2.004 Standards for the licensing of private child-caring or placing agencies.

A.-C. [Unchanged.]

D. Organization and administration.

1.-5. [Unchanged.]

6. Qualifications of personnel:.

a. The executive or director shall have had training and responsible experience in work with children and their families and demonstrated executive ability.

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.

b. The case-work supervisor shall ~~be a graduate of~~ hold a master's degree in social work from an accredited school of social work ~~or have successfully completed two years in such a school~~. In addition, the case-work supervisor must have had a minimum of two years experience in a family and children's agency, or in a children's agency, as a case worker or case-worker supervisor. In agencies not having a case-work supervisor, the executive or case worker shall meet these qualifications.

c. Case workers shall be at least college graduates.

d. Where an agency currently licensed does not meet these requirements, future changes in personnel shall conform to these requirements.

E.-I. [Unchanged.]

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Natural Resources

Commissioner's Order No. 2115 Relating to the Taking of Fish for Commercial Purposes and Permits for the Removal of Fish from Lake of the Woods, Superseding Commissioner's Order Nos. 1924 and 2070

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, do hereby prescribe the following regulations relating to commercial fishing and to the issuance of permits for the removal of fish from Lake of the Woods.

After having determined that it would be in the best interest of the natural resources of the State of Minnesota, I have in this order incorporated those suggestions to me from the negotiated agreement between sport fishing and commercial fishing interests that was consummated February 2, 1982 at 4 P.M. Those suggestions are as follows:

1. No commercial fishing within a two-mile corridor along the Minnesota, U.S.A.-Ontario, Canada, border from Pine Island, on the south to the southern boundary of the area known as Little Traverse Bay, on the north.

2. No commercial fishing in the area known as Little Traverse Bay during July and August. During the remainder of the commercial fishing season, the number of gill net fishermen shall be not more than two (2), who shall fish not more than 3,000 feet of gill net each. The aggregate maximum of gill net being fished shall at no time exceed 6,000 feet. Holders of current commercial fishing license numbers five (5) and fourteen (14) shall be the only gill net fishermen eligible to place gill nets in the waters of Little Traverse Bay.

3. The Commissioner will extend the commercial fishing season in Little Traverse Bay to November 15.

4. In the years 1982, 1983 and 1984 commercial gill net licenses will be transferable, but in no instance shall there be more than ten (10) nor more than 30,000 feet of gill net operating in Minnesota waters.

5. All other prior existing restrictions relating to closed areas, minimum depths, size limits, etc., will remain in force.

6. In 1985, the department will have a public meeting of interested parties and re-evaluate the status of fish population, catch, fish management and matters related thereto. After the meeting the Commissioner will determine what steps are necessary to further protect the natural resources of this state which might include the changing of commercial license practices. There is no intention as of now or in the future of establishing a priority in license rights among the ten gill net license holders themselves or their assignees, or an assurance that said licenses shall be reissued or renewed at the end of any license year.

DPW-82-055-TT

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Amendment to the Department of Public Welfare's Rule Governing Standards for the Licensing of Private Child-Care or Child-Placing Agencies

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Thomas J. Triplett on Wednesday, June 30, 1982, at 10:30 a.m., in Room D, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota.

This Report is a part of the rule hearing procedure required by Minnesota Statutes, Sections 15.0411 to 15.0417 and 15.052 to determine whether the proposed rule amendment should be adopted by the Commissioner of Public Welfare.

Members of the Department staff appearing as the agency panel at the hearing included John S. Buzzell, Director of the Division of Licensing, Department of Public Welfare (hereinafter referred to as "DPW"); Ruth Weidell, Adoption Unit Supervisor, DPW; and Cheryl Nyhus, Supervisor of Residential Facilities, DPW. Diane Masters, Special Assistant Attorney General, also appeared representing the Department.

Ten persons not affiliated with the Department signed the hearing register, and eight of those persons spoke at the hearing. DPW submitted nine exhibits at the hearing, and members of the public submitted three (the last one of those being a packet of five separate letters). Prior to the hearing, the Hearing Examiner received two letters from members of the public.

Pursuant to Minnesota Statutes, Section 15.0412, subds. 4d and 4e (1980), this Report shall be available for review to all affected individuals upon request for at least five working days. Thereafter, the Commissioner of Public Welfare shall, if he proposes to adopt the rule as recommended herein, submit the rule, together with the complete hearing record to the Attorney General and shall be responsible for notifying persons who have indicated that they wish to be notified of the filing. If the Comissioner makes changes in the rule other than those recommended herein and noted as being not substantial, he shall submit the rule with the complete hearing record to the Chief Hearing Examiner for a review of the changes prior to submitting it to the Attorney General for review.

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

FINDINGS OF FACT

Procedural Requirements

1. On May 14, 1982, the Department of Public Welfare filed the following documents with the Chief Hearing Examiner:

   a. a copy of the proposed rule
   b. The Order for Hearing

c. The Notice for Hearing proposed to be issued.

2. On May 26, 1982, the Department mailed the Notice of Hearing to all persons and associations who had requested that their names be placed on file with DPW for the purpose of receiving notice of the proposed adoption of rules by the Department.

3. On May 31, 1982, a Notice of Hearing and a copy of the proposed rule were published in 6 State Register 2018.

4. On June 4, 1982, DPW filed with the Hearing Examiner the following documents:

a. The Order for Hearing
b. DPW's certification that its mailing list was complete and accurate
c. DPW's listing of agency staff who will represent DPW at the hearing
d. A copy of the proposed rule
e. A copy of the State Register publication of the proposed rule
f. DPW's affidavit of mailing to all persons on its mailing list
g. DPW's affidavit of an additional mailing to all county welfare - human service agencies and child care and placement agencies
h. The Statement of Need and Reasonableness
i. A copy of a letter from Senator Tim Penny, chairman of the Legislative Commission to Review Administrative Rules (hereinafter "LCRAR") to the Commissioner, dated December 18, 1981
j. A copy of a memo from LCRAR executive director K. Burek to LCRAR members providing background information on the rule proceeding.

The documents were available for inspection at the Office of Administrative Hearings, and at the office of the undersigned Hearing Examiner, from the date of filing until the date of the hearing.

5. Minnesota Statutes, Section 245.802 (1980), the section cited by the Department as its authority to adopt this rule, requires that certain agencies and individuals be notified of any rules proposed to be adopted pursuant to that section. In its post-hearing filing, DPW noted the organizations and individuals it notified in compliance with this section (letter of Mr. Buzzell, dated July 20, 1982, at pages 3-4).

6. The record in this proceeding remained open through July 20, 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. During this period, in addition to the letter from Mr. Buzzell noted above, there was received two communications from members of the public.

Statutory Authority

7. Minnesota Statutes, Section 245.783 (1980), prohibits any individual or organization from operating an "agency" without first being licensed by DPW. "Agency" is defined in Section 245.782, Subdivision 4, to include, among other entities, any organization or association which places children in foster care or in adoptive homes. The Commissioner of DPW is charged, under Section 245.783, with processing and granting or denying requests for licensure. Section 245.802 requires the Commissioner to adopt rules "for the operation and maintenance of day care and residential facilities and agencies" and for granting and denying licenses. Since 1976, the Commissioner has adopted rules relating to the operation of agencies,

including a rule relating to qualifications of the staff of those agencies.

8. The establishment of minimum qualifications to engage in certain occupations or professions is a permissible exercise of the state's police power so long as those qualificaions bear a reasonable relationship to the activity to be engaged in. Alexander v. City of St. Paul, 227 NW2d 370, 303 Mn 201 (1975), Franklin Theatre Corp. v. City of Minneapolis, 198 NW2d 558, 293 Mn 519 (1972), and Pilla v. American Bar Association, 407 FSupp 451 (D. Mn. 1975), aff'd, 542 F2d 56 (8th Cir. 1975). The issue of reasonableness of the proposed rule will be dealt with in later portions of this Report.

9. The Department noted at the hearing and in its post-hearing filing, that this proceeding was initiated at the request of LCRAR. That commission has the authority to order such a hearing pursuant to Minnesota Statutes, Section 3.965, Subdivision 3 (1980). The letter from the chairman of LCRAR to the Commissioner dated December 18, 1981, complied with the statutory requirement although the letter does not, as contended in DPW's post-hearing filing, request DPW to propose the amendment. (Letter from John Buzzell to the Hearing Examiner, July 20, 1982 at page 4). Rather, the letter merely instructs DPW to hold a hearing "to clarify the rule." (Letter from Senator Penny, dated December 18, 1981, and included in DPW's June 4, 1982 pre-hearing filing.)

10. Other than certain definitional questions, which will be discussed below, there was no challenge to the Department's statutory authority to adopt the rule proposed in this proceeding. DPW has demonstrated its statutory authority to adopt this rule.

Nature of the Rule

11. The proposed rule in this proceeding is an amendment to 12 MCAR Section 2.004 (hereinafter sometimes referred to as "Rule 4"). That rule establishes standards for the licensing of "private child-caring or placing agencies." Paragraph (D)6 establishes minimum standards for three categories of employees of affected agencies: executive (or director), case-work supervisor, and case worker. Subparagraph (b) of that paragraph relates to the case-work supervisor, and is the portion of the rule proposed to be amended in this proceeding.

12. As it now reads, Subparagraph (D)6(b) of Rule 4 requires the case-work supervisor to be a "graduate of an accredited school of social work or have successfully completed two years in such a school." The rule also requires two years experience in a "family and children's agency, or in a children's agency" as a "case worker or case-worker supervisor."

13. As the rule is proposed to be amended, DPW would require the case-work supervisor to "hold a master's degree in social work from an accredited school of social work." To be deleted from the existing rule would be the first quoted phrase in paragraph 12 above.

General Nature of Testimony on Rule

14. None of the testimony at the hearing challenged the desirability of the Commissioner's establishment of minimum standards for employees of agencies. All persons agreed, at least implicitly, that the increasing complexity of placement cases requires high standards of training and competence. Organizations indicating their support of such regulation included the Children's Home Society of Minnesota, the Minnesota Chapter of the National Association of Social Workers, the School of Social Work at the University of Minnesota, and Lutheran Social Services.

15. Opposition to the rule as proposed came from persons challenging the specific requirement that the case-work supervisor possess a master's degree in social work. This objection, and the reasons therefor, will be treated in more detail in subsequent paragraphs. (In remaining portions of this report the term "MSW" will be used to refer either to the master's degree in social work or, occasionally, to individuals holding that degree.)

Definitional Issues

16. Several definitional issues were raised during the course of the hearing. The first of these relates to the types of agencies covered by the rule. Under the relevant statutory provisions, Section 245.782, Subdivisions 4 and 7, adoption and foster care agencies are clearly within the permissible regulatory scope of the rules. However, the rule itself departs from these statutory terms through the use of the terms "private child-caring or placing agencies" (in the rule's title) and "agencies ... engaged in child placement or other child-welfare services" (in Paragraph A describing the scope of the rule). Although these terms are not defined per se, the clear implication from the entirety of the rule, when read in conjunction with the general definition of "agency" and other applicable statutory definitions, indicates that adoption and other affected placement agencies are intended to be covered by the qualification standards set forth in Subparagraph (D)6(b). (See, e.g., the use of the term "foster care" in paragraph B which implies a cross-reference to the statutory definition which specifically includes adoption, and references to adoption in Paragraph H of Rule 4.) It is recommended that in amendments to Rule 4 that DPW attempt to use consistent, defined terminology when referring to covered agencies.

17. A related definitional issue is posed by the use of the terms "family and children's agency" and "children's agency" within the Rule 4 subparagraph proposed to be amended in this proceeding. Those references are to the types of agencies with which a case-work supervisor must have had a minimum of two years work experience as a case worker or case-worker supervisor. Those terms are not defined elsewhere in the rule, nor are they defined in statute. At the hearing, DPW staff said that the required experience under this sentence need not be gained necessarily from adoption or foster care programs. Although this sentence of the subparagraph is not proposed for amendment in this proceeding, it is recommended that DPW consider either defining the terms "family and children's agency" and "children's agency" or changing the terms to track with terminology used elsewhere in statute or Rule 4. Without such a change, there is no objective standard by which a prospective case-work supervisor could ascertain whether they have satisfied the experiential requirement.

18. Paragraph (D)6 of Rule 4 defines qualifications for three categories of employees of a covered agency: executive (or director), case-work supervisor and case worker. The rule states that where an agency does not have a case-work supervisor, the director or case worker must meet the requirements for the supervisor. Although the qualifications for the positions are clearly stated, neither the rule nor the statutes either (1) require explicitly that there be persons filling those positions in each agency or (2) define the duties of those positions. It is possible to infer from the context of the rule that there is a requirement that there be at least an executive and a case worker for each agency. However, it is recommended that the Department make this inference clear in this or future rulemaking proceedings.

19. Related to the preceding is the issue of the ability of

agencies to share a case-work supervisor. The rule does not speak to this issue, but in testimony at the hearing DPW staff indicated that such sharing was possible. However, it was unclear on what basis the sharing would be permitted. For example, may two agencies share a qualified case-work supervisor? May four agencies share? Is there a minimum amount of time that a supervisor must spend with each of the "sharing" agencies? It is recommended that if DPW intends to permit sharing of case-work supervisors, that the standards and limitations for such sharing be defined in rule.

20. Failure to define the duties of the case-work supervisor in the rule poses a difficult burden for the Department. DPW is forced, in essence, to establish the reasonableness of its qualifications for the position without being able to reference the precise types of duties for which such qualifications are presumed to be necessary and reasonable. In response to this issue, the Department, in its post-hearing filing, identified a "representative" listing of case-work supervisor duties from one agency. (See Buzzell letter of July 20, 1982, at pages 4-6.) This listing is helpful, and when combined with testimony at the hearing, does an adequate job of characterizing the duties of the case-work supervisor. However, the Department may want to consider specifying in rule the duties of the supervisor.

21. The second sentence of the subparagraph proposed for amendment in this proceeding uses the term "case-worker supervisor" (emphsis supplied). When asked of the significance of the underlined suffix, DPW staff responded that there was no significance. Because the word "case-work supervisor" is used in the remainder of the rule, it is recommended that the proposed rule be amended to delete the referenced suffix. Such an amendment would not be a substantial change to the rule as proposed.

22. Three members of the public testifying at the hearing recommended that the term "case-work supervisor" be changed to read "social worker supervisor." (Testimony of Roger Toogood of Children's Home Society, Professor John Bower of Bethel College and Alan Ingram of the Minnesota Chapter of the National Association of Social Workers (hereinafter "NASW").) It is recommended that DPW consider this changed title as being more descriptive of the duties of the supervisor. (Such a change would not be substantial and would remove the need for the change recommended in paragraph 21.)

Need and Reasonableness Generally

23. DPW views the proposed rule amendment in this proceeding to be a clarification of existing practice, and not a change from the Department's current regulatory standards. In the Department's pre-filed Statement of Need and Reasonableness, in the testimony of its staff at the hearing, and in its post-hearing filing, the Department contends that the new language simply reflects the fact that it has always required an MSW degree. DPW notes that the clarification is needed because only in recent years have institutions of higher education granted undergraduate degrees in social work. Prior to that time, and at the time this rule was originally adopted, the only degree available in the social work field was the MSW. The Department notes that it has consistently required an MSW during the entire period this rule has been in force.

24. In evaluating an agency's proposed rule, considerable weight is to be given under Minnesota law to past administrative practice. Mankato Citizens Telephone Co. v. Commissioner of Taxation, 145 NW2d 313 (Mn 1966). So long as the agency action is one which a rational person could have made, is within the bounds of the agency's authority and is reasonably related to the stated purpose of the action, it is permissible. This is so even though other possible agency actions might be viewed as "more reasonable." Federal

Security Administrator v. Quaker Oats Co., 318 U.S. 218 (1943), Walsand v. State of Mn Railroad and Warehouse Comm., 88 NW2d 834, 251 Mn 504 (1958), Breimhorst v. Beckman, 35 NW2d 719, 227 Mn 409 (1949). As noted in the following paragraphs, the Department has met this standard of need and reasonableness for the proposed rule.

25. DPW staff and personnel from various higher education, trade association and placement institutions testified that the proposed rule was needed because of the increasing complexity of placements today. They noted the large number of older, foreign-born, family group and disabled person placements occuring in recent years. All of these placements, the persons argued, require sophisticated counseling and human service skills obtainable only through a combination of formal education and hands-on work experiences. They contended that the MSW degree program, with its classroom and work experience requirements, meets the demands of placement service programs. (Testimony and/or written submissions of John Buzzell and Ruth Weidell of DPW, Roger Toogood of Children's Home Services, Patricia Eldridge of Lutheran Social Services, John Bower of Bethel College, Alan Ingram of NASW and Nancy Johnston of the School of Social Work at the University of Minnesota.)

26. Further support for the need and reasonableness of the proposed rule was provided through position statements of national organizations. The Child Welfare League of America (hereinafter referred to as "CWLA"), the Council on Accreditation of Services for Families and Children, and the National Association of Social Workers have all adopted positions advocating graduate degrees in social work for persons holding case-work supervisor positions. (Public Exhibits 1 and 2.) CWLA states that:

> Adoption is a service that requires the specific knowledge and skills that are acquired through a combination of professional education and experience in social work, or through inservice training and supervision. (CWLA, "Standards for Adoption Service," Rev. ed., p. 81.; Pub. Exh. 1).

Based upon this policy statement, the League specifically recommends that "social work staff, particularly directors of adoption programs, casework directors, and social work supervisors, should have professional social work education" (defined as a degree from an accredited graduate school of social work). (Id.)

27. Persons arguing against the MSW requirement contend that the skills needed for placement service activities can be obtained from other sources including experience in the field, recourse to other professionals in the community, and other education degree programs. Opponents of the rule also argue that the rule will impose unfair burdens on rural areas of the state, will be unduly costly, will give advantage to larger adoption service programs (many of which have extremely high parental adoption standards and which are affiliated with churches or other religious institutions), and will not apply to public agencies (and is therefore discriminatory in its application). Each of these points will be discussed in the following paragraphs.

28. Various individuals commented that the skills needed by a case-work supervisor can be obtained through work experience and that a graduate degree was therefore not needed. Testimony from DPW staff and some of the larger agency representatives concurred that there was no guarantee that an MSW would insure competence, but they stressed the increasing complexity of modern-day adoptions and the consequent need for a comprehensive education program that combines both the theory of placement services with practical experience.

29. Related to the preceding point was the suggestion of some members of the public that graduate degrees in fields other than social work might also provide the needed skills. For example, Mr. Richard DeBeau-Melting, Director of Family Services for the Minnesota Sheriffs Boys' Ranch, contends that a graduate degree in psychiatry,

psychology, sociology, family social science, or counseling (all of which are apparently offered by Minnesota higher education institutions) could provide comparable skills and experience for case-work supervisors. (Letter to the Hearing Examiner dated June 15, 1982.)

30. Also related to the above points is the objection most frequently raised at the hearing: the MSW requirement will place an unfair burden on rural community agencies where it is difficult to secure a case-work supervisor with an MSW at compensation levels smaller agencies can afford. At the hearing, DPW staff and representatives of larger agencies commented that from their experience, obtaining MSW services in non-metro areas was not a problem. Mr. Toogood from Children's Home Society, for example, noted that his agency has MSWs assigned to the various regions of the state. Although those persons reside in the metro area, they normally spend several days each week traveling in their assigned districts. Members of the public responded that it was imperative to have placement staff in the immediate area in order to meet short-term, unexpected problems encountered in a placement. In further response to this issue, DPW staff after the hearing inquired of various "selected" agencies about their experiences with MSWs in non-metro areas. Four agencies responded by noting that they have case-work supervisors with MSW degrees residing in non-metro communities; three agencies (including one of the original four) also have MSWs who are not case-work supervisors residing outside of the metro area. (Letter of Mr. Buzzell, dated July 20, 1982, pages 5-6.) Attached to Mr. Buzzell's July 20 letter are the responses of five agency directors. Of the five, two indicated they had experienced difficulty in obtaining MSWs to serve as supervisors, and four of the five indicated strong support for the rule as proposed (one of the four agencies did not state this support in their letter but they did so testify at the hearing). All of the agencies responding to the survey of DPW appear to be larger agencies, or at least those affiliated with institutions such as churches.

31. The related concerns raised by opponents to the proposed rule as discussed in paragraphs 28-30 appear to be legitimate and worthy of DPW attention. Some rural areas of the state do experience problems in attracting MSWs and there was no conclusive evidence that other graduate degrees or substantial relevant experience could not meet necessary skill levels for case-work supervisors. On the other hand, these concerns do not of themselves challenge either the basic need or reasonableness of the rule as proposed. As noted in a preceding paragraph of this Report, the fact that another rule might be "more reasonable" does not necessarily mean that the agency's proposal cannot meet the requisite legal standard of need and reasonableness. However, the Hearing Examiner urges DPW to consider amending the proposed rule or establishing a variance procedure to not amended accommodate those agencies that, after diligent efforts to secure an MSW to serve as a case-work supervisor, have been unable to do so but have located a person to serve as a case-work supervisor who:

> has an MSW and is able and willing to share his or her services with two or more agencies (within limits prescribed by DPW);
> has substantial experience as a case worker with demonstrated supervisory skills; or
> has a graduate degree in a related field with relevant work experience.

32. Ms. Marlys Ubben, one of the individuals initially challenging the proposed rule, noted that the members of the board of her proposed adoption agency collectively possess all of the skills taught to MSW students, and that those individuals had agreed to provide those services as might be needed. DPW, in its post-hearing filing, replied that board members cannot take the place of staff, and that board members should not become involved in the detail of case-work decisions. In addition, there is no guarantee that future members of a board will share those same skills. The arguments of DPW staff on this point are well taken, and the concerns of Ms. Ubben do not detract from the need and reasonableness of the rule as proposed.

Remaining Issues of Legality

33. Members of the public also contend that the proposed rule is unfair in its imposition of excessive cost burdens. Various individuals testified that the requirement of the MSW degree would increase salary expectations of the supervisor. Although the concern about increased operating costs to small agencies may be valid, this fact does not call into question the legality or the need or reasonableness of the rule.

34. Members of the public also challenge the application of the rule by citing its failure to apply to county welfare departments. By virtue of Minnesota Statutes, Sections 245.782, Subdivision 4, and 245.791 (1980), the regulatory program of concern in this proceeding does not apply to local welfare agencies and certain other human service programs. There is no reason why the Legislature cannot elect to exclude classes of agencies from regulation under this particular program and deal with those agencies by other means. Among the agencies covered by this regulatory program, the proposed rule treats all agencies the same and is therefore not discriminatory in its application.

35. Finally, members of the public challenge the proposed rule because it appears to favor larger agencies which often are affiliated with religious institutions (and which allegedly require Christian affiliation for adoption eligibility). Implicit within this challenge is the constitutional issue of the "Establishment Clause" of the First Amendment to the United States Constitution. No evidence other than Ms. Ubben's testimony was offered at the hearing on this matter, and of the various agencies responding to this proceeding, several had no apparent religious affiliation. Even if some or most of these larger agencies do have religious ties, however, the proposed rule does not indicate or imply a preference for or support of any particular religions. Therefore, the rule as proposed does not violate constitutional protections relating to the freedom of religion.

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 as required by Minnesota Statutes, Sections 15.0412 and 245.802 (1980).

2. That the Department has fulfilled the procedural requirements of Minnesota Statutes, Section 15.0412 (1980) and other procedural requirements of statute and rule.

3. That the Department has documented its statutory authority to adopt the proposed rule and has fulfilled all other substantive requirements of statute and rule within the meaning of Minnesota Statutes, Sections 15.0412, Subdivision 4c and 15.052, Subds. 3(4)(i) and (ii).

4. That the Department has demonstrated the need for and reasonableness of the proposed rule by an affirmative presentation of facts in the record as required by Section 15.0412, Subd. 4c.

5. That any Findings of Fact which might properly be called Conclusions and any Conclusions which might properly be called Findings of Fact are hereby adopted as such.

6. That the Department is urged to consider the recommendations contained in paragraphs 16 through 22 and 31 of the Findings of this Report, and that the adoption of one or more of those recommendations may constitute a substantial change to the rule as proposed.

7. That a Finding or Conclusion of need and reasonableness does not preclude and should not discourage the Department from further modification of the proposed rule 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 the 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 rule be adopted consistent with the Findings and Conclusions made above.

Dated: August 16, 1982.

THOMAS J. TRIPLETT
Hearing Examiner

DPW-82-055-TT

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Amendment to the Department of Public Welfare's Rule Governing Standards for the Licensing of Private Child-Care or Child-Placing Agencies.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on June 30, 1982 before Thomas J. Triplett, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with the rule-making provisions of Minn. Stat. Ch. 14 (1982); and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 14.50, was issued to the Commissioner of Public Welfare and;

WHEREAS, the Commissioner has now determined to adopt rules; and

WHEREAS, the Commissioner has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 14.16, 14.51, 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 Commissioner has cured the defects in the rule as required.

NOW, THEREFORE, upon receipt of this Order, the Commissioner has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register if approved by the Attorney General.

Dated: January 25, 1983.



DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED
AMENDMENT OF DEPARTMENT OF
PUBLIC WELFARE RULE 4
(12 MCAR 2.004) STANDARDS
FOR THE LICENSING OF PRIVATE
CHILD-CARING OR PLACING AGENCIES

STATEMENT OF NEED
AND REASONABLENESS

A. Applicability. The present Department of Public Welfare Rule 4 (12 MCAR 2.004) requires that a case-work supervisor in a child-caring or placing agency shall be a graduate of an accredited school of social work or have successfully completed two years in such a school. A question has been raised as to what level of degree this means. At the time the rule was written there was no confusion as to the requirement because social work education programs were available only at the master's level. However, in the last 10 or 12 years several institutions have begun offering social work as a major for a batchelor's degree. Thus, what may have been clear at one time, is no longer so obvious.

The Department has decided to clarify the requirement of part D. 6. b. of 12 MCAR 2.004 by proposing an amendment that will make specific the requirement that the case-work supervisor of a child-caring or placing agency shall hold a master's degree in social work from an accredited school of social work.

The master of social work programs stresses a common base of general knowledge and skills with concentration at the second level in clinical practice or administration and planning. The degree holder must have completed a sequence of course work at the graduate level in human growth and development, principles of social casework, interviewing and principles of family therapy. The typical degree program also includes field instruction that is primarily focused on direct service to individuals, families and small groups. A master's degree program must be completed within a prescribed period of time in order to preserve the continuity of the program.

The requirement for a master's degree for case-work supervisors developed because of the complex nature of child-caring and child-placing agencies. Agencies licensed under the provisions of Rule 4 provide care and supervision to children who may, besides requiring basic care, exhibit behavioral and emotional problems. The supervision and direction of the staff who provide the care and service to these children and their families is of extreme importance so that proper placement may be made, suitable treatment plans developed and continuity of care preserved. The master's of social work degree, through the specialized curriculum and field instruction is designed to prepare individuals for supervisory positions.

Child-caring and placing agencies licensed under Rule 4 provide social case work services to parents, foster parents and children, select and recommend for licensing foster homes and place children for adoption. These are complex and sensitive processes which require that difficult judgments about such matters as the suitability of a home for a foster care license or the appropriateness of a family for an adoption placement be made by the line staff who are required only to be college graduates. Their recommendations must be carefully reviewed by the agency case-work supervisor. The requirement of a master's degree for the case-work supervisor will help ensure that the decisions that are made will be in the best interests of the children, parents and foster parents.

It is acknowledged that it is sometimes difficult to obtain qualified personnel in some areas of the state. However, the rule does not require that all of the professional staff of the agency hold a master's degree in social work. It only requires that the case-work supervisor have such a degree. The director of the agency may be in an administrative position which does not require an advanced degree. For the case-work supervisor, who is more directly involved in the agency's work with children and their parents, it is essential that the individual have the necessary advanced training so that a high level of supervision be maintained.

It is therefore reasonable to require that the case-work supervisor hold a master's degree from an accredited school of social work.

The agencies' authority to adopt the proposed rule is contained in Minn. Stat. § 245.802.

Testimony by expert witnesses will be provided by Roger W. Toogood, Executive Director, Children's Home Society of Minnesota who will discuss the importance of professionally trained staff in providing supervision in a child-caring placing agency and Patricia Eldridge, Supervisor of Adoptions, Lutheran Social Service of Minnesota, who will discuss the need for competent, trained supervision in an agency engaged in placing children for adoption and counseling parents engaged in the adoption process.

Dated: June 3, 1982

Arthur E. Noot
Commissioner of Public Welfare

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Repeal of Rules of the State Department of Public Welfare Governing the Pilot Program of Nonresidential Services for Mentally Ill Persons, 12 MCAR 2.021; Community-Based Residential Services for Mentally Ill Persons, 12 MCAR 2.022; Development of Chemical Dependency Prevention, Identification and Referral Programs for Affected Employees and Underserved Populations, 12 MCAR 2.024; Reimbursement for Cost of Care of Mentally Retarded or Epileptic or Emotionally Handicapped Children, 12 MCAR 2.030; Administration of Work Equity Project, 12 MCAR 2.063; and Services to Unmarried Parents, 12 MCAR 2.170.

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

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

Diane Masters
Special Assistant Attorney General

Dated: 1/25/83

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENT OF DEPARTMENT OF PUBLIC WELFARE RULE 4 (12 MCAR 2.004) STANDARDS FOR THE LICENSING OF PRIVATE CHILD-CARING OR PLACING AGENCIES

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 25th day of January, 1983, 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.

Wendy Johnson

Subscribed and sworn to before me
this 25th day of January, 1983.

Margaret Holt

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

In the Matter of the
Proposed Amendment of
Department of Public Welfare
Rule 4 (12 MCAR 2.004),
Standards for the Licensing of
Private Child-Caring or Placing Agencies

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, 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 coment 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 John Buzzell at 612/296-2539.

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