

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1070

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 9-13-84
DATE FOR REVIEW 9-24-84
DATE DUE 10-03-84

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

Approved Oct 3, 1984 (COS) Disapproved Returned to Agency

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 10-4-84 Revisor approved 9/17/84 disapproved

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✓ Rule as Adopted

✓ Rule as Proposed see SR

✓ Order Adopting 8.30.84 Date cites APA as authority for rule rather than specific statutory section

✓ Notice of Intent to Solicit Outside Opinion SR. 11.1.82 + comments

✓ Order for rulemaking
2.7.84 date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

✓ Mailing list Certificate

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

✓ Hearing Examiner's Report

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

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness
+ letter to Harves from Weidel, 7.26.84

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Leonard Levine
Commissioner, Department of Human Services

DATE: October 4, 1984

ATTN: Dianne Masters
Special Assistant Attorney General

FROM : Larry D. Starns LDS
Special Assistant Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State of Minnesota, Department of Human Services Rules Governing Adoption (12 MCAR 2.200).

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.

LDS:slz

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy.

Department of Human Services

Adopted Amendment of the Department of Human Services' Rule Governing Adoption

Rule as Adopted

12 MCAR S 2.200 Adoption.

A. Purpose; definitions.

1. Goal of the Minnesota adoption program: to ensure for each child, who is free to be legally adopted in the state, a suitable adoptive home and agency services supportive of his or her integration into the new family.

2. The terms used in 12 MCAR S 2.200 have the meanings given them.

a. "Adoptive home" means a home approved by an authorized child-placing agency for the purpose of placing a child for adoption.

b. "Authorized child-placing agency" means the local social service agency or any agency licensed to place children by the commissioner or by a comparable authority in the state or country in which the agency exists.

c. "Child" means an individual under 18 years of age.

d. "Commissioner" means the commissioner of the Department of ~~Public Welfare~~ Human Services.

e. "Foster family home" means a family home licensed to provide 24-hour-a-day care to children who are unrelated to the family.

f. "Genetic parent" means an individual who is referred to as the child's ~~natural~~ birth parent, who is named in the child's original birth certificate as a parent, whose claim to genetic parenthood is unchallenged, or whose genetic parenthood is established by a court of competent jurisdiction.

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g. "Independent placement" means a proposed or actual nonagency placement of a child by a ~~natural~~ parent or unlicensed third party with persons not related to the child within the third degree.

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h. "Infant" means a child under the age of 15 months.

i. "Licensed child-placing agency" means an agency authorized by the commissioner to place children for foster care or adoption.

j. "Local social service agency" means the local agency under the authority of the county welfare board or human service board responsible for arranging and providing social services to individuals.

k. "Minority race or minority ethnic heritage" means a legacy of common traits and customs that society recognizes as belonging to a part of the population which differs from its predominant culture or characteristics.

l. "Placing agency" means the Minnesota licensed child-placing agency which has guardianship of a child from a Minnesota court or the local social service agency which has financial and adoptive planning responsibility for a ward of the commissioner of ~~public welfare~~ human services. ~~The~~ A placing agency ~~retains adoptive planning responsibility~~ may also include a supervisory agency which is providing adoptive planning services for the child ~~even though another agency is supervising~~. HE 13

m. "Postplacement services" means social services provided to the child and the adoptive parents from the time of placement until legal adoption.

n. "Postadoption services" means social services provided after legal adoption to the adoptive parents, genetic parents, or adopted individuals.

o. "Relative" means an individual who is related to a child within the third degree according to the civil table of consanguinity by blood, marriage, or adoption as a parent, stepparent, brother, sister, grandparent, great grandparent, aunt, uncle, niece, or nephew.

p. "State adoption exchange" means the central adoptive home and child registration service operated by the Minnesota Department of ~~Public Welfare's~~ Human Services' adoption unit for use by authorized child-placing agencies.

q. "State agency" means the commissioner of ~~public~~

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welfare human services or the Minnesota Department of Public Welfare Human Services.

r. "Subsidized adoption" means an adoption in which an agreement provides that financial payments assistance HE 14 shall be made to the adoptive parents, subsequent guardian, or conservator because of special needs of a child who is certified as eligible for subsidy.

s. "Suitability study" means the preadoptive counseling and subsequent evaluation made by the authorized child-placing agency to determine whether or not the proposed adoptive home can adequately parent and meet the social, educational, and health needs of a particular child.

B. Legally freeing a child for adoption.

1. Before a valid agency adoptive placement may occur, court termination of the parent's rights under Minnesota Statutes, sections 260.221 to 260.241 or an agreement under Minnesota Statutes, section 259.25 which confers authority to place a child for adoption with the commissioner or a licensed child-placing agency must be obtained from any individual recognized by state law as having parental rights.

a. A local social service agency shall seek to free a child for adoption through court termination of parental rights unless the commissioner states in writing that he will accept the agreement conferring authority to place the child.

b. On all agency adoptive placement plans, the local social service or licensed child-placing agency shall inform the genetic parent, who is identified on the child's birth certificate by birth registration, affidavit, or court order, of the statutory conditions under which birth certificate information and certain agency record information may or may not be released. The agency shall assist the genetic parent with the procedures in (1)-(3).

(1) The genetic parent shall sign an affidavit to be filed in the agency record attesting that the genetic parent has been informed of statutory conditions that affect the agency release or nonrelease of identifying information, such as the

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genetic parent's name, last known address, birth date, and birthplace, to the adopted person after that person reaches adult age as defined in Minnesota Statutes, sections 259.47 to 259.49.

(2) The genetic parent may subsequently choose to file or not file in the agency adoption record an affidavit objecting to the agency release of any or all of the identifying information to the adopted person upon that person reaching adult age as specified in Minnesota Statutes, sections 259.47 to 259.49.

(3) The genetic parent may file an affidavit at any time with the State Registrar of Vital Statistics consenting to or refusing to consent to disclosure of the original birth certificate information to the adopted person after that person reaches adult age as specified in Minnesota Statutes, sections 259.47 to 259.49.

2. All written consents to adoption, executed in a manner prescribed by Minnesota Statutes, sections 259.24, subdivision 5 and 259.25, must be filed with the court prior to the hearing on the adoption petition.

3. All agreements with an agency to place a child and consents to adoption by the child's parent or legal guardian, must be executed before two competent witnesses and an agency representative. Consents to an adoption by the child's parent when that parent is either a copetitioner in the adoption proceedings or does not have custody of the child must be executed before two competent witnesses, but need not be executed before an agency representative. All consents by a parent must contain a notice to the parent of the right to revoke the consent for any reason within ten working days of its execution. Consents obtained in another state may be executed according to either Minnesota law or applicable consent laws of the other state.

a. The consentor's and the agency representative's signatures must each be duly notarized.

b. The two witnesses must be 18 years of age or older

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and of sound mind, and neither may be the subscribing notary public.

c. The agency representative must be a person qualified to counsel the consenting party on adoption matters.

d. Revocation of a parent's consent must be in writing and must be received by the agency no later than the tenth working day after the consent was executed.

4. Affidavits submitted by individuals who allege or deny parenthood which contain a consent to adoption must be executed according to the requirements in 3.

C. Services for children freed for adoption.

1. State photographic adoption exchange. To ensure each child's placement in an adoptive home preferably away from his area of prior residence, the State Adoption Exchange shall be used by all authorized child-placing agencies in accordance with procedures under Minnesota Statutes, section 259.45 and the commissioner. ? excess language?

a. Each authorized child-placing agency shall register the child on the exchange using the registration form prescribed by the commissioner accompanied by a recent photograph of the child.

b. An authorized child-placing agency seeking to defer registration of the child shall make a written request to the exchange for written approval. The request for deferral must meet one of the conditions in (1)-(6).

(1) The child is placed in an agency adoptive home and legal adoption occurs within two years of placement. The agency's report of the adoptive placement to the state agency shall constitute the basis for deferral.

(2) The child's foster home is being considered and meets the criteria of C.3. A deferral granted for this reason may not exceed 90 days unless the placement status formally becomes an adoptive placement.

(3) The child's prospective adoptive home is being considered. A deferral granted for this reason may not exceed 90 days unless an adoptive placement occurs.

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(4) The child is undergoing diagnostic evaluation to aid the agency in adoptive planning. A deferral granted for this reason may not exceed 90 days.

(5) The child is hospitalized and needs continuing daily care which will not permit placement in a family setting. A deferral granted for this reason may not exceed the length of hospitalization.

(6) The child is 14 years of age or older and, after ~~discussion~~ HF 15 counseling with the agency on permanent placement options, will not consent to an adoption plan. The agency shall then assist the child in executing an affidavit to file with the exchange in which the child states that decision and an awareness that the decision may be changed at any time.

2. Special needs. The local authorized child-placing agency shall, without undue delay, seek an adoptive home which will meet the child's special needs. Special needs include sibling ties, minority racial or minority ethnic heritage, religious background, and health, social, and educational needs.

a. The placing agency shall follow the order of placement preference and exception guidelines under Laws of Minnesota 1983, chapter 278, section 7, when placing a child of minority race or minority ethnic heritage.

b. The adoptive placement of an Indian child who comes under the Indian Child Welfare Act of 1978, United States Code, title 25, sections 19 et seq., as amended through December 31, 1982, must follow the order of preference as determined by the child's tribe.

c. The placing agency shall document in its record any recruitment efforts it made and any requests or decisions made by the child's parent, the tribe, court, or agency which affects the order of placement preference.

3. Recruitment. As required in Laws of Minnesota 1983, chapter 278, section 11, an agency shall make special efforts to recruit adoptive families from among the child's relatives, if feasible, and families of the same minority racial or minority ethnic heritage. The agency may work with various community and

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religious organizations, as well as the media, and may accept offers of service and monetary contributions to successfully recruit families for adoption.

4. The child's foster home. The local social service agency may consider the foster home in which the child is currently living as a potential adoptive resource for the child.

a. In such cases the criteria in (1)-(3) apply.

(1) The child has special needs as defined in C.2. which the foster family will be able to adequately meet, or the child is older than an infant, has lived at least 12 consecutive months in the foster home, and is an integrated member of the foster family.

(2) The foster family will be able to accept the child and his background and help the child understand his adoption.

(3) The foster family is either the best adoptive resource for the child or is at least comparable to available resources.

b. Except in Hennepin, Ramsey, and St. Louis counties, a joint decision between the state agency's adoption unit and the local social service agency as to whether the foster home would be a suitable adoptive home for the child must be made. The agencies shall base their decision upon:

(1) the local social service agency's written statement and recommendation to the state agency identifying applicable criteria; and

(2) the state agency's written response either approving or disapproving the recommendation.

c. [Unchanged.]

5. Child placement. The policies in a. and b. govern the local social service agency's preplacement and postplacement activities.

a. Preplacement activities must include those in (1)-(5).

(1) The adoptive family's agency shall, prior to the child being placed in an adoptive home, meet with the child's

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agency in a preplacement conference, obtain written background and health history on the child, and visit the child in his foster home. The preplacement conference may only be waived if the child is under six months of age and is without special needs.

(2) The child's agency shall prepare the child for adoptive placement and provide the adoptive parents with a written nonidentifying background and health history of the child in which all identifying information on the child's relatives has been omitted. The history is to be written in a manner which is understandable and meaningful to the adoptive family.

(3) [Unchanged.]

(4) The adoptive parents shall enter into a written adoptive placement agreement with the commissioner.

(5) During the time the child resides in the adoptive home, the local social service agency shall continue administrative reviews but is not required to schedule a court dispositional hearing unless the child is either removed from the home or is not legally adopted within two years of the date of placement. HE 16

b. Postplacement activities must include (1) and (2).

(1) The agency placing the child shall arrange for and obtain written placement and postplacement reports from the agency supervising the child in the adoptive home.

(2) The supervising agency shall provide postplacement counseling with the adoptive parents in a manner that enables the child and adoptive family to become an integrated family.

6. Subsidized adoptions. Subparts a.-h. provide standards for determining a child's eligibility for subsidy and the criteria for establishing the terms of the subsidy agreement subject to the commissioner's approval. Subsidized adoption is based upon the needs of the child who is certified as eligible for subsidy and is available through the commissioner for a child under legal guardianship of the commissioner or a licensed

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child-placing agency. The commissioner may review and verify the facts upon which the child's eligibility is based.

a.-b. [Unchanged.]

c. The placing agency shall certify the child as eligible for subsidy. The certification must be in writing and signed by the director of the placing agency or the director's designee. The certification must include the conditions and circumstances upon which the child's eligibility is based, and must be sent to the commissioner. A child is eligible for a subsidy when the child's situation meets the criteria in (1)-(5). When a child is placed into a prospective adoptive home without a subsidy but the need for subsidy becomes evident prior to legal adoption, the child-placing agency shall apply only the criteria in (1), (3), and (5) to determine the child's eligibility.

(1) To be eligible, a child must be a Minnesota resident and a ward of the commissioner or a licensed child-placing agency.

(2) The agency shall make an early determination on the availability of a home without subsidy, preferably within two months of the time the child becomes legally available for adoption.

(3) A child is eligible for subsidized adoption by the child's foster parents if the following criteria are met and documented:

(a) The child's foster parents desire to adopt the child;

(b) The agency determines that adoption by the child's foster parents is in the best interest of the child, according to the criteria in C.4.; and

(c) The child's circumstances or characteristics make it difficult for the agency to provide the child with an adoptive home without a subsidy.

(4) The placing agency has made reasonable efforts without success, including the efforts in (a)-(c), to place the child without subsidy.

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(a) [Unchanged.]

(b) The agency shall contact Hennepin, Ramsey, and St. Louis counties and Minnesota-based licensed child-placing agencies to seek potential adoptive homes.

(c) The agency may use photo listing services, adoption exchange services, newsletters, or other special efforts to secure a home.

(5) The agency shall determine the child's eligibility for adoption assistance under Title IV-E of the Social Security Act, United States Code, title I, section 101, as amended through December 31, 1982.

d. When determining the amount of subsidy required to meet the child's needs, the placing agency shall consider the financial resources, social security and veterans benefits, health insurance coverage, medical assistance programs, and other resources~~, including the adoptive parent's resources~~ which are available or which may be available to the child. HE 19

(1) The placing agency shall document the amount of the child's maintenance needs for food, clothing, and shelter which cannot be met by adoptive parent and other financial resources. The monthly maintenance subsidy payment may be less than or equal to the following maintenance standards:

Age	Monthly Maintenance Subsidy
0 - 5	$200
6 - 11	230
12 - 14	260
15 - 18	290

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The state agency shall ~~biannually~~ annually review and adjust the maintenance rate schedule.

(2) The placing agency shall determine the medical, dental, surgical, psychiatric, and psychological expenses, and other related costs necessary for the child's care and well-being. In determining the costs, the placing agency shall identify the child's circumstances or conditions that require subsidy. The placing agency shall document:

(a) The kind and amount of health insurance or

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other medical financial resources including eligibility for medical assistance available to meet the needs of the child.

(b) The actual or estimated expenses for medical, dental, surgical, psychiatric, psychological, or other related needs of the child when these are not covered by health insurance, medical assistance, or other alternative financial or medical resources.

(3) The placing agency shall determine whether the child has additional expenses or other costs not included in (1) and (2) which are necessary for the child's care and well-being, including the purchase of services, items, or equipment not provided by other community resources. The placing agency shall specify and document the child's special cost needs ~~and document the actual or estimated expenses required to meet those needs~~ which are in excess of (1) and (2) according to criteria level (a), (b), (c), or (d).

(a) The child is self-motivated, but due to physical, mental, emotional, or behavior conditions, has one or more of the following needs:

(i) requires assistance and training in dressing, eating, hygiene, or moving from place to place;

(ii) requires an undue amount of attention that disrupts the family's daily structure;

(iii) must have a regimented daily routine;

(iv) requires consistent bimonthly or more frequent contact with specialized community programs and facilities or professional resources;

(v) causes damage or destruction of the environment because of behavior or use of special equipment; or

(vi) exhibits dependency needs in an inability to bond or relate to others, withdrawal, passive aggressive behavior, or delayed maturation.

The monthly rate under criteria (a) shall be $150.

(b) The child's chronic physical, mental, or emotional condition requires one or more of the following:

(i) ongoing daily care and assistance due to

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profound mental retardation or multiple handicaps;

(ii) continuing training and mastery of a specialized communication technique with family members learning the skill;

(iii) communication skill is mastered but is time consuming;

(iv) weekly or more frequent in-home therapy toward managing physical, emotionl, or behavioral difficulties; or

(v) weekly or more frequent use of community health, special educational, and rehabilitation resource.

The monthly rate under criteria (b) shall be $275.

(c) The child's acute or chronic physical, mental, emotional, or behavioral condition is severe and requires one or more of the following:

(i) controlling the child's interaction within the family and in the community;

(ii) restructuring of the home to physically accommodate the child;

(iii) monitoring the child's condition daily to anticipate emergency medical distress;

(iv) hourly management of the child's behavior; or

(v) diagnoses of an acute condition has been completed and psychological intervention has begun.

The monthly rate under criteria (c) shall be $400.

(d) The child's only alternative is institutionalization or professional care due to chronic or acute physical, mental, or emotional condition. The child requires all of the following:

(i) total 24-hour care and supervision by a trained caregiver;

(ii) monitoring of child's condition, medication, or equipment on a 24-hour basis;

(iii) use of multiple specialized community programs, facilities, and professional resources to maintain the

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child in the home; and

(iv) requirement of institutional or paramedical skilled care at the time of family respite care.

The monthly rate under criteria (d) shall be $500.

The placing agency shall include appropriate medical, psychological, or psychiatric evaluations that document the level of the child's special needs.

The state agency shall annually review and adjust the rate schedule for special needs.

(4) The agency record and the subsidy agreement must include all relevant facts upon which subsidy payments are based and the amount and frequency of payments. If the amount and frequency of payments are unknown, estimates and the basis for estimates must be included.

e. The placing agency shall prepare in writing the Subsidized Adoption Agreement clearly setting forth the responsibilities of all the parties and the terms and duration of the agreement.

(1) The agreement shall state the responsibilities of the parties as follows.

(a) The adoptive parents, or in the event of their death or inability to function as parents, the subsequent guardian or conservator, shall agree to:

(i) Submit to the commissioner an annual affidavit within 30 days of the anniversary date of the approved agreement which certifies whether the child remains under their care and the need for subsidy continues to exist. The information in the affidavit may be verified by the commissioner.

(ii) Notify the commissioner in writing within 30 days in the event of a change in the child's status caused by one of the events in (aa)-(dd) and its effect on the expenses covered by the subsidy.

(aa) Marriage of the child or a parent.

(bb) The child's absence from the home by court action or for any reason for a period of more than 30 days.

(cc) Death of the child or a parent.

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(dd) Legal emancipation of the child.

(iii) Notify the commissioner in writing within 30 days of any change which may affect the duration or amount of the subsidy needed.

(iv) Notify the commissioner in writing within 30 days of a change in address to ensure proper mailing of payments.

(v) Participate in and use health insurance, medical assistance, and financial programs available for the child.

(vi) Notify the commissioner in writing at least 30 days before a planned medical or special expense covered in the agreement is incurred to ensure prompt payment after expense statements are submitted to the commissioner.

(vii) Notify the commissioner in writing soon after an emergency of the anticipated cost so that the commissioner may begin to budget for that expense.

(viii) Submit expense statements to the commissioner to receive subsidy payments for costs incurred according to the agreement other than the agreed-upon monthly payments.

(b) The placing agency shall agree to:

(i) specify in the agreement:

(aa) the terms and duration of the subsidy as defined in d.; and

(bb) the effective date of the agreement, which is the date of legal adoption. When the child's needs cannot be met by state and federal programs or other available resources prior to legal adoption, the commissioner shall establish an earlier effective date between the child's placement in the adoptive home and legal adoption;

(ii) assist the adoptive parents, subsequent guardian, or conservator in the review or modification of the agreement; and

(iii) assist the commissioner in the review or modification of the agreement.

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(c) The commissioner shall agree to make the payments in (i)-(iii) to the adoptive parents, subsequent guardian, or conservator. Payments may be terminated at the written request of the adoptive parents, subsequent guardian, or conservator:

(i) Payments for adoptive placement or legal decree of adoption, regardless of the domicile or residence of the adoptive parents, subsequent guardian, or conservator at or after the time of application;

(ii) Monthly payments for the agreed upon maintenance costs and other regular costs;

(iii) Payments based upon the expense statements received from the adoptive parents, subsequent guardian, or conservator for the child's medical or special expenses according to the agreement.

(2) When the terms and duration of the subsidy are agreed upon by the parties, the placing agency shall:

(a) prepare six written copies of the agreement;

(b) ensure that all copies are signed by the adoptive parents and the placing agency director or designee; and

(c) submit all copies to the State Adoption Unit for the commissioner's approval.

(3) Upon the commissioner's approval, copies of the agreement shall be distributed to the adoptive parents and the placing agency. The state agency shall establish an account to reimburse the adoptive parents, subsequent guardian, or conservator upon the effective date of the agreement or, in instances when monthly payments are made, the month beginning closest to the effective date.

(4) The subsidy agreement shall continue in accordance with its terms as long as the need for subsidy continues and the child remains the legal dependent of the adoptive parents, subsequent guardian, or conservator.

(5) [Unchanged.]

(6) The adoptive parents, subsequent guardian, or

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conservator may request modification or termination of the agreement at any time by a written contact with the placing agency or the commissioner.

(7) The adoptive parents, subsequent guardian, or conservator have the right to appeal to the commissioner pursuant to Minnesota Statutes, section 256.045, when the commissioner denies, discontinues, or modifies the agreement. The appeal must be initiated by a written request to the commissioner within 30 days after receiving written notice of the action or decision from the commissioner or within 90 days if the parents show good cause why the request was not submitted within the 30-day time limit.

f. Subsidy payments received according to the terms of the agreement do not affect eligibility for any other financial payments. These other financial payments include social security, veterans, or other benefits, to which a person may otherwise be entitled.

g. The placing agency shall receive a reimbursement from the commissioner to the extent appropriations are available up to 100 percent of the reasonable and appropriate cost of providing or purchasing adoption services for a child certified as eligible for a subsidy, including, when necessary, adoptive family recruitment, counseling, special training, and legal fees for finalization. The criteria for reimbursement are:

(1) The child meets the certification requirements of c.

(2) [Unchanged.]

(3) The placing agency has determined that either the partial or full cost of providing or purchasing the adoption services is not reimbursable under other state and federal financial programs.

(4) The placing agency shall submit the proposed purchase of service agreements to the commissioner for approval and for review of anticipated expenses when a purchase of service is used.

(5) [Unchanged.]

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(6) The placing agency shall submit an itemized statement of expenses to the State Adoption Unit for reimbursement prior to June 30 of each fiscal year.

(a) [Unchanged.]

(b) The commissioner shall reimburse the placing agency to the extent appropriations are available up to 100 percent of the expenses that are not reimbursable under other state and federal programs.

h. The commissioner shall work with American Indian child adoption organizations able to be licensed as child-placing agencies. American Indian children, who are protected under the Federal Indian Child Welfare Act of 1978, United States Code, title 25, sections 19 et seq., as amended through December 31, 1982, and who are certified as eligible for subsidy shall, whenever possible, be served by the tribal governing body, tribal courts, or a licensed Indian child-placing agency.

7. Termination of adoptive placement.

a. The local social service or licensed child-placing agency supervising the child shall notify the state agency's adoption unit within five working days that the child's adoptive placement is terminated when one of the following circumstances arise:

(1) [Unchanged.]

(2) The child dies;

(3) The adoptive placement has continued for two years without the formalization of the adoption; or

(4) [Unchanged.]

b. Termination of the adoptive placement by a local social service agency may be made only upon a specific finding of good cause by responsible agency personnel. Good cause exists when the placement is shown to be detrimental to the physical, mental or emotional well-being of the child or the adoptive parents. Prior to seeking the removal of the child from the home, the agency shall:

(1) inform the adoptive parents in writing of the reasons for removal; and

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(2) in an emergency situation involving danger to the child's health or well-being, request the assistance of the appropriate law enforcement authorities in the immediate removal of the child from the home.

D. Services to children in independent placements.

1. When the local social service agency learns that the child's parent or relative seeks to place the child for the purpose of adoption with a person who is an extended family member not defined in A.2.o. as a relative or is personally known to the child's parent, the agency shall:

a. evaluate with the child's parent whether the placement will be in the interest of the child;

b. arrange for a preadoption evaluation of the proposed home when it is needed to determine whether the placement plan is suitable for the child;

c. assist the child's parents in legally freeing the child for adoption; and

d. arrange the adoptive placement according to procedures in C., unless a court of competent jurisdiction has determined that the best interests of the child are served by waiving the requirement of agency placement.

2. When the local social service agency is informed by the commissioner that a court of competent jurisdiction has waived the agency placement requirement, whether or not the child is already in the home:

a. the local social service agency shall pursue licensing that home for foster care unless an adoption petition has been properly filed; and

b. the prospective parents shall notify the commissioner of the child's placement within 30 days of that placement unless the commissioner was already involved in the proposed placement.

3. When the local social service agency learns that the child's parent or the prospective parent desires the adoptive placement of the child through the assistance of an unlicensed intermediary, the local social service agency shall take

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necessary steps, including legal actions, if necessary, to prohibit the placement.

4. When the local social service agency learns that the child's parent, legal guardian, prospective parents, or the unlicensed intermediary desire to transport the child into or out of Minnesota for adoptive placement, the local social service agency shall advise the party or parties that the transportation requires the prior approval and consent of the commissioner.

a. The commissioner shall not give consent to or approval of importation or exportation of the child when a proposed placement was or is being arranged by an unlicensed intermediary even though a court of competent jurisdiction may waive the requirement of agency placement.

b. Applications for importation or exportation of a child must be made by the child's parent or legal guardian according to the statutory provisions of both the sending and the receiving states.

5. When the local social service agency learns that a child is residing in a nonrelative home for the purpose of adoption, it shall carry out the duties of the commissioner and provide all appropriate child protection services prescribed in the Public Welfare Licensing Act under Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2, child-placing under Minnesota Statutes, sections 257.03, 257.04, and 257.40, and the Juvenile Court Act under Minnesota Statutes, chapter 260.

a. Local social service agency actions include:

(1) ensuring that the child is returned to a responsible person or agency in the state of origin when the child was imported into Minnesota in violation of statutes;

(2) obtaining temporary legal custody;

(3) placing the child into a licensed foster home or licensing the current home;

(4) providing services to the child's parents in making appropriate permanent plans for the child.

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b. In addition, within 30 days of learning that a child resides in a nonrelative home for the purpose of adoption, the local social service agency shall submit to the state agency a full written report of its investigation of the proposed or actual placement. The report shall include:

(1) names and addresses of the child's parents, the child, and the intended home;

(2) the names, addresses, dates, and the activities of all individuals involved in the independent placement plan;

(3) the circumstances surrounding the placement plan; and

(4) any compensation, promise of payment, solicitation, receipt of payment by any person to any person for placing or assisting in the placement of the child.

c.-d. [Unchanged.]

E. Services to families applying for adoption.

1. Each local social service agency shall establish a written intake policy, including social service fees when applicable, which provides for:

a. performance of a suitability study upon the receipt of a properly filed adoption petition;

b. screening of applications received from potential adoptive parents for children under state guardianship and other adoptable children who have special needs;

c. supervision of adoptive families moving into Minnesota when so requested by the prior state of residence through the state agency's adoption unit; and

d. performance of suitability studies on prospective families when requested by the state agency's adoption unit for out-of-state adoption agencies.

2. Local social service agencies shall consider at a minimum the basic standards in a., b., and c. when determining the suitability of prospective adoptive parents.

a. The applicant shall be primarily motivated to meet the child's needs, emotionally mature with healthy interpersonal relationships, in good physical and mental health, and able to

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adequately support and parent a child in a healthy and emotionally secure environment.

b. The applicant shall have the capacity to accept and incorporate into his family a child born to other parents and to assist the child in understanding his genetic background and adoption.

c. The applicant, who desires to adopt a child of minority race or minority ethnic heritage, shall demonstrate an understanding and appreciation of the minority heritage and an ability to assist the child with it.

3. The local social service agency is responsible for determining the suitability of adoptive parents whom it has accepted for service.

a. Prospective adoptive parents which the local social service agency certifies as suitable for placement of a child shall be registered on the State Adoption Exchange. This requirement is optional for Hennepin, Ramsey, and St. Louis social service agencies.

b. Prospective adoptive parents deemed unsuitable by the local agency shall be informed in writing of that decision. Notification must be sent after the agency has counseled with the family on the relevant facts upon which the decision was based.

(1) Prospective adoptive parents which the local agency determines are not suitable for an adoptive placement may be further reviewed by that agency, the county welfare or human service board, or the state agency's adoption unit upon the written request of the applicant. This review is limited to those factors on which the local agency based its decision.

(2) Grievances arising out of adverse suitability studies are not subject to further administrative review pursuant to Minnesota Statutes, chapter 15, or Minnesota Statutes, section 256.045.

F. Interstate and international adoptive placements.

1. No child may be brought into or sent out of Minnesota for adoptive placement into a nonrelative's home unless one of

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the following conditions is met:

a. The commissioner, as state administrator of the Interstate Compact on the Placement of Children, issues written approval for the importation or exportation pursuant to the requirements of that Compact; or

b. The commissioner has, in non-Compact situations, issued a written consent to importation or exportation of the child, pursuant to applicable state law.

2. The commissioner shall not issue consent or approval for the movement of a child across state lines if the proposed placement is planned or made by an unlicensed third party.

3. The commissioner, upon receipt of all required documentation, shall issue consent or approval for importation when:

a. the foreign country allows the child to be exported for the purpose of adoption in the United States;

b. an authorized child-placing agency in the sending state has adoptive planning rights to the child and requests the importation into Minnesota; or

c. a family plans to move to Minnesota and has a child placed with them according to the laws of the other state or country.

4. The documents required for the commissioner's consent and approval are:

a. an authorized child-placing agency's written confirmation that the family is approved for adoptive placement;

b. a document which identifies the child, his birth date, birthplace, and his parentage; and

c. legal documents which demonstrate that the child has been properly released for adoption.

5. Local social service agencies, other than Hennepin, Ramsey, and St. Louis counties, shall route correspondence directed to out-of-state agencies through the state agency's adoption unit.

G. Legalization of the adoptive placement.

1. The commissioner or an authorized child-placing agency

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shall initiate the process of legalizing adoptive placements of agency-placed children by sending the petitioner, or his attorney, such nonidentifying information as is needed for completion of the adoption petition.

2. When an adoption petition which fails to meet the filing requirements of Minnesota Statutes, section 259.22, subdivisions 2 and 3 is nevertheless filed in a court of competent jurisdiction, the commissioner shall recommend to the court dismissal of that petition.

3. The final report and recommendation on a properly filed petition of an investigation by the commissioner or an authorized child-placing agency shall be made to the court within the 90-day time period.

a. The report and recommendation to the court on the form prescribed by the commissioner shall verify the allegations in the petition, determine whether the child is a proper subject for adoption, and ascertain the suitability of the proposed family and child to each other. When the child's placement was arranged through the agency, the report shall also include a statement on how the agency applied the order of placement preference in C.2. in selecting the adoptive family. On intercounty adoptions, the order of placement preference is deemed to have occurred when the appropriate authority in the child's country of birth approved the placement of the child abroad.

b. The commissioner or an authorized child-placing agency shall request a continuance of the court when the investigation cannot be completed in the 90-day time period.

c. A copy of all requests for continuances must be filed with the state agency's adoption unit, the servicing agency, and the petitioner's attorney.

H. Postadoption services.

1. Authorized child-placing agencies shall provide reasonable postadoption assistance and counseling services pursuant to Minnesota Statutes, sections 259.47 and 259.49 to adoptive parents, genetic parents, adult genetic siblings, and

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adopted persons who have reached the age of 19 at their request in a manner which strengthens the adoption contract and complies with Minnesota Statutes, sections 259.27, subdivision 3, 259.31, and 259.47, subdivision 4 and applicable federal regulations on confidentiality and privacy of child welfare and adoption records. The agency shall:

a. prepare general background and health information with the deletion of all identifying information such as names, specific dates, addresses, and locations, to aid the adoptive parents of a minor child or the adopted adult 19 years of age or older in understanding his genetic background and adoption;

b. contact any one of the parties, in a personal and confidential manner;

c. provide the services requested when there is a mutual desire to receive or share information or to have contact;

d. provide services to adult genetic siblings where the agency has determined that:

(1) there is no known violation of confidentiality of a genetic parent who is unknown to the genetic siblings or is deceased; or

(2) the genetic parent has given written consent in order to allow the agency to provide the services requested;

e. provide services to a genetic relative for information or contact upon the written consent of the genetic parent or verification that the genetic parent is deceased;

f. share with the requesting person what options the agency may consider using to locate the other person; and

g. determine the extent and frequency to which the person contacted wishes to share information or have contact whether directly or through the agency.

2. Upon notice from the state agency adoption unit that the adopted adult of the age specified in the statute requests the original birth certificate, authorized child-placing agencies shall locate and notify each genetic parent named on that certificate. The agency shall:

a. make complete and reasonable efforts within six

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months to locate and notify the genetic parent in a personal and confidential contact of the right to file an affidavit with the state registrar and the effects of filing within the time allowed an affidavit of disclosure or nondisclosure, or of filing nothing, on the original birth certificate information; and

b. file through the state agency adoption unit the agency affidavit of notification for the state registrar that each named genetic parent was located and notified, was not located and notified, or was found to be deceased.

3. An authorized child-placing agency shall, as required by Minnesota Statutes, section 259.47, subdivision 1, make a diligent effort to locate and inform genetically related persons of the medical or genetic information the agency has received. If the genetically related person is an adopted minor, the agency shall relay the information to the adoptive parent, subsequent guardian, or conservator. The agency shall make a diligent effort to notify the genetic parents when the agency learns that the adopted person has died.

4. Adopted persons of adult age placed for adoption by an authorized agency on or after August 1, 1982, may, under Minnesota Statutes, section 259.47, subdivision 3, upon reaching adult age, request from the placing agency the name, last known address, birth date, and birthplace of the genetic parents who were identified on the adopted person's original birth certificate. The agency shall:

a. determine that the agency has on file the genetic parent's affidavit attesting to receipt of information in the provisions of Minnesota Statutes, section 259.47, subdivision 3;

b. determine that the genetic parent either has not filed a subsequent affidavit objecting to the release of identifying information or has withdrawn that affidavit;

c. disclose the identifying information to the adopted person when condition a. is met and when the agency has verified that condition b. exists or that the genetic parent is deceased; and

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d. contact the genetic parent if requested by the court upon the adopted person's petition for release of identifying information. The agency shall advise the genetic parent of the opportunity for that genetic parent to present evidence to the court, either directly or through the agency, that nondisclosure of the information is a greater benefit to the genetic parent than disclosure to the adopted person.

5. Authorized child-placing agencies shall provide liaison and skilled counseling services through appropriately trained social workers to the adoptive parents, adopted adults who have reached the age of 19, genetic parents, and adult genetic siblings.

6. Authorized child-placing agencies shall document the postadoption services provided in the agency's adoption service record.

7. Authorized child-placing agencies may require a reasonable expense reimbursement for providing postadoption services.

I. Maintenance of adoption records.

1. The adoption records of authorized child-placing agencies shall contain copies of all relevant legal documents, responsibly collected genetic, medical, and social history, the child's placement record, documentation of the placement preference in C.2., copies of all pertinent agreements or contracts, copies of all reports and recommendations to the court, and copies of all pertinent correspondence and a summary of postadoption services. Nonidentifying information in the agency record may be disclosed to the parties it concerns according to the criteria in C.5.a.(2) and H.1.a. Identifying information may not be disclosed except under Minnesota Statutes, sections 259.31, 259.47, subdivision 3, and 259.49. The agency shall maintain a record of the postadoption services provided under H.1.-7. Disclosure of identifying information within the standards of H.4. does not constitute disclosure of the agency's adoption record.

2. Each adoption record constitutes the permanent record

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upon which all court action is based, agency services are administrated, and the adoptive family unit is identified and established.

3. All adoption records are confidential and permanent. Adoption records must be retained under a protected record system which ensures confidentiality and lasting preservation.

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OFFICE BY:

APPROVED AS TO LEGALITY
October 3, 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT - 4 1984 11:30 A.M.
Joan Anderson Growe
Secretary of State

RECEIVED
JAN 13 1984
ADMINISTRATIVE HEARINGS
DPW Exh. No. 12
File No.
Date

payment must be at least equal to the current post-closure cost estimate, except as provided in F., divided by the number of years in the pay-in period. Subsequent payments must be made as specified in 3.b.

6 MCAR § 4.9411 Liability requirements.

E. Financial test for liability coverage.

8. If the owner or operator no longer meets the requirements of 1., he or she shall obtain insurance for the entire amount of required liability coverage ~~covered~~ as specified in this rule. Evidence of insurance must be submitted to the director within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

Chapter Eight: County Regulation of Hazardous Waste Management

6 MCAR § 4.9560 Agency overview of county hazardous waste programs.

B. County ordinances.

2. The director may suspend a previously approved county ordinance or relevant portion thereof if that ordinance has been modified and is determined by the director to be inconsistent with the state hazardous waste rules. Upon suspension by the director, the matter must be placed on the agenda of the next month's regularly scheduled meeting of the agency board. The agency shall notify the county of its decision to approve, suspend, modify or deny the ordinance.

3. A county having a hazardous waste ordinance approved in writing by the agency, shall revise the county ordinance within 120 days of any agency revision to 6 MCAR §§ 4.9100-4.9560 ~~or the agency's permitting procedures~~. The county revision must embody and be consistent with the agency's revisions to 6 MCAR §§ 4.9100-4.9560 ~~and the agency's permitting procedures~~, and must be submitted to the agency for its review and approval according to the procedure in 1.

Department of Public Welfare
Social Services Bureau
Proposed Amendment of the Department of Public Welfare's Rule Governing Adoption (12 MCAR § 2.200)

A public hearing concerning the above entitled matter will be held in Conference Room A, Fourth Floor Centennial Office Building, 658 Cedar, St. Paul, Minnesota on February 7, 1984 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 presentations 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 George Beck, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota, 55415, telephone 612/341-7601 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 Minnesota Statutes 14.01-14.56, 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 12 MCAR § 2.200 governs the Minnesota Department of Public Welfare adoption program. The goal of the Minnesota adoption program is to ensure for each child, who is free to be legally adopted in the state, a suitable adoptive home and agency services supportive of his integration into the new family.

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

The rule includes definition of terms; provisions for legally freeing a child for adoption; services for children freed for adoption; services to children in independent placements; services to families applying for adoption; provision on interstate and international adoptive placements, and post-adoption services.

Most of the amendments to 12 MCAR § 2.200 are based upon changes in Minnesota Statutes, chapter 259 and federal Public Law 96-272. The amendments are in the areas of the guidelines for the state adoption exchange, post-adoption services, subsidized adoptions, and the rate schedule for subsidized adoptions, and the clarification of standards for foster home adoptions and independent adoptions.

The agency's authority to adopt the proposed rule is contained in Minnesota Statutes, sections 257.05; 259.40, subdivisions 2 and 10; 259.45, subdivision 9; and 259.48.

The passage of the amendments to 12 MCAR § 2.200 will not result in additional spending by local public bodies.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Ruth Weidell, Adoption Director, Department of Public Welfare, Fourth Floor Centennial Office Building, St. Paul, Minnesota 55155, telephone 612/296-3740. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule contact Ruth Weidell.

Note: 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).

Minnesota Statutes, chapter 10A requires each lobbyist to register with the State Ethical Practices Baard within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes 10A.01, subdivision 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.

December 6, 1983

Leonard W. Levine
Commissioner of Public Welfare

Rule as Proposed

12 MCAR § 2.200 Adoption.

A. ~~Introduction~~ Purpose; definitions.

1. Goal of the Minnesota adoption program: to ensure for each child, who is free to be legally adopted in the state, a suitable adoptive home and agency services supportive of his integration into the new family.

2. ~~Definitions~~ The terms used in 12 MCAR § 2.200 have the meanings given them.

a. "Adoptive home~~:~~" means a home approved by an authorized child-placing agency for the purpose of placing a child for adoption.

b. "Authorized child-placing agency~~:~~" means the local social service agency or any agency licensed to place children by the commissioner or by a comparable authority in the state or country in which the agency exists.

c. "Child~~:~~" means an individual under 18 years of age.

d. "Commissioner" means the commissioner of the Department of Public Welfare.

e. "Foster family home~~:~~" means a family home licensed to provide 24-hour-a-day care to children who are unrelated to the family.

~~e.~~ f. "Genetic parent~~:~~" means an individual who is referred to as the child's natural parent, who is named in the child's original birth certificate as a parent, whose claim to genetic parenthood is unchallenged, or whose genetic parenthood is established by a court of competent jurisdiction.

~~f.~~ g. "Independent placement~~:~~" means a proposed or actual nonagency placement of a child by a natural parent or unlicensed third party with persons not related to the child within the third degree.

~~g.~~ h. "Infant~~:~~" means a child under the age of ~~fifteen~~ 15 months.

~~h.~~ i. "Licensed child-placing agency~~:~~" means an agency authorized by the commissioner to place children for foster care or adoption.

~~i.~~ j. "Local social service agency~~:~~" means the local agency under the authority of the county welfare board or human service board responsible for arranging and providing social services to individuals.

k. "Minority race or minority ethnic heritage" means a legacy of common traits and customs that society recognizes as belonging to a part of the population which differs from its predominant culture or characteristics.

~~j.~~ l. "Placing agency~~:~~" means the Minnesota licensed child-placing agency which has guardianship of a child from a Minnesota court or the local social service agency which has financial responsibility for a ward of the commissioner of public welfare. The placing agency retains adoptive planning responsibility for the child even though another agency is supervising.

~~k.~~ m. "Postplacement services~~:~~" means social services provided to the child and the adoptive parents from the time of placement until legal adoption.

~~l.~~ n. "Postadoption services~~:~~" means social services provided after legal adoption to the adoptive parents, genetic parents, or adopted individuals.

~~m.~~ o. "Relative~~:~~" means an individual who is related to a child within the third degree according to the civil table of consanguinity by blood, marriage, or adoption as a parent, stepparent, brother, sister, grandparent, great grandparent, aunt, uncle, niece, or nephew.

~~n.~~ p. "State adoption exchange~~:~~" means the central adoptive home and child registration service operated by the Minnesota Department of Public Welfare's adoption unit for use by authorized child-placing agencies.

~~o.~~ q. "State agency~~:~~" means the commissioner of public welfare or the Minnesota Department of Public Welfare.

~~p.~~ r. "Subsidized adoption~~:~~" means an adoption in which an agreement provides that financial payments shall be made to the adoptive ~~parents(s)~~ parents, subsequent guardian or conservator because of special needs of a child who is certified as eligible for subsidy.

~~q.~~ s. "Suitability study~~:~~" means the preadoptive counseling and subsequent evaluation made by the authorized child-placing agency to determine whether or not the proposed adoptive home can adequately parent and meet the social, educational, and health needs of a particular child.

B. Legally freeing ~~the~~ a child for adoption.

1. ~~The child shall be legally freed for adoption by either a termination of parental rights pursuant to the Juvenile Court Act, or by a voluntary surrender to the Commissioner or to a licensed child-placing agency pursuant to statute.~~

~~a.~~ Before a valid agency adoptive placement may occur, court termination of the parent's rights under Minnesota Statutes, sections 260.221 to 260.241 or a ~~voluntary relinquishment to a~~ an agreement under Minnesota Statutes, section 259.25 which confers authority to place a child for adoption with the commissioner or a licensed child-placing agency must be obtained from any individual recognized by state laws as having parental rights.

a. A local social service agency shall seek to free a child for adoption through court termination of parental rights unless the commissioner states in writing that he will accept the agreement conferring authority to place the child.

b. On all agency adoptive placement plans, the local social service or licensed child-placing agency shall inform the genetic parent, who is identified on the child's birth certificate by birth registration, affidavit, or court order, of the statutory

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conditions under which birth certificate information and certain agency record information may or may not be released. The agency shall assist the genetic parent with the procedures in (1)-(3).

(1) The genetic parent shall sign an affidavit to be filed in the agency record attesting that the genetic parent has been informed of statutory conditions that affect the agency release or nonrelease of identifying information, such as the genetic parent's name, last known address, birth date, and birthplace, to the adopted person after that person reaches adult age as defined in Minnesota Statutes, sections 259.47 to 259.49.

(2) The genetic parent may subsequently choose to file or not file in the agency adoption record an affidavit objecting to the agency release of any or all of the identifying information to the adopted person upon that person reaching adult age as specified in Minnesota Statutes, sections 259.47 to 259.49.

(3) The genetic parent may file an affidavit at any time with the State Registrar of Vital Statistics consenting to or refusing to consent to disclosure of the original birth certificate information to the adopted person after that person reaches adult age as specified in Minnesota Statutes, sections 259.47 to 259.49.

2. All written consents to adoption, executed in a manner prescribed by ~~law, shall~~ Minnesota Statutes, sections 259.24, subdivision 5 and 259.25, must be filed with the court prior to the hearing on the adoption petition.

3. All ~~surrenders~~ agreements with an agency to place a child and consents to adoption ~~(except those given by the commissioner, his agent or a licensed child-placing agency) shall~~ by the child's parent or legal guardian, must be executed before two competent witnesses and an agency representative~~, and shall be filed in court prior to the date of the hearing. However,~~ Consents to an adoption by the child's parent when that parent is either a copetitioner in the adoption proceedings or does not have custody of the child must be executed before two competent witnesses, but need not be executed before an agency representative~~, but only before two competent witnesses~~. All consents by a parent must contain a notice to the parent of the right to revoke the consent for any reason within ten working days of its execution. Consents obtained in another state may be executed according to either Minnesota law or applicable consent laws of the other state.

a. ~~Both~~ The consentor's and the agency representative's ~~signature~~ signatures must each be duly notarized.

b. The two witnesses ~~shall~~ must be 18 years of age or older and of sound mind, and neither ~~shall~~ may be the subscribing notary public.

c. The agency representative ~~shall~~ must be a person qualified to counsel the consenting party on adoption matters.

d. Revocation of a parent's consent must be in writing and must be received by the agency no later than the tenth working day after the consent was executed.

4. Affidavits submitted by individuals who allege or deny parenthood which contain a consent to adoption must be executed according to the requirements ~~set forth~~ in ~~section three, supra~~ 3.

C. Services for children freed for adoption.

1. State photographic adoption exchange. To ensure each child's placement in an adoptive home preferably away from his area of prior residence, the State Adoption Exchange shall be used by all ~~local social service~~ authorized child-placing agencies in accordance with ~~prevailing~~ procedures ~~established by~~ under Minnesota Statutes, section 259.45 and the commissioner. ~~This provision shall not apply to the licensed child-placing agencies, Hennepin, Ramsey, or St. Louis Counties, whose use of the Exchange is optional.~~

a. Each authorized child-placing agency shall register the child on the exchange using the registration form prescribed by the commissioner accompanied by a recent photograph of the child.

b. An authorized child-placing agency seeking to defer registration of the child shall make a written request to the exchange for written approval. The request for deferral must meet one of the conditions in (1)-(6).

(1) The child is placed in an agency adoptive home and legal adoption occurs within two years of placement. The agency's report of the adoptive placement to the state agency shall constitute the basis for deferral.

(2) The child's foster home is being considered and meets the criteria of C.3. A deferral granted for this reason may not exceed 90 days unless the placement status formally becomes an adoptive placement.

(3) The child's prospective adoptive home is being considered. A deferral granted for this reason may not exceed 90 days unless an adoptive placement occurs.

(4) The child is undergoing diagnostic evaluation to aid the agency in adoptive planning. A deferral granted for this reason may not exceed 90 days.

(5) The child is hospitalized and needs continuing daily care which will not permit placement in a family setting. A deferral granted for this reason may not exceed the length of hospitalization.

(6) The child is 14 years of age or older and, after discussion with the agency on permanent placement options, will not consent to an adoption plan. The agency shall then assist the child in executing an affidavit to file with the exchange in which the child states that decision and an awareness that the decision may be changed at any time.

~~a.~~ 2. Special needs. The local ~~social service~~ authorized child-placing agency shall, without undue delay, seek an adoptive home which will meet the child's special needs. Special needs include sibling ties, minority racial or minority ethnic heritage, religious ~~heritages~~ background, and health, social, and educational needs.

~~b. The local social service agency shall make reasonable efforts to provide and preserve the child's heritage by placing the child:~~

~~(1) in an adoptive home of similar background; or~~

~~(2) in an adoptive home which is knowledgeable and appreciative of the child's heritage.~~

a. The placing agency shall follow the order of placement preference and exception guidelines under Laws of Minnesota 1983, chapter 278, section 7, when placing a child of minority race or minority ethnic heritage.

b. The adoptive placement of an Indian child who comes under the Indian Child Welfare Act of 1978, United States Code, title 25, sections 19 et seq., as amended through December 31, 1982, must follow the order of preference as determined by the child's tribe.

c. The placing agency shall document in its record any recruitment efforts it made and any requests or decisions made by the child's parent, the tribe, court, or agency which affects the order of placement preference.

3. Recruitment. As required in Laws of Minnesota 1983, chapter 278, section 11, an agency shall make special efforts to recruit adoptive families from among the child's relatives, if feasible, and families of the same minority racial or minority ethnic heritage. The agency may work with various community and religious organizations, as well as the media, and may accept offers of service and monetary contributions to successfully recruit families for adoption.

~~2.~~ 4. The child's foster home. The local social service agency may consider the foster home in which the child is currently living as a potential adoptive resource for the child.

a. In such cases~~,~~ ~~at least one of~~ the ~~following~~ criteria ~~shall~~ in (1)-(3) apply~~:~~.

(1) The child has special needs ~~(physical and mental health, education or social)~~ as defined in C.2. which the foster family will be able to adequately meet~~.~~, or

~~(2)~~ the child is older than an infant, has lived at least ~~twelve~~ 12 consecutive months in the foster home, and is an integrated member of the foster family.

~~(3)~~ (2) The foster family will be able to accept the child and his background and help the child understand his adoption.

~~(4)~~ (3) The foster family is either the best adoptive resource for the child or is at least comparable to available resources.

b. Except in Hennepin, Ramsey, and St. Louis Counties, a joint decision between the state agency's adoption unit and the local social service agency as to whether the foster home would be a suitable adoptive home for the child ~~shall~~ must be made. The agencies shall base their decision ~~shall be based~~ upon:

(1) the local social service agency's written statement and recommendation to the state agency identifying applicable criteria; and

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(2) the state agency's written response either approving or disapproving the recommendation.

c. [Unchanged.]

~~3.~~ 5. Child placement. The ~~following~~ policies ~~shall~~ in a. and b. govern the local social service agency's ~~child-placing~~ preplacement and postplacement activities~~:~~.

a. Preplacement activities~~:~~ must include those in (1)-(5).

(1) The ~~social worker assigned to the adoptive home~~ adoptive family's agency shall, prior to the child being placed in ~~the~~ an adoptive home, meet with the child's agency in a preplacement conference, obtain written background and health history on the child, and visit the child in his foster home. ~~This~~ The preplacement ~~visit~~ conference may only be waived if the child is under six months of age and is without special needs.

(2) The child's ~~social worker~~ agency shall prepare the child for adoptive placement and provide the adoptive parents with a written ~~genetic~~ nonidentifying background and health history of the child in which all identifying information on the child's relatives has been omitted. The history is to be written in a manner which is understandable and meaningful to the adoptive family.

(3) [Unchanged.]

(4) The adoptive parents shall enter into a written adoptive placement agreement with the commissioner.

(5) During the time the child resides in the adoptive home, the local social service agency is not required to schedule a court dispositional hearing unless the child is either removed from the home or is not legally adopted within two years of the date of placement.

b. Postplacement activities must include (1) and (2).

(1) The agency placing the child shall arrange for and obtain written placement and postplacement reports from the agency supervising the child in the adoptive home.

(2) The supervising agency shall provide postplacement counseling with the adoptive parents in a manner that enables the child and adoptive family to become an integrated family.

~~4.~~ 6. Subsidized adoptions~~:~~ ~~This section provides~~. Subparts a.-h. provide standards for determining a child's eligibility for subsidy and the criteria for establishing the terms of the subsidy agreement subject to the commissioner's approval. Subsidized adoption is based upon the needs of the child who is certified as eligible for subsidy and is available through the commissioner ~~of public welfare~~ for a child under legal guardianship of the commissioner or a licensed child-placing agency. The commissioner may review and verify the facts upon which the child's eligibility is based.

a.-b. [Unchanged.]

c. The placing agency shall certify the child as eligible for subsidy ~~when the following criteria are met:~~. The certification must be in writing and signed by the director of the placing agency or the director's designee. The certification must include the conditions and circumstances upon which the child's eligibility is based, and must be sent to the commissioner. A child is eligible for a subsidy when the child's situation meets the criteria in (1)-(5). When a child is placed into a prospective adoptive home without a subsidy but the need for subsidy becomes evident prior to legal adoption, the child-placing agency shall apply only the criteria in (1), (3), and (5) to determine the child's eligibility.

(1) ~~The~~ To be eligible, a child ~~is~~ must be a Minnesota resident and a ward of the commissioner or a licensed child-placing agency.

(2) The agency shall make an early determination on the availability of a home without subsidy, preferably within two months of the time the child ~~becoming~~ becomes legally available for adoption.

(3) A child ~~shall be~~ is eligible for subsidized adoption by ~~his/her~~ the child's foster parents if the following criteria are met and documented:

(a) The child's foster parents desire to adopt the child; ~~and~~

(b) The agency determines ~~the~~ that adoption by the child's foster parents is in the best interest of the child, according to the criteria ~~established~~ in C. ~~2.,~~ ~~of this rule~~ 4.; and~~,~~

(c) The child's circumstances or characteristics make it difficult for the agency to provide the child ~~a~~ with an adoptive home without a subsidy~~, or~~.

(4) The placing agency has made reasonable efforts without success, including the efforts in (a)-(c), to place the child without subsidy. ~~Such efforts include the following:~~

(a) [Unchanged.]

(b) The agency shall contact Hennepin, Ramsey, and St. Louis Counties and Minnesota-based licensed child-placing agencies to seek potential adoptive homes.

(c) The agency may use photo listing services, adoption exchange services, newsletters, or other special efforts to secure a home.

(5) ~~When the child is placed into a prospective adoptive home without a subsidy but the need for subsidy becomes evident prior to legal adoption, the placing agency shall apply the criteria in C.4.e.(1) and (3) to determine the child's eligibility for subsidy.~~

~~(6) The placing agency shall certify to the commissioner, in writing under its director's or designee's signature, the child's eligibility for subsidy. The statement shall include the conditions or circumstances upon which the child's eligibility is based~~ The agency shall determine the child's eligibility for adoption assistance under Title IV-E of the Social Security Act, United States Code, title I, section 101, as amended through December 31, 1982.

d. When determining the amount of subsidy required to meet the child's needs, the placing agency shall consider the financial resources, social security and veterans benefits, health insurance coverage, medical assistance programs, and other resources, including the adoptive parent's resources which are available or which may be available to the child.

(1) ~~Maintenance: Maintenance payments shall be provided as necessary to ensure the adoption of a child. The placing agency shall refer to DPW Rule 44, 12 MCAR 2.044, to determine the amount of a child's monthly maintenance needs for food, clothing, allowances, supplies and transportation. The total monthly maintenance payments may be less than, equal to or more than the basic rate. Amounts greater than the basic rate shall be set according to the difficulty of care standards and the need for the greater amount shall be documented~~ The placing agency shall document the amount of the child's maintenance needs for food, clothing, and shelter which cannot be met by adoptive parent and other financial resources. The monthly maintenance subsidy payment may be less than or equal to the following maintenance standards:

Age	Monthly Maintenance Subsidy
0-5	$200
6-11	230
12-14	260
15-18	290

The state agency shall biannually review and adjust the maintenance rate schedule.

(2) ~~Medical:~~ The placing agency shall determine the medical, dental, surgical, psychiatric, and psychological expenses, and other related costs necessary for the child's care and well-being. In determining the costs, the placing agency shall identify the child's circumstances or conditions that require subsidy. The placing agency shall document:

(a) ~~document~~ The kind and amount of health insurance or other medical financial resources including eligibility for medical assistance available to meet the needs of the child.

(b) ~~Document~~ The actual or estimated expenses for medical, dental, surgical, psychiatric, psychological, or other related needs of the child ~~which~~ when these are not covered by health insurance ~~and/or~~, medical assistance, or other alternative financial or medical resources.

(3) ~~Special costs:~~ The placing agency shall determine whether the child has additional expenses or other costs not included in (1) and (2) ~~of this section~~ which are necessary for the child's care and well-being. The placing agency shall specify the child's special needs and document the actual or estimated expenses required to meet ~~that need~~ those needs.

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(4) The agency record and the subsidy agreement ~~shall~~ must include all relevant facts upon which subsidy payments are based~~,~~ and the amount and frequency of payments. If the amount and frequency of payments are unknown, estimates and the basis for ~~them shall~~ estimates must be included.

e. The placing agency shall prepare in writing the Subsidized Adoption Agreement clearly setting forth the responsibilities of all the parties and the terms and duration of the agreement.

(1) The agreement shall state the responsibilities of the parties as follows~~:~~.

(a) The adoptive ~~parent(s)~~ parents, or in the event of their death or inability to function as ~~parent(s)~~ parents, the subsequent guardian or conservator, shall agree to:

(i) Submit to the commissioner ~~a written statement each year~~ an annual affidavit within ~~thirty (30)~~ days of the anniversary date of the approved agreement ~~to certify~~ which certifies whether the child remains under their care and the need for subsidy continues to exist. The information in the affidavit may be verified by the commissioner.

(ii) Notify the commissioner in writing within ~~thirty (30)~~ days in the event of a change in the child's status caused by one of the events in (aa)-(dd) and its effect on the expenses covered by the subsidy~~:~~.

(aa) Marriage of the child or a parent.

(bb) The child's absence from the home by court action or for any reason for a period of more than ~~thirty (30)~~ days.

(cc) Death of the child or a parent.

(dd) Legal emancipation of the child.

(iii) Notify the commissioner in writing within ~~thirty (30)~~ days of any change which may affect the duration or amount of the subsidy needed.

(iv) Notify the commissioner in writing within ~~thirty (30)~~ days of a change in address to ensure proper mailing of payments.

(v) Participate in and use health insurance, medical assistance, and financial programs available for the child.

(vi) Notify the commissioner in writing at least~~thirty (30)~~ days before a planned medical or special expense covered in the agreement is incurred to ensure prompt payment after expense statements are submitted to the commissioner.

(vii) Notify the commissioner in writing soon after an emergency of the anticipated cost so that the commissioner may begin to budget for that expense.

(viii) Submit expense statements to the commissioner to receive subsidy payments for ~~incurred~~ costs ~~over and above~~ incurred according to the agreement other than the agreed-upon monthly payments~~, but within the parameters of the agreement~~.

(b) The placing agency shall agree to:

(i) specify in the agreement:

(aa) the terms and duration of the subsidy as defined in ~~C.4.~~d.; and

(bb) the effective date of the agreement, which ~~shall be~~ is the date of legal adoption. When the child's needs cannot be met by state and federal programs or other available resources prior to legal adoption, the commissioner shall establish an earlier effective date between the child's placement in the adoptive home and legal adoption~~.~~;

(ii) assist the adoptive ~~parent(s)~~ parents, subsequent guardian, or conservator in the review or modification of the agreement~~.~~; and

(iii) assist the commissioner in the review or modification of the agreement.

(c) The commissioner shall agree to make ~~financial~~ the payments in (i)-(iii) to the adoptive ~~parent(s)~~ parents, subsequent guardian, or conservator~~, as follows:~~. Payments may be terminated at the written request of the adoptive parents, subsequent guardian, or conservator.

(i) Payments for adoptive placement or legal decree of adoption, regardless of the domicile or residence of the adoptive ~~parent(s)~~ parents, subsequent guardian, or conservator at or after the time of application ~~for adoptive placement, legal decree of adoption, or thereafter.~~;

(ii) Monthly payments for the agreed upon maintenance costs and other regular costs ~~as specified in the agreement.~~;

(iii) Payments based upon the expense statements received from the adoptive ~~parent(s)~~ parents, subsequent guardian, or conservator for the child's medical or special expenses ~~which are within the parameters of~~ according to the agreement.

~~(iv) Payments may be terminated at the written request of the adoptive parents, subsequent guardian or conservator.~~

(2) When the terms and duration of the subsidy are agreed upon by the parties, the placing agency shall:

(a) prepare six written copies of the agreement~~.~~;

(b) ~~insure~~ ensure that all copies are signed by the adoptive ~~parent(s)~~ parents and the placing agency director or designee~~.~~; and

(c) submit all copies to the State Adoption Unit for the commissioner's approval.

(3) Upon the commissioner's approval, copies of the agreement shall be distributed to the adoptive ~~parent(s)~~ parents and the placing agency. The state agency shall establish an account to reimburse the adoptive ~~parent(s)~~ parents, subsequent guardian, or conservator upon the effective date of the agreement or, in instances when monthly payments are made, the month beginning closest to the effective date.

(4) The subsidy agreement shall continue in accordance with its terms as long as the need for subsidy continues and the child remains the legal dependent of the adoptive ~~parent(s)~~ parents, subsequent guardian, or conservator.

(5) [Unchanged.]

(6) The adoptive ~~parent(s)~~ parents, subsequent guardian, or conservator may request modification or termination of the agreement at any time by a written contact with the placing agency or the commissioner.

(7) The adoptive parents, subsequent guardian, or conservator have the right to appeal to the commissioner pursuant to Minnesota Statutes, section 256.045, when the commissioner denies, discontinues, or modifies the agreement. The appeal ~~shall~~ must be initiated by a written request to the commissioner within ~~thirty (30)~~ days after receiving written notice of the action or decision from the commissioner or within ~~ninety (90)~~ days if the ~~parent(s)~~ parents show good cause why the request was not submitted within the ~~thirty (30)~~-day time limit.

f. Subsidy payments received according to the terms of the agreement~~,~~ ~~shall~~ do not affect eligibility for any other financial payments ~~(i.e.,~~. These other financial payments include social security, veterans, or other benefits~~)~~, to which a person may otherwise be entitled.

g. The placing agency shall receive a reimbursement from the commissioner ~~equal~~ to the extent appropriations are available up to 100% percent of the reasonable and appropriate cost of providing or purchasing adoption services for a child certified as eligible for a subsidy, including, when necessary, adoptive family recruitment, counseling, special training, and legal fees for finalization. The criteria for reimbursement are:

(1) The child meets the certification requirements of ~~C.4.c~~.

(2) [Unchanged.]

(3) The placing agency has determined that either the partial or full cost of providing or purchasing the adoption services is not reimbursable under other state and federal financial programs.

(4) The placing agency shall submit the proposed purchase of service agreements to the commissioner for approval and for review of anticipated expenses when a purchase of service is used.

(5) [Unchanged.]

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(6) The placing agency shall submit an itemized statement of expenses to the State Adoption Unit for reimbursement prior to June 30 of each fiscal year.

(a) [Unchanged.]

(b) The commissioner shall reimburse the placing agency ~~for~~ to the extent appropriations are available up to 100~~%~~ percent of the expenses that are not reimbursable under other state and federal programs.

h. The commissioner shall work with American Indian child adoption organizations able to be licensed as child-placing agencies. American Indian children, who are protected under the Federal Indian Child Welfare Act of 1978 ~~(25 U.S.C. Section 19 et seq.)~~, United States Code, title 25, sections 19 et seq., as amended through December 31, 1982, and who are certified as eligible for subsidy shall, whenever possible, be served by the tribal governing body, tribal courts, or a licensed Indian child-placing agency.

~~5. Postplacement services. The local social service agency which supervises the child in his adoptive placement is to provide postplacement services.~~

~~a. The local social service agency placing the child shall be responsible for arranging and obtaining written placement and postplacement notes from the agency supervising the adoptive placement.~~

~~6.~~ 7. Termination of adoptive placement.

a. The local social service or licensed child-placing agency supervising the child shall notify the state agency's adoption unit with five ~~(5)~~ working days ~~when~~ that the child's adoptive placement is terminated~~,~~ when one of the following circumstances arise:

(1) [Unchanged.]

(2) The child dies; ~~or~~

(3) The adoptive placement has continued for two ~~(2)~~ years without the formalization of the adoption; or

(4) [Unchanged.]

b. Termination of the adoptive placement by a local social service agency may be made only upon a specific finding of good cause by responsible agency personnel. Good cause exists when the placement is shown to be detrimental to the physical, mental or emotional well-being of the child or the adoptive parents. Prior to seeking the removal of the child from the home, the agency shall:

(1) inform the adoptive parents in writing of the reasons for removal~~.~~; and

(2) in an emergency situation involving danger to the child's health or well-being, request the assistance of the appropriate law enforcement authorities in the immediate removal of the child from the home.

D. Services to children in independent placements.

1. When the local social service agency learns that ~~a parent seeking to place the child desires to place the child with an identified family, the local social service agency shall provide services in evaluating this plan, unless:~~

~~a. The prospective parent is related to the child; or~~

~~b. The natural parent is receiving services with a licensed child placing agency~~ the child's parent or relative seeks to place the child for the purpose of adoption with a person who is an extended family member not defined in A.2.o. as a relative or is personally known to the child's parent, the agency shall:

a. evaluate with the child's parent whether the placement will be in the interest of the child;

b. arrange for a preadoption evaluation of the proposed home when it is needed to determine whether the placement plan is suitable for the child;

c. assist the child's parents in legally freeing the child for adoption; and

d. arrange the adoptive placement according to procedures in C., unless a court of competent jurisdiction has determined that the best interests of the child are served by waiving the requirement of agency placement.

2. When the local social service agency ~~learns~~ is informed by the commissioner that a court of competent jurisdiction has waived the agency placement requirement, whether or not the child is already in the home:

a. the local social service agency shall pursue licensing that home for foster care unless an adoption petition has been properly filed; and

b. the prospective parents shall notify the commissioner of the child's placement within ~~thirty~~ ~~(30)~~ days of that placement unless the commissioner was already involved in the proposed placement.

3. When the local social service agency learns that the ~~natural~~ child's parent ~~and/or~~ or the prospective parent ~~desire to place~~ desires the adoptive placement of the child through the assistance of an unlicensed intermediary, the local social service agency shall take necessary steps, including legal actions, if necessary, to prohibit ~~such~~ ~~a~~ the placement ~~from occurring~~.

4. When the local social service agency learns that the child's parent, legal guardian, prospective parents, or the unlicensed intermediary desire to transport the child into or out of Minnesota for adoptive placement, the local social service agency shall advise the party or parties that ~~such~~ the transportation requires the prior approval and consent of the commissioner.

a. The commissioner shall not give consent to or approval of importation or exportation of the child when a proposed placement was or is being arranged by an unlicensed intermediary even though a court of competent jurisdiction may waive the requirements of agency placement.

b. Applications for importation or exportation of a child must be made by the ~~natural~~ child's parent or legal guardian according to the statutory provisions of both the sending and the receiving states.

5. When the local social service agency learns that a child is residing in a nonrelative home for the purpose of adoption, it shall carry out the duties of the commissioner and provide all appropriate child protection services prescribed in the Public Welfare Licensing Act under Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2, child-placing under Minnesota Statutes, sections 257.03, 257.04, and 257.40, and the Juvenile Court Act under Minnesota Statutes, chapter 260.

a. Local social service agency actions ~~may~~ include~~,~~ ~~but are not limited to~~:

(1) ~~licensing current home or placing the child into a licensed foster home~~ ensuring that the child is returned to a responsible person or agency in the state of origin when the child was imported into Minnesota in violation of statutes;

(2) obtaining temporary legal custody;

(3) ~~providing services to natural parents in making appropriate permanent plans for the child~~ placing the child into a licensed foster home or licensing the current home;

(4) ~~returning the child to a responsible agency in the state of origin when child was imported into Minnesota in violation of statutes~~ providing services to the child's parents in making appropriate permanent plans for the child.

b. In addition, ~~the local social service agency shall,~~ within ~~thirty~~ ~~(30)~~ days~~,~~ of learning that a child resides in a nonrelative home for the purpose of adoption, the local social service agency shall submit to the state agency a full written report of its investigation of the proposed or actual placement. The report shall include:

(1) names and addresses of ~~natural~~ the child's parents, the child, and the intended home;

(2) the names, addresses, dates, and ~~activity on~~ the activities of all individuals involved in the independent placement plan;

(3) the circumstances surrounding the placement plan; and

(4) any ~~promise or actual payments of money, and amounts of such payments~~ compensation, promise of payment, solicitation, receipt of payment by any person to any person for placing or assisting in the placement of the child.

c.-d. [Unchanged.]

E. Services to families applying for adoption.

1. Each local social service agency shall establish ~~an~~ a written intake policy, including social service fees when applicable, which provides for:

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a. performance of a suitability study upon the receipt of a properly filed adoption petition;

b. screening of applications received from potential adoptive parents for children under state guardianship and other adoptable children who have special needs;

c. supervision of adoptive families moving into Minnesota when so requested by the prior state of residence through the state agency's adoption unit; and

d. performance of suitability studies on prospective families when requested by the state agency's adoption unit for out-of-state adoption agencies.

2. Local social service agencies~~, at the minimum,~~ shall consider at a minimum the ~~following~~ basic standards in a., b., and c. when determining the suitability of prospective adoptive ~~homes:~~ parents.

a. The applicant ~~must~~ shall be primarily motivated to meet the child's needs, emotionally mature with healthy interpersonal relationships, in good physical and mental health, and able to adequately support and parent a child in a healthy and emotionally secure environment.

b. The applicant ~~must~~ shall have the capacity to accept and incorporate into his family a child born to other parents and to assist the child in understanding his genetic background and adoption.

c. The applicant, who desires to adopt a child of minority race or minority ethnic heritage, shall demonstrate an understanding and appreciation of the minority heritage and an ability to assist the child with it.

3. The local social service agency is responsible for determining the suitability of adoptive parents whom it has accepted for service.

a. Prospective adoptive ~~homes~~ parents which the local social service agency certifies as suitable for placement of a child shall be registered on the State Adoption Exchange. ~~(~~This requirement is optional for Hennepin, Ramsey, and St. Louis Social Service Agencies.~~)~~

b. Prospective adoptive ~~homes~~ parents deemed unsuitable by the local agency shall be informed in writing of ~~any such~~ that decision. Notification ~~shall~~ must be sent after the agency has counseled with the family on the relevant facts upon which the decision was based.

(1) Prospective adoptive ~~homes~~ parents which the local agency determines are not suitable for an adoptive placement may be further reviewed by that agency, the county welfare or human service board, ~~and/or~~ or the state agency's adoption unit upon the written request of the applicant. ~~Such~~ This review ~~shall be~~ is limited to those factors on which the local agency based its decision.

(2) Grievances arising out of adverse suitability studies are not subject to further administrative review pursuant to Minnesota Statutes, chapter 15, or Minnesota Statutes, section 256.045.

F. Interstate and international adoptive placements.

1. No child ~~shall~~ may be brought into or sent out of ~~the State of~~ Minnesota for adoptive placement into a nonrelative's home unless one of the following conditions is met:

a. The commissioner, as state administrator of the Interstate Compact on the Placement of Children, issues written approval for the importation or exportation pursuant to the requirements of that Compact; or

b. The commissioner has, in non-Compact situations, issued a written consent to importation or exportation of the child, pursuant to applicable state law.

2. The commissioner shall not issue consent or approval for the movement of a child across state lines ~~where~~ if the proposed placement ~~plan~~ is planned or made by an unlicensed third party.

3. The commissioner, upon receipt of all required documentation, shall issue consent or approval for importation when:

a. the foreign country allows the child to be exported for the purpose of adoption in the United States; ~~or~~

b. an authorized child-placing agency in the sending state has ~~custody of~~ adoptive planning rights to the child and requests the importation into Minnesota; or

c. a family plans to move to Minnesota and has a child placed with them according to the laws of the other state or country.

4. The documents required for the commissioner's consent and approval are:

a. an authorized child-placing agency's written confirmation that the family is approved for adoptive placement;

b. a document which identifies the child, his birth date, birthplace, and his parentage; and

c. legal documents which demonstrate that the child has been properly released for adoption.

5. Local social service agencies ~~(~~, other than Hennepin, Ramsey, and St. Louis Counties~~)~~, shall route correspondence directed to out-of-state agencies through the state agency's adoption unit.

G. Legalization of the adoptive placement.

1. The commissioner or an authorized child-placing agency shall initiate the process of legalizing adoptive placements of agency-placed children by sending the petitioner, or his attorney, such nonidentifying information as is needed for completion of the adoption petition.

2. When an adoption petition~~,~~ which fails to meet the filing requirements of Minnesota Statutes, section 259.22, subdivisions 2 and 3~~,~~ is nevertheless filed in a court of competent jurisdiction, the commissioner shall recommend to the court dismissal of that petition.

3. The final report and recommendation on a properly filed petition ~~under~~ of an investigation by the commissioner or an authorized child-placing agency shall be made to the court within the ~~ninety (90)~~-day time period.

a. The report and recommendation to the court on the form prescribed by the commissioner shall verify the allegations in the petition, determine whether the child is a proper subject for adoption, and ascertain the suitability of the proposed family and child to each other. When the child's placement was arranged through the agency, the report shall also include a statement on how the agency applied the order of placement preference in C.2. in selecting the adoptive family. On intercounty adoptions, the order of placement preference is deemed to have occurred when the appropriate authority in the child's country of birth approved the placement of the child abroad.

b. The commissioner or an authorized child-placing agency shall request a continuance of the court when the investigation cannot be completed in the ~~ninety (90)~~-day time period.

~~b.~~ c. A copy of all requests for continuances ~~shall~~ must be filed with the state agency's adoption unit, the servicing agency, and the petitioner's attorney.

H. Postadoption services.

1. ~~Post-adoption services shall be provided to adoptive families, adopted adults, and genetic parents~~ Authorized child-placing agencies shall provide reasonable postadoption assistance and counseling services pursuant to Minnesota Statutes, sections 259.47 and 259.49 to adoptive parents, genetic parents, adult genetic siblings, and adopted persons who have reached the age of 19 at their request in a manner which strengthens the adoption contract and ~~which is within the parameters of applicable state law~~ complies with Minnesota Statutes, sections 259.27, subdivision 3, 259.31, and 259.47, subdivision 4 and applicable federal regulations on confidentiality and privacy of child welfare and adoption records. The agency shall:

~~2.~~ a. prepare general background and health information with the deletion of all identifying information such as names, specific dates, addresses, and locations, ~~shall be prepared~~ to aid the adoptive parents of a minor child or the adopted adult 19 years of age or older in understanding his genetic background and adoption;

b. contact any one of the parties, in a personal and confidential manner;

c. provide the services requested when there is a mutual desire to receive or share information or to have contact;

d. provide services to adult genetic siblings where the agency has determined that:

(1) there is no known violation of confidentiality of a genetic parent who is unknown to the genetic siblings or is deceased; or

(2) the genetic parent has given written consent in order to allow the agency to provide the services requested;

e. provide services to a genetic relative for information or contact upon the written consent of the genetic parent or verification that the genetic parent is deceased;

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f. share with the requesting person what options the agency may consider using to locate the other person; and

g. determine the extent and frequency to which the person contacted wishes to share information or have contact whether directly or through the agency.

2. Upon notice from the state agency adoption unit that the adopted adult of the age specified in the statute requests the original birth certificate, authorized child-placing agencies shall locate and notify each genetic parent named on that certificate. The agency shall:

a. make complete and reasonable efforts within six months to locate and notify the genetic parent in a personal and confidential contact of the right to file an affidavit with the state registrar and the effects of filing within the time allowed an affidavit of disclosure or nondisclosure, or of filing nothing, on the original birth certificate information; and

b. file through the state agency adoption unit the agency affidavit of notification for the state registrar that each named genetic parent was located and notified, was not located and notified, or was found to be deceased.

3. An authorized child-placing agency shall, as required by Minnesota Statutes, section 259.47, subdivision 1, make a diligent effort to locate and inform genetically related persons of the medical or genetic information the agency has received. If the genetically related person is an adopted minor, the agency shall relay the information to the adoptive parent, subsequent guardian, or conservator. The agency shall make a diligent effort to notify the genetic parents when the agency learns that the adopted person has died.

4. Adopted persons of adult age placed for adoption by an authorized agency on or after August 1, 1982, may, under Minnesota Statutes, section 259.47, subdivision 3, upon reaching adult age, request from the placing agency the name, last known address, birth date, and birthplace of the genetic parents who were identified on the adopted person's original birth certificate. The agency shall:

a. determine that the agency has on file the genetic parent's affidavit attesting to receipt of information in the provisions of Minnesota Statutes, section 259.47, subdivision 3;

b. determine that the genetic parent either has not filed a subsequent affidavit objecting to the release of identifying information or has withdrawn that affidavit;

c. disclose the identifying information to the adopted person when condition a. is met and when the agency has verified that condition b. exists or that the genetic parent is deceased; and

d. contact the genetic parent if requested by the court upon the adopted person's petition for release of identifying information. The agency shall advise the genetic parent of the opportunity for that genetic parent to present evidence in the court, either directly or through the agency, that nondisclosure of the information is a greater benefit to the genetic parent than disclosure to the adopted person.

~~3. Local social service~~ 5. Authorized child-placing agencies shall provide liaison and skilled counseling services through appropriately trained social workers to the adoptive parents, adopted ~~adult~~ adults who have reached the age of 19, genetic parents, ~~and/or~~ and adult genetic siblings ~~where there exists a mutual desire to arrange contact and there exist no known factors prohibiting such contact~~.

~~4. Local social service~~ 6. Authorized child-placing agencies shall ~~maintain a record of all such~~ document the postadoption services provided in ~~each individual's~~ the agency's adoption service record.

7. Authorized child-placing agencies may require a reasonable expense reimbursement for providing postadoption services.

I. Maintenance of adoption records.

1. ~~Content: Each child's~~ The adoption ~~record~~ records of authorized child-placing agencies shall contain copies of all relevant legal documents, responsibly collected genetic, medical, and social history, the child's placement record, documentation of the placement preference in C.2., copies of all pertinent agreements or contracts, copies of all reports and recommendations to the court, and copies of all pertinent correspondence and a summary of postadoption services. Nonidentifying information in the agency record may be disclosed to the parties it concerns according to the criteria in C.5.a.(2) and H.1.a. Identifying information may not be disclosed except under Minnesota Statutes, sections 259.31, 259.47, subdivision 3, and 259.49. The agency shall maintain a record of the postadoption services provided under H.1.-7. Disclosure of identifying information within the standards of H.4. does not constitute disclosure of the agency's adoption record.

2. ~~Use:~~ Each adoption record ~~shall constitute~~ constitutes the permanent record upon which all court action is based, agency services are administrated, and the adoptive family unit is identified and established.

3. All adoption records are confidential and permanent. Adoption records must be retained under a protected record system which ensures confidentiality and lasting preservation.

Department of Transportation

Proposed Adoption, Amendment and Repeal of Rules Governing State-Aid Operations Under Minnesota Statutes Chapters 161 and 162.

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Commissioner of Transportation intends to adopt—without a public hearing—newly proposed rules, as well as amendments to, or repeal of, existing rules of the Department of Transportation which create a county state-aid highway system (C.S.A.H.) and a municipal state-aid street system (M.S.A.S.), within cities having a population of 5,000 or more; which are to be established, located, constructed, reconstructed, improved, and maintained as public highways. In addition, the Commissioner proposes to adopt a formula to distribute town road funds from the account in the county state-aid highway fund which would be used if a county does not adopt its own.

The Department of Transportation has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 14.21 to 14.82 (1982).

The proposed rules are authorized by Minn. Stat. §§ 161.082, 161.083, 162.02, and 162.09; as well as Laws of Minnesota 1983, chapter 17. The proposed rules, if adopted, would:

1. Simplify the procedure whereby cities and counties designate M.S.A.S. and C.S.A.H. routes,
2. reduce the minimum urban state-aid street widths for certain routes to 44 feet, curb to curb,
3. answer publicly expressed interest on:
   a. standards for bridge replacement, generally.
   b. standards for town bridge replacements, specifically.
   c. construction standards, including—
      a. width changes for city streets,
      b. design changes for city street and rural county state-aid highway projects.
   d. a variety of related administrative and financial practices of the Minnesota Department of Transportation.

The Department of Transportation has prepared a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules, and identifies that data and information relied upon by Mn/DOT to support the rule. Copies of the statement of need and reasonableness and of the proposed rules are available and may be obtained by contacting:

Gordon M. Fay
State-Aid Engineer
Office of State-Aid
Technical Services Division - 420
Minnesota Department of Transportation
St. Paul, Minnesota 55155
(Telephone: 612-296-9872).

Interested persons have 30 days, until February 6, 1984, to submit comments on the proposed rules. The proposed rules may be modified if the data and views submitted to the Department warrant modification and the modification does not result in a substantial change in the proposed rule.

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.

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption
of Rules of the State of Minnesota
Governing Adoption (12 MCAR 2.200)

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner George A. Beck on the 7th day of February, 1984 at 9 a.m. in Conference Room A, 4th Floor, Centennial Office Building, St. Paul, Minnesota, after proper notice required by Minnesota Statutes, section 14.22 was served upon all persons, associations, and other interested groups registered with the State Department of Human Services for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, having heard all the testimony, considering all of the evidence addressed upon the records, files, and proceedings herein, and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Adoption, 12 MCAR 2.200 are adopted this 30 day of August, 1984, pursuant to authority vested in me by Minnesota Statutes, section 14.22

STATE OF MINNESOTA



COMMISSIONER OF HUMAN SERVICES

DW/04

DPW Exh. No. 10 RECEIVED
File No.
Date JAN 13 1984
ADMINISTRATIVE HEARINGS

—Acquiring and extending trunk sewer lines for interceptors in the cities of New Brighton and Mendota Heights.

—Providing a forcemain relief system from the Lake Virginia Lift Station to the Purgatory Creek Interceptor rather than construct the Lake Ann Interceptor.

The following is a tentative schedule for reviewing the proposed amendments:

Nov. 4, 1982 The Physical Development Committee of the Metropolitan Council and the Metropolitan Council adopt the proposed amendments for public hearings.

Jan. 6, 1983 Public hearing on the proposed amendments. Physical Development Committee.

Jan. 20, 1983 Hearing record closes.

Feb. 3, 1983 The Physical Development Committee reviews final hearing report and adopts final amendments.

Feb. 10, 1983 Metropolitan Council adopts final amendments.

This schedule is tentative and subject to change. A subsequent notice of the public hearing will be published. If you have any questions regarding the schedule or the plan, call John Harrington, the council's water pollution program manager, at 291-6324.

Minnesota State Agricultural Society Minnesota State Fair

Meeting Notice

The board of managers of the Minnesota State Agricultural Society, governing body of the Minnesota State Fair, will conduct a business meeting at 10 a.m. Friday Nov. 12 at the Administration Building on the fairgrounds, St. Paul. Preceding the general meeting will be a meeting of the board's space rental committee at 9 a.m.

State Board of Investment Investment Advisory Council

Notice of Regular Meeting

The State Board of Investment will meet on Wednesday, November 10, 1982 at 10:30 a.m. in the Governor's Reception Room, State Capitol, Saint Paul.

The Investment Advisory Council will meet at 7:30 a.m. on Wednesday, November 10, 1982 in the MEA Building Conference Room, at 41 Sherburne, Saint Paul.

Department of Public Welfare Social Service Bureau

Notice of Intent to Solicit Outside Opinion Concerning Revision of 12 MCAR § 2.200 (DPW Rule 200) Concerning Adoption Services

Notice is hereby given that the Minnesota Department of Public Welfare is considering a revision of 12 MCAR § 2.200 (DPW Rule 200). This rule governs administration of adoption services in Minnesota to include legally freeing the child for adoption; the state adoption exchange; pre-placement, post-placement and post-adoption services; subsidized adoptions; interstate and intercounty adoptions; and legal finalization of adoptive placements. The statutory authorities for the rule are found in P.L. 96-272, Minn. Stat. §§ 257 and 259.

All interested or affected persons or groups are requested to participate. Statements of information or comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Ruth Weidell, Supervisor
Adoption Unit
Department of Public Welfare
Centennial Office Building
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-3740.

All statements of information and comment must be received by December 10, 1982. Any written material received by the department shall become part of the hearing record.

Water Planning Board

Notice of Meeting of the Water Planning Board

Notice is hereby given that the Water Planning Board will hold a meeting on Wednesday, November 10, 1982 in the Department of Natural Resources third floor conference room in the Centennial Building, 658 Cedar Street, St. Paul at 10:00 a.m. An agenda for the meeting may be obtained one week prior to the meeting by contacting the undersigned at 600 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota 55101.

Thomas Kalitowski, Chairman
Water Planning Board

CHILDREN'S HOME SOCIETY OF MINNESOTA
Lloyd Brandt, *President* Roger W. Toogood, *Executive Director*

January 5, 1983

Ms. Ruth Weidell, Supervisor
Adoption Unit
Department of Public Welfare
Centennial Office Building
St. Paul, Minnesota 55155

Dear Ruth:

RE: Revision of 12 MCAR 2.200 (DPW Rule 200)
on Adoption Services

In response to the Informational Bulletin #82-99, I am writing to let you know that the Children's Home Society of Minnesota is interested in receiving a copy of any proposed revisions on DPW Rule 200. We are particularly concerned about the wording on the revisions that will be a result of the Chapter 584 Laws of 1982.

We have received a number of expressed concerns about the implementation of Chapter 584 and the Instructional Bulletin #82-40, which was issued on June 1, 1982. It is our understanding that you will be putting together a written revision of Rule 200, which will be sent to interested people. We would like to receive a copy of the written document. It is also our understanding that once the written, revised document has been prepared, that if more than seven people request a hearing, there will be the opportunity for input.

We appreciate your consideration of our interest and clarification if our understanding is not correct.

Cordially,

Roger W. Toogood, ACSW
Executive Director

RWT:bbc
cc: Marietta Spencer, Post-Legal Adoption Program Director
Tom Regan, Adoption Program Director
Mary Abbett, Adoption Program Supervisor
Jane Bose, Pregnancy Counseling Program Director
June Wheeler, Foster Care Program Director

JAN 1983 RECEIVED SOCIAL SERVICES

SF-00006-03

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT of Public Welfare

TO: Carol Bethmers

DATE: 5-6-83

FROM: Ruth Weidell, Supervisor
Adoption Unit

PHONE: 612/296-3740

SUBJECT: Proposed DPW Rule 200, Adoption, Provisions on Minority Placement and Recruitment

Attached are proposed changes in the adoption rule relating to children of minority heritage. These proposals are in response to the expected enactment of the minority foster care and adoption bill.

Please review the language I have drafted. While these statements conform to the provisions in the bill, I have attempted to define "minority race or minority ethnic heritage. Any suggestions for improving the definition are welcomed.

May I have your comments as soon as possible and no later than May 20, 1983.

EW-25

Attachment

5/6/83

Definition is excellent!

Questioned wording on p 2 last paragraph a., first complete sentence – it didn't hang together for me.

* Comma in wrong place. Should be after "verified"

May 20, 1983

Ms. Ruth Weidell, Supervisor
Adoption Unit
Minnesota Department of Public Welfare
Centennial Building
St. Paul, Minnesota 55101

Dear Ms. Weidell:

I write as a member of the Legislative and Rules Committee of the Minnesota Foster Parents' Association in connection with the proposed revisions of Rule 200, Adoption. You have previously corresponded with Orv Peterson, chair of our committee. I have been assigned as liaison with your department on Rule 200.

The Minnesota Foster Parents' Association is squarely behind the adoption program, and the permanence that it offers to children. We have carefully reviewed the materials you have provided relative to the revision of Rule 200, and generally support the Rule in its proposed revision.

We do, however, have serious reservations concerning the provisions regarding the monthly maintenance subsidy:

1. In the Statement of Need and Reasonableness, the rationale is put forth that subsidized adoption rates should not be maintained equal to those of foster care because costs of daily supervision and reasonable travel to the child's home for visitation which is normally allowed for in foster care maintenance do not apply. We assert that this is an invalid rationale in that the children moving from foster care to subsidized adoption have typically been wards of the state, with parental rights and visitation privileges terminated. The differential in cost of care due to costs of travel to home visits simply does not exist.

2. We understand that Rule 44, under which foster care rates have previously been set, is no longer applicable. However, when Rule 204 is finally put in place, the rate structure included in it will have been structured with substantial research and careful analysis of the actual costs of caring for children. (From time to time the assertion is made that foster care is a business, and that people participate in it out of a profit motive. Anyone who would enter into foster care for those reasons would be ill-advised. Use of USDA figures or any other established index on child-rearing costs would support the granting of much higher fees before even a "break even" point

would be reached. We have, of course, just successfully made that point with the Internal Revenue Service.) The costs of raising a child do not decrease as a result of adopting a child. In fact, they may well increase as the shared responsibility for medical care, loss of school lunch grants, and the automatic cut-off of subsidy at age 18 occurs. Savings obviously accrue to the State as a result of these provisions.

It seems most reasonable to us, then, that the monthly maintenance subsidy be tied to the schedule adopted for Rule 204. In addition to taking advantage of the work being done in the establishment of the Rule 204 schedule, the review conducted periodically to adjust rates for 204 should be applied directly to revision of the Rule 200 schedule.

3. As foster parents around the state are being encouraged to adopt their placed children, the subsidized adoption program is typically being represented to them as one which will provide the same rate of subsidy and difficulty-of-care as is being provided under foster care agreements. To keep faith with these prospective adoptive parents, it is essential that this commitment be honored.

Our understanding is that difficulty-of-care schedules will be tied to those now applied to foster care placements. We endorse this, and encourage that, as these rates are up-graded for foster care, they will likewise be up-graded in the subsidized adoption agreements. In many cases, the costs of caring for these children in foster care or subsidized adoptive homes is a substantial bargain for the State, when compared with costs of placing these same children in institutional settings. It is imperative that the substantial expenses incurred by families caring for handicapped or otherwise difficult children be adequately reimbursed.

We are eager to dialog with you further as the revision process continues. Thank you for your diligent work in the interest of children and families.

Sincerely,

Thomas J. Johnson

Thomas J. Johnson (home, 786-6359; office, 638-6287)
Legislative and Rules Committee
Minnesota Foster Parents Association
8025 Red Oak Drive
Minneapolis, Minnesota 55432

cc: Orville Peterson
Ralph Willenbring

DPW Exh. No. 1

File No. Date

RECEIVED
DEC 13 1983
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Amendment of the Department of Public Welfare's Rule Governing Adoption (12 MCAR § 2.200)

ORDER FOR HEARING

IT IS ORDERED this 9th day of December, 1983, that a public hearing on the proposed rules captioned above be held in Conference Room A, Fourth Floor Centennial Office Building, 658 Cedar, St. Paul, Minnesota on February 7, 1984, 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

EW-05

DPW Exh. No. 5
File No.
Date

RECEIVED
JAN 13 1984
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Amendment
of the Department of Public Welfare's
Rule Governing Adoption (12 MCAR § 2.200)

NOTICE OF HEARING

A public hearing concerning the above entitled matter will be held in Conference Room A, Fourth Floor Centennial Office Building, 658 Cedar, St. Paul, Minnesota on February 7, 1984 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 George Beck, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota, 55415, telephone 612/341-7601 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 Minnesota Statutes 14.01-14.56, 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 12 MCAR § 2.200 governs the Minnesota Department of Public Welfare adoption program. The goal of the Minnesota adoption program is to ensure for each child, who is free to be legally adopted in the state, a suitable adoptive home and agency services supportive of his integration into the new family.

The rule includes definition of terms; provisions for legally freeing a child for adoption; services for children freed for adoption; services to children in independent placements; services to families applying for adoption; provision on interstate and international adoptive placements, and post-adoption services.

Most of the amendments to 12 MCAR § 2.200 are based upon changes in Minnesota Statutes, chapter 259 and federal Public Law 96-272. The amendments are in the areas of the guidelines for the state adoption exchange, post-adoption services, subsidized adoptions, and the rate schedule for subsidized adoptions, and the clarification of standards for foster home adoptions and independent adoptions.

The agency's authority to adopt the proposed rule is contained in Minnesota Statutes, sections 257.05; 259.40, subdivisions 2 and 10; 259.45, subdivision 9; and 259.48.

The passage of the amendments to 12 MCAR § 2.200 will not result in additional spending by local public bodies.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Ruth Weidell, Adoption Director, Department of Public Welfare, Fourth Floor Centennial Office Building, St. Paul, Minnesota 55155, telephone 612/296-3740. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule contact Ruth Weidell.

Note: 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).

Minnesota Statutes, chapter 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 Minnesota Statutes 10A.01, subdivision 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: December 6, 1983



LEONARD W. LEVINE
Commissioner of Public Welfare

EW-06

DPW Exh. No. 7
File No.
Date

RECEIVED
JAN 13 1984
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENT OF THE DEPARTMENT OF PUBLIC WELFARE'S RULE GOVERNING ADOPTION (12 MCAR §2.200)

AFFIDAVIT OF MAILING

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

That on the 3rd day of January, 1984, 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 3 day of January, 1984.

Margaret Holt

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

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

RECEIVED
JAN 13 1984
ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Amendment
of the Department of Public Welfare's
Rule Governing Adoption (12 MCAR § 2.200)

NOTICE OF HEARING

A public hearing concerning the above entitled matter will be held in Conference Room A, Fourth Floor Centennial Office Building, 658 Cedar, St. Paul, Minnesota on February 7, 1984 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 George Beck, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota, 55415, telephone 612/341-7601 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 Minnesota Statutes 14.01-14.56, 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 12 MCAR § 2.200 governs the Minnesota Department of Public Welfare adoption program. The goal of the Minnesota adoption program is to ensure for each child, who is free to be legally adopted in the state, a suitable adoptive home and agency services supportive of his integration into the new family.

The rule includes definition of terms; provisions for legally freeing a child for adoption; services for children freed for adoption; services to children in independent placements; services to families applying for adoption; provision on interstate and international adoptive placements, and post-adoption services.

Most of the amendments to 12 MCAR § 2.200 are based upon changes in Minnesota Statutes, chapter 259 and federal Public Law 96-272. The amendments are in the areas of the guidelines for the state adoption exchange, post-adoption services, subsidized adoptions, and the rate schedule for subsidized adoptions, and the clarification of standards for foster home adoptions and independent adoptions.

The agency's authority to adopt the proposed rule is contained in Minnesota Statutes, sections 257.05; 259.40, subdivisions 2 and 10; 259.45, subdivision 9; and 259.48.

The passage of the amendments to 12 MCAR § 2.200 will not result in additional spending by local public bodies.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Ruth Weidell, Adoption Director, Department of Public Welfare, Fourth Floor Centennial Office Building, St. Paul, Minnesota 55155, telephone 612/296-3740. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule contact Ruth Weidell.

Note: 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).

Minnesota Statutes, chapter 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 Minnesota Statutes 10A.01, subdivision 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: December 6, 1983



LEONARD W. LEVINE
Commissioner of Public Welfare

EW-06

DPW Exh. No. 8
File No.
Date

RECEIVED
JAN 13 1984
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENT OF THE DEPARTMENT OF PUBLIC WELFARE'S RULE GOVERNING ADOPTION (12 MCAR §2.200)

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 3rd day of January, 1984, 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:

Adoption Supervisors - Counties
Lutheran Social Service
Childrens Home Society
Catholic Charities
Individuals Who Requested Notification

Wendy Johnson

Subscribed and sworn to before me
this 3 day of January, 1984.

Margaret Holt

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

RECEIVED
JAN 13 1984
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Amendment
of the Department of Public Welfare's
Rule Governing Adoption (12 MCAR § 2.200)

NOTICE OF HEARING

A public hearing concerning the above entitled matter will be held in Conference Room A, Fourth Floor Centennial Office Building, 658 Cedar, St. Paul, Minnesota on February 7, 1984 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 George Beck, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota, 55415, telephone 612/341-7601 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 Minnesota Statutes 14.01-14.56, 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.

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The rule includes definition of terms; provisions for legally freeing a child for adoption; services for children freed for adoption; services to children in independent placements; services to families applying for adoption; provision on interstate and international adoptive placements, and post-adoption services.

Most of the amendments to 12 MCAR § 2.200 are based upon changes in Minnesota Statutes, chapter 259 and federal Public Law 96-272. The amendments are in the areas of the guidelines for the state adoption exchange, post-adoption services, subsidized adoptions, and the rate schedule for subsidized adoptions, and the clarification of standards for foster home adoptions and independent adoptions.

The agency's authority to adopt the proposed rule is contained in Minnesota Statutes, sections 257.05; 259.40, subdivisions 2 and 10; 259.45, subdivision 9; and 259.48.

The passage of the amendments to 12 MCAR § 2.200 will not result in additional spending by local public bodies.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Ruth Weidell, Adoption Director, Department of Public Welfare, Fourth Floor Centennial Office Building, St. Paul, Minnesota 55155, telephone 612/296-3740. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule contact Ruth Weidell.

Note: 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).

Minnesota Statutes, chapter 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 Minnesota Statutes 10A.01, subdivision 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: December 6, 1983

LEONARD W. LEVINE
Commissioner of Public Welfare

EW-06

D[redacted] Exh. No. 6
File No.
Date

RECEIVED
JAN 13 1984
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENT OF THE DEPARTMENT OF PUBLIC WELFARE'S RULE GOVERNING ADOPTION (12 MCAR §2.200)

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. §14.14 subd. 1, 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 3rd day of January, 1984.

Wendy J. Johnson

DPW-84-019-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed
Amendment of the Department of
Public Welfare's Rule Governing
Adoption (12 MCAR § 2.200)

REPORT OF
THE HEARING EXAMINER

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck on Tuesday, February 7, 1984 at 9:00 a.m. in Conference Room A, 4th Floor, Centennial Office Building, 658 Cedar Street, in the City of St. Paul, Minnesota.

This report is a part of a controversial rule hearing proceeding held pursuant to Minn. Stat. §§ 14.13 through 14.20 to determine whether the agency has fulfilled all relevant substantive and procedural requirements, whether the proposed rules are needed and reasonable, and whether or not the rules, if modified, are substantially different from those originally proposed.

Members of the agency panel appearing at the hearing included: Ruth Weidell, Supervisor, Adoptions Unit, Department of Public Welfare and Dianne Masters, Special Assistant Attorney General representing the Department.

The Commissioner 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. § 14.15, subd. 3 (1982), as amended by Minn. Laws 1983, Ch. 210, § 6, 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 Public Welfare of actions which will correct the defects and the Commissioner may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Commissioner may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Commissioner does not elect to adopt the recommendations, he may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 14.15, subd. 4 (1982), as amended by Minn. Laws 1983, Ch. 210, § 7.

If the Commissioner of Public Welfare 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 Commissoner 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. § 14.16 (1982).

When the Commissioner of Public Welfare 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 December 13, 1983, 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 January 2, 1984, a Notice of Hearing and a copy of the proposed rules were published at 8 State Register 1589.

3. On January 3, 1984, the Department of Public Welfare 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 January 13, 1984, the Department filed the following documents with the Hearing Examiner:

(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 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 7 State Register 684 on November 1, 1982.

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 public comment record remained open through February 27, 1984 for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

6. Pursuant to Minn. Laws 1983, Ch. 210, § 5 the Department had until 4:30 p.m. on March 1, 1984 to submit a statement of agreement with amendments proposed by the public. DPW filed a statement on February 29, 1984 and the record closed on that date.

7. DPW has prepared and filed a fiscal note to show the change in costs due to its proposed revision of the monthly subsidy maintenance payment schedule. (Ex. 13).

Nature of the Proposed Rules

8. This rule hearing proceeding involves amendment of a number of sections of the Department's rule on adoption. The rule on adoption was first adopted in December of 1977. A number of the changes proposed in this proceeding are based upon changes in state or federal statutes which have occurred since 1977. Other changes are also proposed, however. The subsections of the rule which are substantially amended include legally freeing a child for adoption, services for children freed for adoption, which includes the topics of the state photographic adoption exchange, special needs, recruitment, child placement and subsidized adoptions; services to children in independent placements, legalization of the adoptive placement, post adoption services and maintenance of adoption records.

Statutory Authority

9. The Department cites the following statutes as authority for the adoption of the proposed rule amendments: Minn. Stat. §§ 257.05, 259.40 subd. 2 and 10, 259.45 subd. 9, and 259.48. Minn. Stat. § 259.40 subd. 10 authorizes rules to implement the subsidized adoption program. Minn. Stat. § 259.45 subd. 9 authorizes rules necessary to administer the state adoption exchange. Minn. Stat. § 259.48 authorizes rules necessary to administer adoption records and post-adoption services. The Department has demonstrated its statutory authority for the proposed rule amendments.

Notice of the Hearing

10. The Department of Public Welfare mailed notice of the hearing in this matter to everyone on its rule hearing notice list. Additionally, they mailed notice of the hearing to the Lutheran Social Service, The Children's Home Society, Catholic Charities, the adoption supervisors in individual counties and other unnamed individuals who requested notification. (Exh. 8). The notice and the proposed rules were also published in the State Register. One of the speakers at the hearing, Pastor James Salmons, questioned the adequacy of the notice. He specifically complained that parents involved in the subsidized adoption program were not given notice. He also questioned why the

county ARC's were not notified. Pastor Salmons also stated that when he called the Department he was advised that he didn't need to attend the hearing because the Minnesota Foster Parents Association would be providing testimony. Although the Department complied with Chapter 14, it appears that wider notice to parents in the subsidized adoption program would have been appropriate.

Analysis of Proposed Amendments

11. The subsequent findings discuss only those proposed amendments which were the subject of comment in this rulemaking proceeding. Except as hereinafter specifically noted, the proposed amendments have been shown to be needed and reasonable and in compliance with substantive law.

Section 2.200A -- Purpose; Definitions

12. Section 2.200A.2.f. and g. define "genetic parent" and "independent placement". Both definitions use the term "natural parent". Karen Karls suggested replacing the word "natural" since it implies that the adoptive parent is then "unnatural". (Ex. A). DPW agreed to change the phrase "natural parent" to "birth parent" in § 2.200A.2.f. and to delete the word "natural" from A.2.g. As modified, the two subdivisions are needed and reasonable. The modification does not constitute a substantial change.

changed p.1

13. Section 2.200A.2.1 defines "placing agency". The Children's Home Society of Minnesota asked that this definition be amended to include "any other agency licensed to place children by the Commissioner". The Children's Home Society seeks to eliminate the necessity of a purchase of service contract between a county and a voluntary agency. (Ex. J). Joe Kroll of the Citizens Coalition on Permanence for Children suggested changing the phrase to be defined to "supervising agency" to allow private adoption agencies to place children with special needs and request direct reimbursement from the state for placement related costs. (Ex. L, p. 4). DPW responded in its final comments (Ex 15) by proposing to modify the definition so that it would read as follows:

> 1. "Placing Agency" means the Minnesota licensed child placing agency which has guardianship of a child from a Minnesota court or the local social service agency which has financial and adoptive planning responsibility for a ward of the commissioner. A placing agency may also include a supervising agency which is providing adoptive planning services for the child.

As modified, the definition is needed and reasonable. The modification is not a substantial change.

so modified p.2

14. DPW also suggested in its post-hearing comments that the word "payments" contained in the definition of "subsidized adoption" at 2.200A.2.r. be changed to the word "assistance". (Ex. 15). The change is not substantial and results in a needed and reasonable definition.

so changed p.3

Section 2.200C -- Services for Children Freed for Adoption

15. Section 2.200C.1.b (6) sets a condition for deferral of registration of a child on the state photographic adoption exchange when the child is 14 years of age or older. At the hearing, Joe Kroll suggested that DPW could strengthen this provision since counselling for such children is now limited. In response, DPW suggested that the word "discussion" in the subsection be replaced by the word "counselling". (Ex. 15). So modified, the subsection is needed and reasonable. The change is not a substantial one.

So replaced p. 6

16. Section 2.200C.5. deals with child placement. Subsection C.5.a.(5) provides that the social service agency is not required to schedule a court dispositional hearing during the first two years of placement in an adoptive home. Joe Kroll was concerned that the rule as proposed might be construed to allow agencies to suspend periodic administrative reviews during the 2-year period. (Ex. L, p. 1). DPW suggested inserting the phrase "shall continue administrative reviews but" after the word "agency" on line 34 of page 8 of the proposed rules. As modified, the proposed subsection is needed and reasonable. The change is not substantial.

So modified p. 8

17. Section 2.200C.6. deals with subsidized adoptions. Most of the comment in this rule proceeding was directed towards this subdivision. As of July 1, 1982 the subsidized adoption program in Minnesota involved 278 families and 338 children. Approximately 18.7% of families adopting a child request a subsidy of some type. Approximately 6 children are added to the program each month. For the 1983-84 fiscal year the total projected costs of the program are $912,000 of which $227,000 is covered by federal funds. Of the remaining $685,000, $580,000 is budgeted for maintenance, $55,000 for medical and $50,000 for special costs. As of July 1, 1982 the average monthly maintenance payment was $263. DPW estimates that if the 338 children in the program on July 1, 1982 had not been adopted, an additional $489,180 tax dollars would have been spent to take care of the children as state wards. Additional savings accrue because the child is fully or partially covered under the family's hospitalization insurance instead of medical assistance. (Ex. 14).

18. Section 2.200C.6.c.(4) requires the placing agency to make reasonable efforts to place the child without subsidy. Ramsey County suggested that the phrase "or where replacement is not in the child's best interest" be added to line 18, page 10 of the proposed rules. (Ex. G). DPW may consider the comment. The subsection is needed and reasonable as proposed.

19. Section 2.200C.6.d. deals with a determination of the amount of subsidy to be provided for a subsidized adoption. In the first paragraph, DPW proposed to include the phrase "including the adoptive parent's resources which are" as an item to be considered in determining the amount of subsidy. A number of commenters, including The Children's Home Society of Minnesota (Ex. J), Hope International Family Services (Ex. F), Ramsey County (Ex. G), Lutheran Social Services (Ex. I) and the Citizens Coalition (Ex. L), all protested what appeared to be a means test for the adoptive family. They stated that this was not required by either federal or state law and that it was in fact the intent of federal and state law not to focus on the family's income but on the child's needs. In response, DPW agreed to delete this

proposed phrase. (Ex. 15). As modified the first paragraph of § .200C.6.d. is needed and reasonable. The deletion is not a substantial change. deleted p. 10

20. DPW proposes a substantial revision of § 2.200C.6.d.(1) which sets out the mechanism for determining maintenance payments. The existing rule ties determination of the child's monthly maintenance needs to the AFDC rule which was the same method used to determine foster care maintenance before 1983. The proposed amendment establishes a monthly maintenance subsidy in dollars based on the age category of the child. In its statement of need and reasonableness the agency states that the amounts allowable for foster care maintenance cannot be applied to subsidized adoption maintenance because subsidized adoption rates may not be used to cover such costs as daily supervision of the child or reasonable travel expenses to the child's home for visitation, which are included in foster care maintenance payments. (Ex. 9, p. 11). The Department also proposes to delete the reference in subsection d.(1) to difficulty of care standards. DPW proposes to handle the child's special needs now dealt with under the difficulty of care standards under § d.(3) on special costs. (Ex. 9, p. 12).

21. A large number of commenters opposed this change in the determination of maintenance payments and deletion of the difficulty of care standards. The commenters perceived that the new rule would provide a smaller subsidy to adopting parents. They stressed that if subsidized adoption is not available, many of these children would be institutionalized or maintained in long-term foster placement at a much higher cost and a less healthy environment for the children. The following comments were made:

a. The Minnesota Foster Parents Association urged that a payment mechanism similar to the difficulty of care schedule be established to recognize the cost of caring for children with special needs such as handicaps, hyperactivity, emotional/psychological difficulties and trips for therapy or medical services. (Ex. B).

b. Douglas County commented that eliminating difficulty of care payments may also eliminate the possibility of adoption for children with severe disabilities. (Ex. D).

c. Mrs. Leland Dahlin commented that the proposed maintenance rates are inadequate and that uniform difficulty of care rates are necessary because it would be nearly impossible to negotiate individual special costs. She and her husband adopted a multiply-handdicapped child in 1980 but could not have done so without maintenance and difficulty of care provisions. (Ex. E).

e. Ramsey County suggested that existing contracts be grandfathered in should they exceed the rates set out in the proposed amendment. (Ex. G).

f. Another adoptive parent, Barbara C. Jirik, points out that one of her adopted children was previously in institutional placement at a cost of $101 per day. The taxpayers have saved at least $58,500 over the past two years by subsidizing her adoption. Ms. Jirik states that by making subsidized adoption rates lower than foster parent rates, foster parents are put in the difficult position of deciding whether

to lower the family's standard of living by pursuing adoption or maintaining the child in the inpermanence of foster care. She also sees difficulty in applying the concept of special costs. She is concerned that such intangible costs as parenting a child who must be fed each meal, toileted 6 times a day, bathed, dressed and undressed and provided with a home therapy program will be difficult to measure. She also points out that there will be no structure or uniformity in the special cost determination by social workers which now exists under the difficulty of care payments. (Ex. H).

g. An adoptive parent of an emotionally disturbed boy, Jean M. Dehning, commented that special needs children have the right to parents who make a decision to adopt based on what they can give a child and not on whether they can "afford" a child. She stated that prospective parents should not have to weigh what financial situations may develop in the future when deciding whether to adopt a special needs child. (Ex. K).

h. Reverend James Salmons, an adoptive parent of a handicapped child, states that the effect of the rule change is that severely handicapped children will not be adopted. He notes that there are higher expenses for handicapped children like his such as higher transportation costs, a special diet, a higher gas bill due to respiratory problems, and a second car for medical complications.

i. Joe Kroll of the Citizens Coalition states that the proposed changes go well beyond the intent of state and federal law. He points out that Minn. Stat. § 259.40, subd. 1 states that the subsidy payments shall be based on the needs of the child. He supports maintaining the original language of the rule together with the difficulty of care schedule. (Ex. C). Mr. Kroll points out that the federal statute provides that the amount of adoption assistance payment cannot exceed the foster care maintenance payment which would have been paid if the child had been in a foster family home. He suggests that this implies that lower subsidized adoption rates need not be established and that federal law approves of a parallel use of foster family home care rates in determining subsidized adoption payment schedule maximums. (Ex. L, p. 2-3).

22. DPW proposes no modification of these proposed amendments in its post-hearing submission. (Ex. 15). Nor did it offer any further justification or support for the proposed rule during the 20-day comment period. In its statement of need and reasonableness, DPW stated that the monthly maintenance subsidy amounts in the proposed amendment were based upon the maintenance amounts currently being paid for subsidized adoption. DPW then added a 7% cost of living increase twice to compensate for the two years that cost of living increases had been frozen. (Ex. 9, p. 11). DPW did acknowledge in its post-comment period submission that concern had been expressed with regard to a lack of difficulty of care rates or special cost guidelines. It stated that "the Department agrees that a guideline is needed and will develop one. There are no specific guidelines currently available to use." (Ex. 15, p. 2).

23. Mr. Kroll suggested initially in his written comments that the proposed amendment may go beyond the statute and make new law. The Commissioner's statutory authority is as follows:

> 259.40 SUBSIDIZED ADOPTION PROGRAM.
>
> Subdivision 1. Subsidy payments. The commissioner of public welfare may make subsidy payments as he deems necessary to families who adopt a child under state guardianship or a Minnesota resident from a licensed child placing agency after the adoptive placement of the child. The subsidy payments shall be based on the needs of the child.
>
> Subd. 2. Subsidy agreement. The placing agency shall certify a child as eligible for a subsidy according to rules promulgated by the commissioner. When parents are found and approved for placement of a child certified as eligible for a subsidy, and before a final decree of adoption is issued, there must be a written agreement in accordance with the rules promulgated by the commissioner, between the parent or parents entering into the subsidized adoption and the placing agency, clearly setting forth the responsibilities of all parties and the duration and the terms of the subsidy agreement. The agreement shall be subject to the commissioner's approval.
>
> The commissioner shall provide adoption subsidies to the adoptive parent or parents according to the terms of the subsidy agreement. The subsidy may include payment for medical, dental, and surgical expenses, psychiatric and psychological expenses, maintenance costs, and other costs necessary for the child's care and well-being. The anticipated duration of the subsidy shall be specified in the agreement. The amount of the subsidy may in no case exceed that which would be allowable for the child under foster family care.

It is clear that the commissioner has authority to establish a monthly maintenance schedule and to modify that schedule. This would include authority to raise or lower the maintenance payments. The statute requires the commissioner to provide a subsidy for maintenance, medical expenses, and "other costs necessary for the child's care and well-being." While the proposed amendment could not deny any payment for "other costs", since the statute recognizes this a legitimate category, the proposed amendment does not do that. The amendment does change the method of determining those "other costs" by abandoning the difficulty of care standards and relying upon § 200.C.6.d.(3) to determine "additional expenses or other costs" to meet the child's "special needs". The commissioner has statutory authority to modify the method by which these costs are to be met.

24. The second question raised by the public comments is whether the Department has met its obligation to "make an affirmative presentation of

facts establishing the need for and reasonableness of the proposed rule", as required by Minn. Stat. § 14.14 subd. 2, in regard to its modification of the maintenance amounts and the elimination of the difficulty of care schedule. The agency must make the same presentation in support of a change or amendment of an existing rule as for a proposed new rule. The existing rule sets the subsidy payment in the same manner as payments were set for foster care, namely by use of 12 MCAR § 2.044. Additionally, the existing rule permits an amount above the monthly maintenance payment to be set according to difficulty of care standards. There is currently a difficulty of care schedule (Ex. C) which establishes specific payments for different emotional and physical problems. For example, a child who required daily bronchial drainage therapy would be entitled to an additional payment of $6.57 per day. The foster care rule, 12 MCAR § 2.204, was modified in 1983 to contain its own payment schedule (instead of relying upon Rule 44). The adopted rule was published on December 26, 1983 (8 S.R. 1537) and set monthly payment rates of $244 for ages 0-11, $293 for ages 12-14 and $320 for ages 15-18. (See 8 S.R. 191).

25. The agency's statement of Need and Reasonableness explains that new proposed maintenance amounts for subsidized adoption are arrived at by taking the 1982-83 foster care amount and adding 7% twice as a cost of living increase (Ex. 9, p. 11). This results in an increase over the old subsidized adoption rate but is less than that now payable under § 2.204 for foster care. DPW has presented a rational calculation to establish the reasonableness of the proposed rates. It has also presented sufficient facts to establish a reason for a difference between the foster care and subsidized adoption basic rates, namely, differences in costs as to daily supervision and travel expenses. Mr. Kroll points out that in long term foster care, and foster care where parental rights have been terminated, the foster care costs are quite similar to those in a subsidized adoption. It would seem, however, that for most adoptions the costs will be less. It is concluded therefore that DPW has established the need for and reasonableness of the new monthly maintenance subsidy rates.

26. One of the commenters pointed out that if the rates for subsidized adoption are significantly less than those for foster care a disincentive is created for foster parents to adopt. At age 5 the difference between foster care and subsidized adoption is $44 per month; at age 11, $14 per month; at age 14, $33 per month; and at age 18, $30 per month. Whether this is a wise social policy is within the agency's discretion as policymaker. The hearing examiner is limited to determining if the rule is arbitrary and it is not. It is suggested, however, that DPW reexamine whether the rather large differences at some age levels between foster care and subsidized adoption is appropriate policy since it is not required by state or federal law and given the disincentive it establishes.

27. As a part of the revision of this rule subsection, DPW has deleted a reference to allowing an amount above the basic rate to be "set according to the difficulty of care standards". The Department suggests in its Statement of Need that the child's special needs now paid for under the difficulty of care standards "may more clearly be identified and met under d.(3) on special costs." This change produced substantial opposition because it replaces a certain payment schedule for children with disabilities by individual negotiation of "special costs" by social workers without any guidelines. Substantial doubt is therefore created as to what will be covered under

d.(3). Since d.(3) is an existing section and the difficulty of care language is proposed to be deleted, it might even appear to the social worker that no extra payments are intended for a child with handicaps. It seems clear based upon this hearing record that severely handicapped children cannot feasibly be adopted without these added payments. One adoptive parent stated that:

> I speak from experience as a foster parent, biological parent and adoptive parent. We adopted a multiply handicapped son under the subsidized program in 1980. He is paralyzed from the waist down due to spina bifida, has shunted hydrocephalus, dislocated hips, congenital scoliosis, club feet, visual problems, developmental delays, severe food allergies, a urinary diversion and bears the emotional scars of prolonged hospitalization and previous placement with severely retarded children. His IQ has improved dramatically since adoption. The care needs and medical costs are great. Without maintenance and difficulty of care provisions we could not have adopted him. It required giving up my job as well as incurring many other costs. In this case alone the state is saving $840 per year in maintenance and difficulty of care payments. Our insurance covers 80% of his medical bills, which are at least $5,000 per year. ... "(Ex. E; See also Ex. H).

28. This amendment cannot be justified on the grounds of saving tax dollars since institutional and foster care are more expensive. At any rate the payments for difficulty of care are a small portion of the subsidized adoption budget. (See Finding of Fact No. 17.) Mr. Kroll points out that using the same difficulty of care schedule used for foster care is easier to administer and suggests that individual negotiation of costs without standards will not work. The system proposed by DPW will vest a large degree of unguided discretion in the social workers with the placing agency and will not promote uniformity in determination of special costs. DPW did suggest in its post-hearing response that it will develop guidelines for special costs, but stated that no specific guidelines are currently available. (Ex. 15, p.2). Without standards to guide the social workers, determinations may be made in an arbitrary manner and similarly situated families may be treated differently. This does not constitute due process of law [see Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2d Cir. 1968); Historic Green Springs Inc. v. Bergland, 497 F. Supp. 839, 854-855 (E.D. Va. 1980)] and therefore is a violation of a substantive requirement of law.

29. The Department has also failed to produce sufficient facts in this record to justify the need for and reasonableness of this change. The Statement of Need contains only the conclusion that special needs may be more clearly identified under subsection d.(3). The opposite appears to be true, however. No explanation of how local agency staff will implement this change is provided nor are any guidelines similar to the difficulty of care standards available. Adequate and necessary compensation for disabled children, which is available under the old rule, is uncertain under the proposed amendment. Because the proposed amendment is without a rational justification, it is not reasonable within the meaning of Chapter 14. Sterling Secret Service, Inc. v.

Michigan Dept. of State Police, 174 N.W. 2d 298, 304 (Mich. App. 1969); Greenhill v. Bailey, 519 F.2d 5, 10 (8th Cir. 1975); In re Application of Byron M. Hansen, 275 N.W. 2d 790 (Minn. 1978). The agency has also failed to establish a need for the change it proposes.

30. In order to correct these defects, the Department can retain at some point in the rule, and not strike, the following sentence in § 2.200.C.6.d.(1).: "Amounts greater than the basic rate shall be set according to the difficulty of care standards and the need for the greater amount shall be documented." DPW may wish to add language which clarifies that these are the same standards applicable to foster care. Alternatively, DPW could develop standards relating to special costs to be added to d.(3) to guide those who will determine the proper extra monthly payment for disabled children. Such an addition would be subject to a review on the issue of substantial change.

see added language p. 11, 12, 13.

31. The last paragraph of § 2.200C.6.D.(1) provides that DPW will bi-annually review and adjust the maintenance rates schedule. Joe Kroll of the Citizens Coalition noted that foster family care rates are set annually and suggested that a subsidized adoption rate should be set annually also. (Ex. L, p. 3). DPW agreed and suggests that "bi-annually" be replaced by "annually". (Ex. 15). As modified, this paragraph is needed and reasonable. The change is not a substantial one.

✓ p. 10

32. Section 2.200C.6.g deals with reimbursement to the placing agency. The rule requires the placing agency to submit the proposed purchase of service agreements to the commissioner for approval. Lutheran Social Service (Ex. I), Hope International Family Services (Ex. F), and The Children's Home Society (Ex. J) as well as Mr. Kroll commented on this section because under the originally proposed definition of placing agency they would have to enter into a purchase of service agreement with the county welfare department and send them an itemized statement. The county welfare department would then have submitted the bill to DPW. With the agreement by DPW to amend the definition contained at § 2.200A.2.1, this problem should now be solved, and the subsection is needed and reasonable as proposed.

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 DPW has fulfilled the procedural requirements of Minn. Stat. § 14.14, subds. 1, 1a and 2 (1982), as amended by Minn. Laws Ch. 210, § 4 and Ch. 301, § 64, and all other procedural requirements of law or rule.

3. That DPW 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. §§ 14.05, subd. 1, and 14.15, subd. 3, as amended by Minn. Laws 1983, Ch. 210, §§ 6, and 14.50 (i) and (ii) (1982), except as noted at Finding of Fact No. 28.

4. That DPW 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. §§ 14.14, subd. 2 and 14.50 (iii) (1982), except as noted at Finding of Fact No. 29.

5. That the modifications of the proposed rule amendments which were suggested by DPW 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. § 14,15 subd. 3 (1982), as amended by Minn. Laws 1983, Ch. 210, § 6, and 9 MCAR §§ 2.110A and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusions No. 3 and 4 as noted at Finding of Fact No. 30.

7. That due to Conclusions No. 3 and 4, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 14.15, subd. 3 (1982), as amended by Minn. Laws 1983, Ch. 210, § 6.

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 Board 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 foreoing 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: March 19, 1984.



GEORGE A. BECK
State Hearing Examiner

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1 (1982), the agency is required to serve its final decision upon each party and the hearing examiner by first class mail.

Reported: Taped.

DPW-84-019-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Amendment of the Department of Public Welfare's Rule Governing Adoption (12 MCAR § 2.200)

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. § 14.15, subds. 3 and 4 (1982), as amended by Minn. Laws 1983, Ch. 210, §§ 6 and 7, which provide:

> Subd. 3. Finding of substantial change. If the [hearing examiner's] report contains a finding that a rule has been modified in a way which makes it substantially different from that which was originally proposed, or that the agency has not met the requirements of sections 14.13 to 14.18 it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, the chief hearing examiner shall advise the agency and the revisor of statutes of actions which will correct the defects. The agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected.
>
> Subd. 4. Need or reasonableness not established. If the chief hearing examiner determines that the need for or reasonableness of the rule has not been established pursuant to section 14.14, subdivision 2, and if the agency does not elect to follow the suggested actions of the chief 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 adopt the rule until it has received and considered the advice of the commission. However, the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission. Advice of the commission shall not be binding on the agency.

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.

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: March 23, 1984.

DUANE R. HARVES
Chief Hearing Examiner

DPW-84-019-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendment of the Department of Public Welfare's Rule Governing Adoption (12 MCAR § 2.200)

REPORT OF THE CHIEF ADMINISTRATIVE LAW JUDGE

WHEREAS, a hearing was held on February 7, 1984 before George A. Beck, an Administrative Law Judge of the Office of Administrative Hearings, on the above-entitled matter in compliance with the rule-making provisions of Minn. Stat. Ch. 14; and

WHEREAS, the Report of Administrative Law Judge made pursuant to Minn. Stat. § 14.50, was issued to the Department of Human Services (formerly Department of Public Welare) and;

WHEREAS, the Department of Human Services has now determined to adopt the rules; and

WHEREAS, the Department of Human Services has submitted the rules to the Chief Administrative Law Judge for review pursuant to Minn. Stat. §§ 14.16, 14.51, and Minn. Rule 1400.1000, Subp. 1 and 1400.1100; and

WHEREAS, the Chief Administrative Law Judge finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Human Services has cured the defects in the rule as required.

NOW, THEREFORE, upon receipt of this Order, the Department of Human Services has the responsibility of and submitting the rules adopted to the Revisor of Statutes, and to publish in the State Register and file with the Secretary of State if approved by the Revisor of Statutes.

Dated: August 3rd, 1984.

Duane R. Harves

DUANE R. HARVES
Chief Administrative Law Judge

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the matter of the Proposed Adoption of Rules of the State of Minnesota Governing Adoption (12 MCAR 2.200)

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for hearing before Hearing Examiner George A. Beck on the 7th day of February, 1984, at 9 a.m., in Conference Room A, 4th Floor, Centennial Office Building, St. Paul, Minnesota, after proper notice required by Minnesota Statutes, section 14.22 was served upon all persons, associations, and other interested groups registered with the State Department of Human Services for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, having heard all the testimony, having considered all of the evidence addressed upon the records, files, and proceedings herein, I find the following:

That the Findings, Conclusions, and Recommendations of the Hearing Examiner as contained in the March 19, 1984, Report of the Hearing Examiner are hereby adopted and incorporated herein,

The Findings of Fact of the Hearing Examiner are enumerated 1 through 32 in his Report. The Commissioner accepts Findings of Fact 1 through 7 relating to procedural requirements, and 8, 9, and 11 which are substantive to the rule. The Commissioner agrees that they are not substantial in nature, are needed and reasonable, and adopts and incorporates them herein.

The Hearing Examiner's Findings of Fact 12 through 16, 19, 31, and 32 reflect the Hearing Examiner's acceptance of the Department's proposal for change. The Commissioner reaffirms that they do not constitute substantial change and are reasonable and necessary. The Commissioner adopts and incorporates them herein.

The following Hearing Examiner's Findings of Fact presented the following considerations:

1. #17 - presents the Findings facts on the number of children in the subsidized adoption program and the costs involved. The Commissioner finds this to be an informational Finding.

2. #18 - The Hearing Examiner suggested the Commissioner consider adding to the rule language proposed by Ramsey County to clarify placing children considered for subsidy. The Commissioner reviewed the language but did not find that it added further clarity to the existing language. The Commissioner concurs with the Hearing Examiner's finding that the subsection is needed and reasonable as proposed.

3. #20 through #26 - The Hearing Examiner reviewed the Department's proposal for substantial change in deleting reference to 12 MCAR 2.044 foster care maintenance and difficulty of care rates and established a subsidy maintenance rate schedule. The Finding summarized testimony from various persons who expressed objections and concerns that the new rule would provide a smaller subsidy to adopting parents. The persons testifying reqsted that the original language be retained. The Department offered no modification in its post-adoption submission but agreed that guidelines needed to be developed for difficulty of care.

   The question was also raised in testimony whether the Commissioner had exceeded statutory authority in establishing a monthly maintenance schedule and in modifying that schedule. The Hearing Examiner found that the Commissioner has statutory authority to establish a maintenance schedule, raise or lower maintenance payments, and modify the methods by which other costs are to be met.

   Public comment questioned whether the Commissioner had established the need and reasonableness for modifying the maintenance amounts and eliminating reference to the difficulty of care schedule. The Hearing Examiner reviewed the existing rule's provisions referred to Exhibit C on a difficulty of care schedule which is not in rule, and reviewed the Department's statement of Need and Reasonableness for establishing a new maintenance schedule. The Hearing Examiner concluded that the Department has established the need and reasonableness of the new maintenance subsidy rates.

   One commentor had questioned that the new rates in the rule would be significantly less than those in foster care and would be a disincentive to adopt. The Hearing Examiner suggested that the Department reexamine whether large differences in rates between foster care and subsidized adoption would be a disincentive for foster parents to adopt. However, the Hearing Examiner found that the Department was not being arbitrary in establishing the rule.

   The Commissioner accepts the Hearing Examiner's Finding #20 through 26.

The Hearing Examiner in the Findings of Fact identified a defect in the proposed rule and offered suggestions to correct that defect.

1. #28 through #30 - The proposed amendment to delete reference to difficulty of care standards without establishing uniform standards to guide social workers in making determinations of special costs is a violation of a substantive requirement of law. The Hearing Examiner also found that the Department failed to produce sufficient facts to justify the need and reasonableness for the change.

   To correct the defect, the Hearing Examiner suggested that the Department either retain the language, "amounts greater than the base rate shall be set according to the difficulty of care standards and the need for the greater amount shall be documented" or develop standards relating to special costs to be added to the rule. The addition of standards would be subject to review on the issue of substantial change.

The Department would not have been able to reinstate the language suggested by the Hearing Examiner as those standards no longer exist in rule. The Department adopted the Hearing Examiner's alternative recommendation to develop standards. These proposed standards were submitted to Chief Administrative Law Judge on July 26, 1984.

The Department asserted that these proposed standards did not constitute substantial change. The Chief Administrative Law Judge found that the Department had cured the defects in the rule as required and that the final proposed rules are not substantially different from those proposed at the public hearing.

The Commissioner concurs with the Hearing Examiner's Findings and Conclusions and the Report of the Chief Administrative Law Judge. The proposed amendments are adopted and incorporated herein.

STATE OF MINNESOTA



COMMISSIONER OF HUMAN SERVICES

KM/26

DRW Exh. No. 9
File No. ____
Date ____

RECEIVED
JAN 13 1984
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENT 12 MCAR 2.200 GOVERNING THE ADMINISTRATION OF THE ADOPTION SERVICES

STATEMENT OF NEED AND REASONABLENESS

The Commissioner of Public Welfare has the authority to promulgate rules relating to adoption services pursuant to Minnesota Statutes, sections 257.05; 259.40, subdivision 2 and 10; 259.45, subdivision 9, and 259.48.

The rule on adoption services, 12 MCAR § 2.200, was originally promulgated in December, 1977. Since 1977, there have been a number of changes in state and federal statutes which affect adoption services. In 1980, a change in the state subsidized statutes required that rules on that program be promulgated. As mandated by Minnesota Statutes § 259.40, subdivision 10, that portion of the rule governing the administration of subsidized adoptions was amended. The current proposed amendments to 12 MCAR § 2.200 are based on revisions in state and federal statutes since 1977 which occur in Minnesota Statutes, chapter 259 and in Title IV-E of the Social Security Act.

The Department of Public Welfare will not be calling upon expert witnesses to give testimony on the provisions in the proposed permanent rule on adoptions.

The Statement of Need and Reasonableness for this proposed rule are presented section by section.

Section A. Purpose; definitions.

Part 1. Part 1 states the goal of the adoption program. The changes in this part are grammatical only and do not change the meaning of the statement.

Part 2. Two definitions are added in Part 2 to define "Commissioner" and to clarify the meaning of "minority race or minority ethnic heritage." All subsequent definitions are relettered. Other revisions are grammatical only and do not alter the meaning of Section A.

Subpart d. This subpart defines "Commissioner" as the Commissioner of the Department of Public Welfare. This is consistent with the definition in Minnesota Statutes, section 259.21, subdivision 5.

Subpart k. Minority race or minority ethnic heritage. This phrase is used but is not defined in statute. A definition in rule is necessary for two reasons: it underscores the intent of the statute to ensure, when possible, a suitable adoptive home of similar racial or ethnic heritage as the child's; and it distinguishes between those racial or ethnic heritages which are recognized by society as predominent and those which are

regarded as minority. The definition is a reasonable and necessary guide for implementing adoption services for children whose special needs are related to racial or ethnic heritages.

Subparts e. through q. of the current rule are assigned new letters as a result of adding new definitions.

Section B. **Legally freeing a child for adoption.**

Part 1. The proposed amendments in Part 1. eliminate repetitious statements, add statutory references where these are pertinent to the content of the rule, and also update the terminology used. These changes are reasonable and are necessary for clarity.

Subpart a. This proposed revision is added to clarify that the preferred method of freeing a child for adoption is through court termination of parental rights pursuant to Minnesota Statutes, section 260.221. An alternative method of freeing a child for adoption, pursuant to Minnesota Statutes, section 259.25, allows a parent to enter into an agreement with the agency, thereby transferring the responsibility of placing the child for adoption to the agency. The agreement with the agency does not legally terminate parental rights until the court grants the adoption petition. At that time, the court assigns to the adoptive parents all the parental rights and responsibilities as though they were the child's natural parents as stated in Minnesota Statutes, section 259.29 regarding the effects of adoption.

In most situations, the local social service agency will determine that the court termination of parental rights provides the best protection of both the child's and the parents' rights. The local social services agency may determine that the agreement with the agency conferring authority to place the child is the preferable alternative to court termination of parental rights. Minnesota Statutes, section 259.25 provides that the Commissioner of Public Welfare may enter into the agreement. The local social service agency, as agent of the Commissioner, must obtain from the Commissioner a written statement indicating the Commissioner's willingness to enter into such an agreement. Subsequently, the local social service agency may assist the parent in executing that agreement.

The requirements in subpart a. are necessary to ensure that the local social service agency pursues freeing the child for adoption through court action but allows the agency to use the agreement in exceptionable circumstances. This standard is reasonable for properly freeing the child for adoption.

Subpart b. Minnesota Statutes, section 259.48 requires the Commissioner of Public Welfare to make rules necessary to administer the release of identifying information pursuant to Minnesota Statutes, sections 259.47 and 259.49.

Effective August 1, 1982, all Minnesota public and licensed child-placing agencies are required to inform genetic parents, who place their children for adoption, about the conditions under which the agency may, in the future, release certain identifying information about them to the child as an adult. Identifying information, as defined in Minnesota Statutes, section 259.47, subdivision 3 (a), is limited to the genetic parent's name, last known address, birthdate, and birth place. The genetic parent may prohibit the release of any or all of this information by filing an affidavit of objection in the agency record any time prior to the child, as an adult, making the request with the agency.

As required by Minnesota Statutes, section 259.47, subdivision 3, the agency must obtain and file in its record an affidavit, signed by each genetic parent, which attests to the fact that the parent has been informed by the agency. The provisions in the affidavit are stated in Minnesota Statutes, section 259.47, subdivision 3 (a) - (f).

Identifying information about genetic parents whose children were placed for adoption prior to August 1, 1982 remains confidential and may only be disclosed by a court order.

Genetic parents also need to be informed about their rights to either consent to or refuse disclosure of identifying information on the original birth certificate. Minnesota Statutes, section 259.49 provides that an adopted person, age 21 years or older, may file a request with the Minnesota Department of Health, Section of Vital Statistics for the information on the original birth certificate. The responsibility for informing the genetic parent of these provisions is assumed by the agency as part of its counseling services. Otherwise, in a court termination of parental rights, the court may delegate that responsibility to the agency. Minnesota Statutes, section 260.241, subdivision 4, requires the court to ascertain that the genetic parent is informed of the provisions in statute concerning original birth certificate information.

The provisions in Subpart b. are necessary and reasonable to insure that child-placing agencies carry out their statutory responsibilities to genetic parents in

providing them with information concerning future release of identifying information in the agency record or on the original birth certificate.

Part 3. The grammatical revisions proposed in Part 3 do not change the meaning of the standard. The proposed change from the term "surrender" to "agreements with an agency to place a child" is consistent with the terminology used in Minnesota Statutes, section 259.25.

A new standard is added in Part 3 which requires that all consents to adoption by the child's parent must also contain a notice of the parent's right to withdraw that consent within 10 working days of its execution. This is a statutory requirement of Minnesota Statutes, section 259.24, subdivision 5. Minnesota public and licensed child-placing agencies are involved in assisting parents to execute written consents to adoption. Consequently, agencies have a responsibility to ensure that these consents to adoption meet the requirements of statutes.

All of the proposed revisions in Part 3 are reasonable and necessary to enable agencies to discharge their responsibilities in assisting the child's parent to execute an informed and properly executed consent to adoption.

Part 4. No substantial changes are made in this part except to eliminate unnecessary words. These revisions do not change the meaning in Part 4.

Section C. Services to children free for adoption.

Part 1. State Adoption Exchange. The state agency adoption unit has operated an exchange for many years through which local social services agencies locate and select suitable adoptive families for children under state guardianship. Minnesota Statutes, section 259.45, subdivision 1, effective August 1, 1979, mandates the operation of a state photographic adoption exchange to be used by all authorized child-placing agencies, whether public or licensed. It requires the registration of all children who are free to be adopted and who do not meet the criteria for deferral from registration on the state exchange. The purposes for operating the exchange are: 1) to ensure prompt registration of children; 2) to facilitate the adoptive placement of waiting children; 3) to increase the visibility of these children; 4) to prevent children from becoming lost in the system; and 5) to account to the public that efforts are being made to find homes for waiting children without undue delay.

Subpart a. This subpart requires the agency to register the child within 60 days of the child's coming under legal guardianship of the Commissioner of Public Welfare

or a licensed child-placing agency. Registration within the 60 days is required by Minnesota Statutes, section 259.45, subdivision 2.

Subpart b. This subpart states the conditions under which a local social services or licensed child-placing agency may request a deferral from registering the child on the state exchange. The state agency adoption unit recognizes two forms, the report of adoptive placement and the adoptive placement agreement, as written requests for deferral. All other requests must be submitted on the requesting agency's letterhead and may be accompanied by supporting documents.

The criteria listed in Subpart b. are based on conditions established in Minnesota Statutes, section 259.45, subdivision 8. The Department of Public Welfare is proposing time limits for each deferral condition. For condition (1) "child is in an adoptive home", the time limit of two years is proposed because the licensing statute, Minnesota Statutes, section 245.791(4), governs the length of time a child may be in placement in an approved adoptive home without licensure. The adoptive placement status may not continue beyond two years without either legal adoption occurring or the home being licensed for foster care. If adoption has not occurred within two years of placement, the permanent placement of the child in the adoptive home must be evaluated as part of the periodic administrative review for a child in foster care, (Social Security Act, Title IV-E, Section 473 and Minnesota Laws of 1983, Chapter 278, section 4.).

The time limits for deferrals in condition (2): the child's potential foster home; condition (3): other prospective homes; and condition (4): diagnostic evaluation, may not exceed 90 days. These time limits are established in Minnesota Statutes, section 259.45, subdivision 8.

The Department is also proposing that the deferral under condition (5): when the child is hospitalized, be limited to the time the child remains hospitalized. Upon discharge from the hospital, the condition for deferral will cease to exist and the agency must then register the child on the State Adoption Exchange.

Deferral under condition (6) is determined by the child who is over the age of 14 years and whose consent to adoption would be required in Minnesota Statutes, section 259.24, subdivision 3. Because the child may not be aware or knowledgeable about the permanent placement options, including adoption, that are available to him,

the proposed rule would require the agency to discuss the options with the child. The child has a right to make an informed decision on whether or not he would consent to being adopted. When the child chooses not to consent to adoption, the agency is to assist him in signing an affidavit attesting to his decision. The affidavit constitutes a deferral from state adoption exchanges registration and documents the child's decision.

All of the requirements proposed in Part 1 are necessary pursuant to Minnesota Statutes 259.45, subdivision 8. They are also reasonable to ensure that children in need of adoption are given the opportunity to find permanent homes without undue delay.

Part 2. Special needs.

The standards in Part 2. pertain to the responsibilities of authorized child-placing agencies to make efforts to meet the special needs of children when placing them for adoption. The agency responsible for the child must determine the child's specific needs. Special needs include sibling ties, minority race or miniority ethnic heritage, religious background, health, social or educational needs.

Subparts a. and b. When the child's special needs include minority race or minority ethnic heritage, the rule proposes that the agency must follow the guidelines on the order of placement preference pursuant to Minnesota Laws of 1983, chapter 278, section 7 or the Indian Child Welfare Act, Public Law Number 95-608, section 105. The Commissioner has authority under Minnesota Laws of 1983, chapter 278, section 17 to establish rules necessary to implement the order of adoptive placement preference guidelines when a child, who is free to be adopted, is of minority race or minority ethnic heritage.

The Indian Child Welfare Act, Public Law Number 95-608, requires that the child's Indian heritage must be protected in placement. That act arose out of the Indian community's concern about the disproportionate number of Indian children being reared outside of the Indian culture. For several years, the Black community has also been concerned about the racial and cultural preservation of Black children as the majority of these children have been placed in non-Black homes. The Minnesota Council on Black Minnesotans has published a report, Adoption and Foster Care Placement of Black Children in Minnesota, 1982. This report recommended the passage of enabling legislation to better ensure the placement of Black children into Black foster and adoptive homes. As a result of this concern the 1983 Legislative Session passed Chapter 278 which establishes state policy and

guidelines for preserving, not just Black, but the minority race or minority ethnic heritage of children, whether Indian, Black or other minority.

The proposed rule in standard c. requires the agency to document what recruitment efforts, requests, and decisions are made which may affect the order of placement preference. An agency's adoption planning decisions often involve input from others, including the child's parent, an Indian tribe, or the court having jurisdiction. The agency, utilizing a variety of information sources, is responsible for serving the child's best interest in making a long term permanent plan. It is necessary that the agency maintain pertinent information on its recruitment efforts and its decisions which effect the child's placement plan. When the child's adoptive placement is being legally finalized, the agency must include a statement in its report to the court concerning how it applied the order of placement preference as required by Minnesota Laws of 1983, chapter 278, sections 8 and 9.

The proposed revisions in Part 2, Subparts a., b. and c. address the requirements of federal and state statutes which have arisen out of community concerns that child-placing agencies must seriously consider as a special need the child's minority race or minority ethnic heritage when an agency places the child into a suitable adoptive home. These rule requirements are, therefore, reasonable and necessary within the parameters of state and federal statutes to provide the agency with basic standards in meeting the child's special needs.

Part 3. Recruitment.

Minnesota Laws of 1983, chapter 278, section 11 requires agency recruitment of adoptive homes from among the child's relatives or among families of the same minority racial or minority ethnic heritage. In order for an agency to meaningfully carry out the order of placement preference guidelines, it needs a pool of approved adoptive applicants who are of minority heritage from which to select a suitable home or a child. Agency recruitment and preparation of these applicants are required to develop that pool.

The proposed standards in Part 3 include several of the community resources listed in Minnesota Laws of 1983, chapter 278, section 11; however, these do not exhaust the variety of resources an agency or agencies may use to recruit adoptive families.

The proposed requirement that the agency make special recruitment efforts to develop approved adoptive homes of minority heritage is reasonable to meet the needs of children of similar heritage. It is also necessary to enable the agency to fulfill the statutory guidelines in Minesota Laws of 1983, chapter 278, section 7.

Part 4. The child's foster home.

Part 4 focuses on the criteria which the local social service agency uses to consider whether the child's foster home is able to meet the child's special needs and can therefore be an adoptive resource. In the current rule, an agency may reconsider the child's foster home using only one of the four criteria. As the current rule does not balance the child's needs with the foster home's resources, the proposed revisions are reorganized into three criteria to better achieve that balance.

Criteria (1) contains two optional parts: the child's special needs and length of time in the foster home. Criteria (2) and (3) relate to the foster home's ability to meet the child's needs and the comparability of the foster home to adoptive homes.

The proposed revisions are necessary and reasonable to ensure that the child's foster home, which is licensed for temporary foster care, will be an appropriate long-term adoptive resource for the child.

Other changes in Part 4 are grammatical only and do not change the meaning.

Part 5. Child Placement.

The proposed revisions in Part 5 consolidate Parts 3 and 5 in Section C of the existing rule: child placement (Part 3) and postplacement services (Part 5). As these two are related service areas, it is reasonable to consolidate them within the same part of the rule as a continuum of services. Proposed additions or revisions in Part 5 more clearly reflect state requirements and define agency responsibility. Part 5 consists of Subpart a. (1)-(5) and Subpart b. (1)-(2).

Subpart a. Agency preplacement activities are governed in standards (1)-(5).

Standard (1) emphasizes that the proposed adoptive family's agency has a responsibility to become acquainted with the child prior to his adoptive placement. Also, the family's agency needs to be aware of the child's background and health history in order to better assist the adoptive family in integrating the child into their home.

Standard (2) clarifies that the child's agency must prepare the child for placement. The child's agency must also share written nonidentifying information with the adopting parents to assist them in intergrating the child into their family and to use in helping the child understand his adoption.

Standard (3), which requires the adoptive family to become acquainted with the child prior to placement, remains the same and is not revised.

Proposed standard (4) is added to address the adoptive placement agreement document used by the family and the agency to confirm the date of the child's placement into the adoptive home. The written agreement also states the responsibilities of the parties and verifies that the child was placed by an agency. The proposed standard carries out the requirements in Minnesota Statutes, sections 257.01, 259.22, subdivision 2., and 259.27, subdivision 5.

Proposed standard (5) is added whereby the child, who is in an adoptive placement, is excused from having a court dispositional hearing unless the adoptive placement is either not finalized within the two years pursuant to proposed standard (4) or is terminated for some reason. This standard falls within the provision of Minnesota Statutes, section 245.791 (4); Minnesota Laws of 1983, chapter 312, article V, section 35; and Federal Regulations, 45 CFR 1356.21.

The revised standards (1)-(5) in Subpart a. are necessary criteria upon which the local social services agencies enables the child and adoptive family to begin establishing themselves as a new family. These standards are based on statutory requirements and sound agency child placement practices. The standards are therefore reasonable and necessary.

Subpart b. Standards (1) and (2) in Subpart b. apply to post-placement services. Standard (1) remains essentially unchanged from the existing rule in C. 5 in which the child's agency, responsible for the child until legal adoption, arranges to obtain ongoing written reports from the adoptive family's agency.

Proposed standard (2) is added to require the supervising agency to assist the adoptive family and child in achieving a degree of integration prior to legal adoption.

The proposed requirements in Subpart b. (1) and (2) are reasonable and necessary standards pursuant to Minnesota Statutes, section 259.27, subdivision 4 for both the placing and the supervising agencies to fulfill their responsibilities to the child and the adoptive family prior to legal adoption.

Part 6. Subsidized Adoption.

The Department is proposing rearrangement of the standards in Part 5, a.-h. of the existing rule without changing the content or the meaning of these standards. This rearrangement will provide a more logical sequence of activities. Some grammatical revisions are proposed for clarity. The rearrangement and grammatical changes are reasonable and necessary as they add more logical sequence of activity and more clearly state the standards without changing the substance of the rule.

Within this rearrangement, several revisions are proposed in Subpart c. (5), Subpart d. (1) and (2), Subpart e., and Subpart g.

Subpart c. (5). This subpart adds a reference to Title IV-E of the Social Security Act which determines the child's eligibility for federal assistance. The proposed reference to Title IV-E in standard (5) becomes one of the five criteria used to determine the child's eligibility for a subsidy. Agencies are expected to utilize the Federal Adoption Assistance Program for each child who qualifies for subsidy in order to maximize all needed resources and available funds for the child. Therefore, reference to the Title IV-E requirements in rule is necessary and reasonable to ensure full use of the federal program for the benefit of eligible children.

Subpart d. The revisions in subpart d. focus on determining the amount of subsidy actually required to meet the child's needs. The agency must consider the various financial and health resources available to meet the child's needs including those resources which the adoptive parents can provide. The Social Security Act, Title IV-E, section 473, requires the state to take into account the circumstances of the adopting parents and the needs of the child to determine the amount of the subsidy. In no case may the subsidy exceed amounts allowable for foster family care. The Commissioner has authority under Minnesota Statutes, section 259.40 and Public Law Number 96-272, section 473 (b)(2) to establish the amount of subsidy payments necessary to meet the child's needs. The proposed revisions, which establish subsidized adoption maintenance rates, present the subsidized adoption program as separate from the foster family care program.

Subpart d. (1). Proposed standard (1) addresses the maintenance needs of the child and establishes the maximum monthly amounts allowable for adoption maintenance subsidies within four age categories. Reference to 12

MCAR § 2.044 which no longer regulate foster care rates and difficulty of care standards, is deleted from the proposed rule.

The proposed basic maintenance subsidy rate cover the child's need for food, clothing and shelter. Maintenance rates in subsidized adoption may not be used to cover such costs as daily supervision of the child or reasonable travel expenses to the child's home for visitation. These are two expenses which are included in the foster care maintenance payments. Therefore, the amounts allowable for foster care maintenance cannot be applied to subsidy maintenance.

The age categories proposed in standards (1) identify four general age groups: the preschool years of 0-5; the grade school years of 6-11; the middle school years of 12-14; and 15-18 years of senior high school. The Department recognizes that while children's grade placements, growth and development may vary within these age groupings, the four categories provide a reasonable framework for determining basic maintenance needs for food, clothing and shelter.

To determine the maintenance rate for the 0-5 age category, the department reviewed the maintenance amounts currently being paid for subsidized adoption. The department took into consideration that it had frozen cost-of-living increases since Fiscal Year 1981. The department decided to maintain an equal increase between each age category by proposing an initial basic rate for the 0-5 age category and adding a $30 increment for each subsequent age category.

The following method was used to determine the initial basic rate of $200 a month for the 0 to 5 age category. The 1982-83 basic maintenance amounts allowed in foster care for the 0 to 3 age group ($151) and 4 to 7 age group ($192) was averaged giving the amount $172. A seven percent (7%) cost-of-living increase was added twice to that average to compensate for the two years the cost-of-living increases had been frozen. These increases, plus the average for each subsequent year, totals $197. The $197 amount is rounded off to $200. The Department estimates that a $30 increase added to each subsequent age category is comparable to past increases allowed in the foster care rate schedule. In order to maintain an equal distance between each age category, an increment of $30 is added to each category to allow for an increase in costs for the food, clothing and shelter needs of the child as he reaches each subsequent age category.

A proposed statement is added to standard (1) to require the state agency to review and adjust the maintenance rate biannually. This is consistent in timing with the state agency's biannual preparation of its proposed budget. The Commissioner is required by the state's constitution to operate within budget. It is, therefore, reasonable and necessary to consider subsidy maintenance rate adjustments as a part of the Department of Public Welfare's development of its proposed biannual budget.

In the existing rule, on d. (1), reference is made to difficulty of care standards used in foster care. The proposed rule deletes reference to difficulty of are standards because the child's special needs, which either exceed basic maintenance for food, clothing and shelter in d. (1) or are not covered under medical needs in d. (2), may more clearly be identified and met under d. (3) on special costs. The use of difficulty of care in the subsidized adoption program has been controversial among agencies since the state program was implemented in 1978. The controversies centered around whether difficulty of care is payment to the adoptive parent for caring for a child with special needs or payment to meet the child's actual special needs. Minnesota Laws of 1983, chapter 312, article V, section 5 requires county boards to establish difficulty of care rates for children in foster care. Therefore, the proposed revision in this rule, which deletes reference to difficulty of care and allows extraordinary costs to be identified and met under d. (2) and d. (3), is reasonable.

The revisions proposed in d. (1) are reasonable to meet the basic needs of the child for food, clothing and shelter within the subsidized adoption program and are within the Commissioner's authority under state and federal statutes. Therefore, these revisions are reasonable and necessary to cover the child's basic needs.

Subpart d. (2). Subpart d. (2) focuses on the child's medical needs. The proposed revision adds references to Medical Assistance for which children, who qualify under the federal Title IV-E adoption assistance program, are eligible. The references to Medical Assistance in this part are reasonable and necessary to meet the requirements of Title IV-E of the Social Security Act in ensuring that Medical Assistance is made available to those children who are eligible to use it.

Subpart d. (3). This subpart recognizes that a child may have other costs not met or covered under d. (1) for

food, clothing and shelter and d. (2) for medical needs. Revisions in Subpart d. (3) are grammatical only and add clarity to this section. They are, therefore, reasonable.

Subpart d. (4). The revisions in Subpart d. (4) are grammatical only and do not change the meaning of this section. These revisions are reasonable in order to add clarity to Subpart d. (4).

Subpart e. A proposed revision in Subpart e. changes "a written statement" to "an annual affidavit." Another proposed revision in this subpart adds that the Commissioner may verify the information in the affidavit. These revisions are reasonable and necessary as they are required by Minnesota Statutes, section 250.40, subdivision 3.

All other proposed revisions in Subpart e. are grammatical only and do not change the meaning of the standards. Because the grammatical revisions add to the clarity of the language consistent with state statute, they are reasonable and necessary.

Subpart f. The proposed revisions are grammatical only and are reasonable in that they add clarity to the standard without changing the meaning.

Subpart g. This section addresses agency reimbursement. A proposed clause is added in two places which states "to the extent appropriations are available " The first clause occurs in the opening paragraph and the second occurs in Subpart g. (6) (b). These revisions clarify the rule standards that the Commissioner will reimburse the agency to the extent that appropriations are available up to 100 percent of the agency's reasonable expenses. These revisions are necessary and reasonable as the Commissioner is required under the State's constitution and statutes to operate within the amounts appropriated.

Other proposed revisions in Subpart g. are grammatical only and do not change the meaning of the standards. These changes are reasonable and necessary changes to add clarity to the language.

Subpart h. The proposed revisions in subpart h. are grammatical only and are, therefore, reasonable to clarify the standard without changing its meaning.

Part 7. Termination of adoptive placement. The revisions proposed in Part 7 are grammatical only and do not change the meaning of the standards. They are reasonable changes necessary to add clarity to Part 7.

Section D. Services to Children in Independent Placements.

Section D contains standards for agencies to carry out services in situations where the proposed or actual placement of a child is not arranged through an authorized child-placing agency.

Part 1. Part 1. focuses on direct placement arrangements in which no unlicensed intermediary or agency is involved. Pursuant to Minnesota Statutes, section 393.07, the local social service agency is required to provide child protection services and to assist parents when the child is placed outside the parents' home. The proposed revisions in this part more specifically state what services the local social service agency must perform when a parent or relative plans to place the child with persons who are personally known to them but are not related to the child's parent. Prospective adoptive parents, who do not meet the statutory definition of of relative in Minnesota Statutes, section 245.782, subdivision 10, are required to be licensed for foster care in order to receive a child into their home for placement. When the child's parent requests that the child be placed with a specific family, the local social service agency needs to determine the suitability of the proposed home for licensing as a foster home (Minnesota Statutes, section 245.783) or as an approved potential adoptive home (12 MCAR § 2.200E). There may be situations where the placement plan requested by the child's parent or relative is in the best interest of the child. The proposed rule requirements in Part 1 allow the agency to work with the parents or relatives to evaluate and to facilitate such a placement when the proposed adoptive placement would serve the interest of the child. These requirements are therefore reasonable and necessary.

Part 2. The revisions proposed in Part 2. address the agency's responsibility when the court has waived the requirement of agency placement pursuant to Minnesota Statutes, section 259.22, subdivision 2(e). Because the court notifies the Commissioner when it grants such a waiver, the state agency adoption unit must then inform the appropriate local social service agency what services it needs to provide. In the event the petitioners, subsequent to the court's waiver of agency placement, do not immediately file an adoption petition, the local social service agency must pursue licensing the home as required by Minnesota Statutes, section 245.781 et seq. Non-agency adoptive homes do not meet the exclusion for licensing in Minnesota Statutes, section 245.791 (4).

When the adoption petition is filed immediately upon the court granting the waiver of agency placement, the Commissioner is required by Minnesota Statutes, section 259.27, subdivision 1 to pursue an investigation of the petition and make a full report and recommendation to the court

within 90 days. Because the Commissioner, through the assigned agency, immediately begins the adoption petition investigation on the child in the home, effort to license the home would duplicate the child welfare services and, therefore, does not appear to be feasible. The proposed revisions in Part 2 are reasonable and necessary within state statutes to clarify the responsibilities of both the Commissioner and local social services agency when the court waives the requirement of agency placement.

Part 3. The proposed revision in Part 3 deletes the word "natural" as a description of parent and replaces it with the word "child's" to allow recognition that the role of parent may be achieved by birth or adoption. Another proposed revision adds the word "adoptive" to describe the purpose of the placement plan. This revision would distinguish the type of placement which this rule addresses from other types of child placements. All other proposed revisions in Part 3 are grammatical and do not change the meaning of the standards. The revisions that are proposed in Part 3 are reasonable and necessary changes which more clearly define the kind of placement properly addressed by this rule and which allow the term "parent" to be understood as defined in Minnesota Statutes, section 259.21, subdivision 3.

Part 4. The word "adoptive" is being added to the first paragraph to describe the type of interstate placement addressed in this rule which is within the provisions of Minnesota Statutes, sections 257.05, 257.06 and 257.40. Other proposed revisions within this paragraph are grammatical only and do not change the meaning of the standards. These proposed revisions are reasonable and necessary to clarify the type of interstate placement addressed in Part 4.

Part 4 also contains two subparts.

Subpart a. Two revisions are proposed in Subpart a. The first revision adds the past tense verb "was" to also include an interstate placement of a child which may have occurred without the prior knowledge and approval of the Commissioner. In order for a child to be placed into and remain in the state, the Commissioner must approve the placement. This rule revision is reasonable and necessary as a protection for the child whose placement must be addressed under the state's importation statutes: Minnesota Statutes, section 287.05 and Minnesota Statutes, section 257.40. The other proposed revision adds the words "requirement of" to the phrase "agency placement". This revision more clearly reflects one of the filing requirements on adoption petitions in Minnesota Statutes, section 259.22, subdivision 2 and subdivision 3. This proposed revision is reasonable and necessary as it clarifies the standard to reflect the provisions in statute regarding child placement.

Subpart b. The proposed revision in Subpart b. deletes the word "natural" and substitutes the word "child's" to describe parent. The proposed revision allows for a broader understanding of the term "parent" as defined in Minnesota Statutes, section 259.21, subdivision 3. Therefore, this proposed revision is reasonable and necessary.

Part 5. In the first paragraph of Part 5, the proposed phrase, "for the purpose of adoption", is added to define the purpose of the child's placement. This revision is necessary and reasonable as it provides a focus for agencies, necessary in adoptive placement situations, to carry out child protection services within Minnesota Statutes. References to pertinent statutes are added to the rule. Other revisions in this paragraph do not effect the meaning of the content.

Proposed revisions are also made to Subparts a. and b.

Subpart a. No changes have been made in the content of standards (1) through (4). However, these activities have been realigned into a different sequence according to the importance and seriousness of the activity which the agency must perform on behalf of the child. These changes are reasonable and consistent with the requirements of Minnesota Statutes, sections 257.40, 257.03, 257.04, 245.783, and 260.015, subdivision 10 (f) and (g).

Subpart b. The proposed revision, pertaining to the 30 days within which the local social service agency makes a report to the Commissioner, adds clarity to the time framework without causing a substantive change in meaning.

Subpart b. (1). In Subpart b., standard (1), the term "child's" is substituted for "natural" to broaden the meaning of "parents" to include parents by adoption or by birth as defined in Minnesota Statutes, section 259.21, subdivision 3. These changes are consistent with similar changes made in Parts 3 and 4 of Section D in the proposed rule. These revisions are a necessary clarification of meaning and are, therefore, reasonable.

Subpart b. (2). The revision adds clarity to the standard but does not change its meaning.

Subpart b. (4). Standard (4) is revised to better reflect the kinds of compensations prohibited in Minnesota Statutes, section 257.03. The agency is required to obtain any information affecting the child's placement. Therefore, this is a necessary and reasonable standard.

The proposed revisions in Part 5 and Subparts a. and b (1), (2), and (4) are intended to emphasize the child protection actions required in statute which the agency must perform to ensure the appropriateness of child's placement as well as any adoptive planning for the child with his parents and the proposed family. The revisions also clarify the terms used. Therefore, the proposed revisions in Part 5 are reasonable and necessary.

Section E. Services to Families Applying for Adoption.

Part 1. Part 1 proposes two revisions: a written intake policy and a reference to the charging of fees. The word "written" is added to intake policy on the basis that the public, as well as any person applying for adoption, is entitled to review the local social services agency's adoption intake policy.

A clause is also added regarding social service fees. In order for the agency to carry out its responsibilities within Section E, the agency may charge fees when applicable. Minnesota Statutes, section 256E.08, subidivision 6, of the Community Social Services Act provides that the county board, subject to the approval of the Commissioner, may establish a schedule of fees based upon the client's ability to pay.

The two proposed revisions in Part 1 are reasonable and necessary to allow the public to have access to information regarding the agency's policy for adoption applications and to allow the agency to charge fees in order to defray part of the cost for applicant adoption studies.

Part 2. The changes proposed in Part 2 and Subparts a. and b. are grammatical only and do not alter the meaning of these standards. Subpart c. is a proposed new standard.

Subpart c. This proposed standard is added to require the local social service agency to consider an adoptive applicant's ability to help a child of minority race or minority ethnic heritage gain an appreciation of his heritage. Minnesota Statutes, section 259.255, states that when the agency places a child with a family of a different racial or ethnic heritage, the family is to be knowledgeable and appreciative of the child's racial or ethnic heritage. In determining the applicant's ability to help the child with his heritage, the agency needs to consider the applicant's resources. The applicant may have personal relationships with persons of the same minority heritage as the prospective child's, may have membership in organizations which include persons of the child's minority heritage, may reside in an ethnically or racially integrated neighborhood, or may demonstrate the ability to meet the cultural needs of

the child in a multi-racial family. The agency may also offer or provide resources to the applicant in becoming prepared to help a child with his minority race or minority ethnic heritage.

Supbart c. is, therefore, a necessary standard based on Minnesota Statutes, section 259.255. The proposed standard requirement is reasonable as the agency is responsible for determining an applicant's suitability to adopt a child of minority race or minority ethnic heritage.

Part 3. All the changes made in Part 3 are in sentence structure and grammar only. These changes do not in any way alter the content or meaning of the standards. The revisions are therefore reasonable and necessary for the purpose of clarity.

Section F. Interstate and International Adoptive Placements.

All changes in this section, except in Part 3, Subpart b. are grammatical only and do not in any way change the content or meaning of the section.

Part 3, Subpart b. The proposed revision in Subpart b. more clearly defines the sending agency's authority to place the child for adoption by deleting the term "custody of" and replacing it with "adoptive planning rights to". The term "custody of" is too broad in meaning for this rule on adoption. "Custody" may be physical or legal, yet it may not give the agency the authority to place the child into an adoptive home. The revision as proposed, focuses on the fact that a sending agency, which is requesting to place a child across state lines for adoption, must have the authority under its state statutes, similar to the authority under Minnesota Statutes, sections 259.25, or 260.242, to make an adoption plan and to consent to the child's adoption. Therefore, the revisions in Subpart b. are reasonable and necessary for clarification.

Section G. Legalization of the Adoption Placement.

Part 1. The term "nonidentifying" is added to define what kind of information the agency may, pursuant to Minnesota Statutes, section 259.46, subdivision 1, send to the petitioner or his attorney to prepare the adoption petition. This clarification is also consistent with the provisions in Minnesota Statutes, section 259.23, subdivision 2, when a child is placed by an agency. This proposed revision is reasonable and necessary to provide the attorney with information essential to file an adoption petition.

Part 3. In this part the proposed revision adds "properly filed" to describe those petitions which meet the filing requirements of Minnesota Statutes, 259.22, subdivisions 2 and 3. The Commissioner or authorized child-placing agency is responsible, pursuant to Minnesota Statutes, section 259.27, for submitting a report and recommendation to the court on those petitions which meet the filing requirements of Minnesota Statutes, section 259.22. The proposed revision more clearly states which petitions the Commissioner or agency must investigate and submit reports and recommendations to the court. The proposed revision in this part is reasonable and necessary.

Subpart a. Subpart a. is added to Part 3 to define the four areas of information which the Commissioner or agency must, pursuant to Minnesota Statutes, section 259.27, include in its report and recommendation to the court. These four areas are: verifying the information on the petition; verifying that the child is free to be adopted; ascertaining the suitability of the proposed family and child to each other; and stating the application of the order of placement preference when the child is of minority race or minority ethnic heritage. The addition of Subpart a. to Part 3 is reasonable and necessary for the Commissioner or the agency to fulfill its responsibility to the court, according to Minnesota Statutes, section 259.27.

Subparts b and c. These two standards are relettered. Any proposed revisions in these two subparts are grammatical changes which do not alter the meaning of the standards. These revisions are reasonable and necessary for clarity.

Section H. Post-Adoption Services.

The Commissioner has the authority under Minnesota Statutes, section 259.48, to establish rules necessary to enable agencies to administer post-adoption services. Any paraphrase of statutory standards is necessary to provide continuity along with the standards proposed by the department.

The proposed rules in this section apply to both public and licensed child-placing agencies, which are required by Minnesota Statutes, sections 259.47 and 259.49, to provide post-adoption services. The proposed standards cover a broad range of agency services which may be requested by adoptive parents, genetic parents, adopted adults, or adult genetic siblings. Requests for services may occur any time after legal adoption and may range from requests for information or counseling to requests for the agency to contact another party to either obtain information or establish contact of some kind.

The standards proposed in this section enable agencies to implement the requirements of Minnesota Statutes, sections 259.47 and 259.49. The agency must deliver the services requested in a manner which protects the right to confidentiality and privacy of the other parties. Before the agency may arrange for any exchange of information or contact, the agency must determine whether it is mutually desired by the parties involved. However, when the agency receives significant medical information, the agency must make a deligent effort to transmit that information to other genetically related persons.

Part 1. Part 1 proposes standards under which the agency may share information or establish contact among the parties to the adoption upon receiving a request for post-adoption services.

Subpart a. The proposed revision in this standard bring the existing rule standard into compliance with Minnesota Statutes, section 259.47, subdivision 1. The standard would allow the agency to share nonidentifying information contained in its record with the adoptive adult or adoptive parents of a minor child. Nonidentifying information is an important aid to the adoptive person's gaining an understanding of himself and his adoption. Information which is identifying may not be disclosed from the agency record.

Subparts b. and c. These subparts propose standards, in accordance with Minnesota Statutes, section 259.47, subdivision 1, requiring the agency to provide services in a confidential and personal manner as well as to establish the extent to which there is a mutual desire to share information or to have contact between the parties.

Subpart d. The standard proposed in this subpart is based on the requirement in Minnesota Statutes, section 259.47, subdivision 1, to provide services requested by adult genetic siblings in a manner that respects the genetic parent's right to maintain confidentiality.

Subpart e. This requirement is proposed to enable agencies to provide services requested by a genetic relative other than the genetic parent. An increasing number of relatives, including alleged fathers, are requesting post-adoption services. The proposed standards in Subpart e. would allow the agency to provide services to other relatives under conditions similar as those established in Subpart d. which allows the genetic parents the right to maintain confidentiality. This standard is consistent with the intent of Minnesota Statutes, section 259.47, subdivision 1.

Subpart f. This proposed standard requires the agency to share with the person making the request what methods it may consider using when searching for the other party. The person making the request may recommend that the agency check only through public records even though a search could more successfully be conducted by the agency making discrete inquiries to relatives or acquaintences. Agency delivery of post-adoption services must be done sensitively, respecting the needs of the parties involved. Minnesota Statutes, section 259.47 requires the agency to pursue post-adoption services in a personal and confidential manner.

Subpart g. This standard proposes that the agency respect the wishes of the party whom it has contacted when determining the extent to which there is a mutual desire to share information or have contact. This standard is based on Minnesota Statutes, section 259.47, subdivision 1.

The proposed standards in Part 1. a.-g. establish the standards upon which the agency may provide post-adoption services within the requirements of Minnesota Stautes, section 259.47. These standards are necessary under the Commissioner's rule making authority in Minnesota Statutes, section 259.48. They are also reasonable as they provide the parameters within which the agency may deliver post-adoption services, while balancing the needs of the various parties.

Part 2. The standards proposed in Part 2 are based on the requirements of Minnesota Statutes, section 259.49. Proposed standards in Subparts a. and b. address services the agency is required to provide when the adoptive adult files a request with the State Registrar of Vital Statistics for the information on the original birth certificate. These proposed standards specify what actions the agency must take to inform the birth parent about the adopted adult's request and to notify the State Registrar of the services the agency completed. The Commissioner must ensure that the request is assigned to an agency and the search completed, within a six month time frame. At that time, the state adoption unit reports to the Section of Vital Statistics. The standards proposed in Part 2, a. and b. are necessary requirements pursuant to Minnesota Statutes, section 259.49. These standards are reasonable agency requirements in providing services to adopted persons and birth parents regarding the original birth certificate information.

Part 3. The proposed standard in Part 3 requires the agency to make a diligent effort to relay significant medical or genetic information to genetically related persons upon receipt of that information. The agency must exercise diligent effort to ensure that genetically related persons

receive health information which may affect them or their offspring. Included in the standard in Part 3 is the agency responsibility to relay the information to the adoptive parent, subsequent guardian or conservator of a minor child. When an adopted person dies, whether by illness or accident, the rule proposes that the agency, when notified, must inform the genetic parent. Diligent is fulfilled when the agency has exhausted all conceivable means of locating the other person.

The proposed standards in Part 3 recognize a common concern in society that health history is an important part of one's health needs. It is vital that there exist a mechanism through which adoptive parents, adoptive adults, genetic parents or other relatives may relay medical or genetic information. Therefore, the proposed rule in Part 3 is reasonable, as well as necessary, to fulfill to the requirements of Minnesota Statutes, section 259.47, subdivision 2.

Part 4. The proposed standards a. through d. in Part 4 affect agency adoptive placements made after August 1, 1982. These proposed standards state the conditions under which the ageny may subsequently release certain identifying information from its record, pursuant to Minnesota Statutes, section 259.49, subdivision 3, to the adult adopted person. Identifying information consists of the genetic parent's name, last known address, birth date and birth place.

Subpart a. Under proposed standard a. the agency must determine that it has on file the genetic parent's affidavit attesting to receiving the information from the agency about the conditions for future release of identifying information.

Subpart b. This standard proposes that the agency determine that it either does not have on file an affidavit from the genetic parent prohibiting release of any or all the identifying information or that the genetic parent has withdrawn the affidavit of objection.

Subpart c. As proposed by this standard, the agency can disclose identifying information when the condition in Subpart a. is met and the agency has verified that either condition in Subpart b. exists or that the agency has verified that the genetic parent is deceased. Release of identifying information from the agency record does not constitute disclosure of the agency record. Disclosure of the agency record is governed by Minnesota Statutes, sections 259.46 and 259.31.

Subpart d. This proposed standard requires the agency to assist the court in notifying the genetic parent of the adoptive person's petition for disclosure of identifying information. The birth parent has the right,

pursuant to Minnesota Statutes, section 259.47, subdivision 3 (e) to inform the court on whether non-disclosure would be of greater benefit to the genetic parent than disclosure. In most cases, the agency, rather than the court, would have information in its record for locating and informing the genetic parent of the adoptive person's petition for disclosure.

These proposed standards are reasonable as they allow the agency to provide services within the parameters of statute. These standards are also necessary for agencies to carry out their responsibilities under the provisions of Minnesota Statutes, section 259.47, subdivision 3, as well as under the Commissioner's rulemaking authority of Minnesota Statutes, section 259.48.

Part 5. In Part 5, the proposed revision includes licensed child-placing, as well as local social service agencies, to provide post-adoption services. Other revisions specify the age when the adopted person may receive services upon request and adds the term "adult genetic" to describe the siblings who may request services. The proposed revisions are reasonable in defining agencies, adopted persons and siblings. These revisions are necessary pursuant to Minnesota Statutes, sections 259.47 and 259.49.

Part 6. The revisions proposed in Part 6 require the agency to maintain in its adoption records information on the post-adoption services given. This recordkeeping would ensure continuity of services in the event persons may contact the agency at various times over a span of years. This standard is reasonable to ensure that consistent post-adoption services are provided to clients. The proposed revision is necessary within the provisions of Minnesota Statutes, sections 259.47 and 259.49.

Part 7. This proposed standard allows agencies to charge a reasonable expense reimbursement for post-adoption services pursuant to Minnesota Statutes, section 259.47, subdivision 5 and Minnesota Statutes, section 259.49, subdivision 2. The standard proposes a reasonable method by which the agency may defray some of the costs of post-adoption services. When clients help support a part of the services they receive, the agency is in a better position to apply for other funding sources in order to maintain and develop the services needed. The proposed standard in Part 7 is a reasonable requirement in the delivery of agency services. It is also necessary to implement the services required by Minnesota Statutes, sections 259.47 and 259.49.

Section I. Maintenance of Adoption Record.

The proposed changes in Section I, Parts 1-3 are intended to implement Minnesota Statutes, section 259.46 requirements

that agencies maintain permanent and confidential adoption records. The Commissioner of Public Welfare has authority under Minnesota Statutes, section 259.48 to establish rules to implement and administer Section I.

Part 1. The proposed revisions in Part 1 apply to the confidential nature of the records maintained by all agencies authorized to place children for adoption. The agency may share nonidentifying information with the person it concerns. Release of identifying information requires a court order or must meet statutory requirements in Minnesota Statutes, sections 259.47 and 259.49. The proposed revisions include the requirement that the record contain documentation on the order of placement preference required in Section C. Part 2 of the proposed rule, as well as in any post-adoption services given.

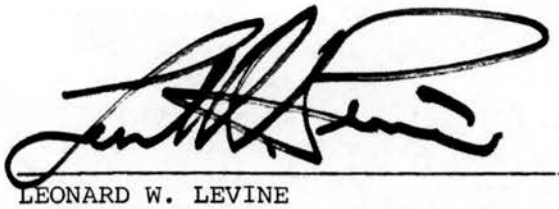
These proposed revisions are reasonable and necessary pursuant to Minnesota Statutes, section 259.46 to ensure that agencies maintain pertinent information in agency records on the services given.

Part 2. The proposed revisions in this part are grammatical only and do not change the meaning of the content. These revisions are reasonable.

Part 3. The proposed standard in Part 3 requires the agency to establish a protected record system to maintain adoption records on a confidential and permanent basis. Adoption, as a lifetime process for the persons involved, may also affect others indirectly. Therefore, the agency has a responsibilty to maintain adoption records upon which it may need to provide services requested by the adoptive adult, adoptive parents of a minor child, genetic parents, adult genetic siblings or others. This standard is a reasonable expectation for an agency to meet in preserving its records. It is necessary pursuant to Minnesota Statutes, section 259.46 on adoption records.

LJD/60.0

Dated: December 9, 1983



LEONARD W. LEVINE
Commissioner of Public Welfare

July 26, 1984

Mr. Duane R. Harves
Chief Hearing Examiner
Office Administrative Hearings
400 Summit Bank Building
310 South Fourth Avenue
Minneapolis, MN 55415

Re: In the matter of the Proposed Amendment of the Department of Human Service's Rule Governing Adoption (12 MCAR § 2.200) - OHH Docket No. DPW #84-019-6B

Dear Mr. Harves:

We are responding to conclusion #6 in the Report of the Hearing Examiner dated March 19, 1984. At the February 7, 1984, hearing, a major concern had been expressed about deleting references to 12 MCAR 2.044. Several people testified that they were comfortable with using the Rule 44 Difficulty of Care system because it provided measureable standards which could be uniformly applied. They felt that the general reference to special cost in the proposed rule left too much to the discretion of the individual worker. As a result of these comments, the Department is proposing these criteria for special costs which are enclosed with this letter. This proposal is being submitted to you for review on the issue of substantial change.

Historically, on October 1, 1980, Title IV-E (P.L. 96-272) of the Social Security Act was implemented and the administration of the foster care program, which was under 12 MCAR 2.044, was transferred to the Social Services Bureau. The Department continued to apply the rates under the former rule until the basic foster care maintenance rates were subsequently implemented under 12 MCAR 2.204, effective January 2, 1984. However, the responsibility for establishing difficulty of care rates in foster care was transferred by the 1983 Legislature to the local social service agency. Therefore, the Rule 44 difficulty of care scheme was not incorporated into the new foster care rule. Prior to that statutory change, the Department had used the last adjustment for Difficulty of Care rates issued in July, 1981 by the Income Maintenance Bureau of this Department.

Because Difficulty of Care standards no longer existed in rule, the proposed rule 12 MCAR 2.200 deleted reference to them. However, because of the requests at the February 7, 1984 hearing, the Department has decided to propose similar standards in Rule 200. The Department established a task force to address that issue. Task force members included several persons* who had testified at the hearing as well as others representing various perspectives. These persons were:

*Joe Kroll, Citizen Coalition on Permanence for Children
*Barb Jirik, Adoptive Parent
Mrs. Linda Hunt, Adoptive Parent
Mr. and Mrs. John Malmberg, Foster Parents,
Ramsey County Foster Parent Association
Lori Simons, Social Worker,
Mental Retardation Unit, Hennepin County Bureau of Social Services
Tom Regan, Adoption Supervisor, Children's Home Society of Minnesota
Ann Sinnott, Ramsey County Community Human Services, Social Worker,
Foster Parent and Adoptive Parent
Al Mingo, Supervisor, Hennepin County Bureau of Social Services
Don Tomsuden, Supervisor, Dakota County Human Services
Jack Kettlewell, Social Worker, Lutheran Social Service of Minnesota
Marjorie Mereen, Social Worker, Children's Home Society of Minnesota

The Task Force used the Difficulty of Care standards formerly found under 12 MCAR 2.044 as a basis of discussion. The Department condensed the three Rule 44 criteria of Emotional, Physical and Auxiliary, each having levels A, B, C, D and E, into four proposed levels, (a), (b), (c) and (d). The proposed four levels (a), (b), (c), and (d) consider progressive degrees of chronic and acute problems in the child's physical, mental, emotional or behavioral condition.

The Department is proprosing one rate for each criteria level. A flat monthly rate is attached to each level, replacing the more cumbersome point system that had been used in 12 MCAR 2.044. These four monthly rates for special costs will be subject to annual review and adjustment, as are the basic maintenance rates.

Rates under 12 MCAR 2.044, which were last adjusted on July 1, 1981, ranged from a minimum of $42.00 a month to a maximum of $522.00 a month. The rates in the proposed subsidy Special Cost levels are set at a reasonable amount for each level. These are level (a). - $150.00; level (b). - $275.00; level (c). - $400.00 and level (d). - $500.00. The criteria in each level provides information for determining the rate needed to meet the child's special needs.

It was not the Department's intention to significantly alter the Rule 44 Difficulty of Care standards when it proposed the special cost language. The proposed levels just provide more direction than the special cost levels in dealing with subsidies. The Department's intention is to provide agencies with a guideline that will establish the amount and additional cost to meet the needs of children who require a Special Cost Subsidy. The proposed criteria simplify the method so that the social worker need not use a detailed list, with a point system, to arrive at a suitable level and rate amount for the child's condition and needs. Consolidation of the proposed criteria into levels (a) through (d) and assigning an average rate to each level do not constitute a substantial change from those standards formerly used in 12 MCAR 2.044 for Difficulty of Care.

In regard to Notice of Hearing, dated December 6, 1983, the standards which we are proposing are consistent with the references on page two made to "subsidized adoption, and the rate schedule for subsidized adoptions." Incorporation of the proposed Special Cost criteria (a) through (d) do not in any way alter the final rule results in the December 6, 1983 Notice of Hearing. The Department is recommending the adoption of the proposed criteria standards, (a) through (d) for Special Costs in subsidized adoption. These standards are a substitute for the 12 MCAR 2.044 standards referred to in the existing 12 MCAR 2.200 rule.

The proposed four standard levels for Special Cost do not constitute a substantial change because:

1. The proposed rule amendments affect adoptive parents and children who were represented at the hearing and on the post-hearing task force.

2. The proposed amendment addresses the rates for special costs. This subject matter is addressed by reference in the current version of 12 MCAR 2.200 and in the proposed revisions.

3. The Department advised the public in the Notice of Hearing that the rate schedule was being amended.

4. The proposed final rule is not fundamentally different than the original proposed rule for the reasons addressed in the body of this letter.

The following are the additions to the proposed rule, 12 MCAR 2.200, C.6.d.(3):

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necessary to the child's care and well being, including the purchase of services, items or equipment not provided by any other community resource. The placing agency shall specify and document the child's special cost needs ~~document the actual or estimated expense required to meet that need~~ which are in excess of (1) and (2) according to criteria levels (a), (b), (c), or (d).

(a) The child is self motivated, but due to physical, mental, emotional, or behavior conditions, has one or more of the following needs:

(i) Requires assistance and training in dressing, eating, hygiene, or moving from place to place.

(ii) Requires undue amount of attention that disrupts the family's daily structure.

(iii) Must have a regimented daily routine.

(iv) Requires consistent bi-monthly a more frequent contact with specialized community programs and facilities or professional resources.

(v) Causes damage or destruction of the environment because of behavior or use of special equipment.

(vi) Exhibits dependency needs in an inability to bond or relate to others, withdrawal, passive aggressive behavior, or delayed maturation.

The monthly rate under criteria (a) shall be $150.

(b) The child's chronic physical, mental or emotional conditions require one or more of the following:

(i) Ongoing daily care and assistance due to profound mental retardation or multiple handicaps.

(ii) Continuing training and mastery of a specialized communication technique with family members learning the skill.

(iii) Communication skill is mastered but is time consuming.

(iv) Weekly or more frequent in-home therapy toward managing physical, emotional or behavioral difficulties.

(v) Weekly or more frequent use of community health, special educational and rehabilitation resource.

The monthly rate under criteria (b) shall be $275.

(c) The child's acute or chronic physical, mental, emotional or behavioral condition is severe and requires one or more of the following:

(i) Controlling the child's interaction within the family and in the community.

(ii) Restructuring of the home to physically accommodate the child.

(iii) Monitoring the child's condition daily to anticipate emergency medical distress.

(iv) Hourly management of the child's behavior.

(v) Diagnoses of an acute condition has been completed and psychological intervention has begun.

The monthly rate under criteria (c) shall be $400.

(d) The child's only alternative is institutionalization or professional care due to chronic or acute physical, mental, or emotional condition. The child requires all of the following:

(i) Total 24-hour care and supervision by a trained caregiver;

(ii) Monitoring of child's condition, medication or equipment on a 24-hour basis;

(iii) Use of multiple specialized community programs, facilities, and professional resources to maintain the child in the home; and

(iv) Requirement of institutional or para-medical skilled care at the time of family respite care.

The monthly rate under criteria (d) shall be $500.

The placing agency shall include appropriate medical, psychological or psychiatric evaluations that document the level of the child's special needs.

The state agency shall annually review and adjust the rate schedule for special needs.

Sincerely,

Ruth C. Weidell, Supervisor
Adoption Unit

JD1/01

Enclosure

cc: Dianne Masters
Legal Services

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE OF MINNESOTA, DEPARTMENT OF HUMAN SERVICES RULES GOVERNING ADOPTION (12 MCAR 2.200)

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: 9/6/84

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE OF MINNESOTA GOVERNING ADOPTION (12 MCAR 2.200)

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 13 day of September , 1984, 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, 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 13 day of September, 1984

Darlene Ann Sweet

DARLENE ANN SWEET
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 16, 1988

In the Matter of the Proposed Amendment of the Department of Human Services Rule Governing Adoption (12 MCAR § 2.200)

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes 1982, section 14.16:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, Sept. 13, 1984, 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 ten (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 Ruth Weidell at 612/296-3740.

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