


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST
RESUBMITTED RULE

File No. 1414

Docket No. 05.0009.0850

RESUBMISSION DATE 12/01/87
DATE DUE 12/11/87

ADOPTED W/O HEARING _____
EMERGENCY RULE X

APPROVED ✓ 12/8/87 JJR
DISAPPROVED _____
WITHDRAWM _____

REVISOR APPROVED _____
REVISOR DISAPPROVED _____
FILED W/SEC. STATE _____
RETURNED TO AGENCY _____

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No **Does the revision raise significant new legal issues?**

12/8/87 Review date

✓ Rule as adopted (4 copies)

✓ Supplemental Findings of Fact, Conclusions & Order Adopting

✓ Board's Supplemental Resolution Adopting

— Notice of submission to Attorney General

— Affidavit of Mailing Notice to Attorney General

SF-00006-05 (4/86)

STATE OF MINNESOTA

# Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : December 9, 1987

TO : DAVID SIEGEL
Department of Human Services
Rules Division

FROM : JULIE A. LEPPINK
Special Assistant
Attorney General

PHONE : 7-3493

SUBJECT : In the Matter of the Adopted Rules Relating to Foster Care Difficulty of Care Payments

The above-referenced rule has been approved as to its legality by the Attorney General on December 8, 1987.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

JAL:nah

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Adminsitrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

**STATE OF MINNESOTA**
**DEPARTMENT OF HUMAN SERVICES**
**444 LAFAYETTE ROAD**
**ST. PAUL, MINNESOTA 55155**

RECEIVED
ATTORNEY GENERAL'S OFFICE
DEC 01 1987
204 ADMINISTRATION BLDG.
50 SHERBURNE AVENUE
ST. PAUL, MN 55155

TO: Rita Desmond
Legal Assistant
Attorney General's Office, Administration Division

FROM: David Siegel DS
Rules Division
444 Lafayette Road, 2nd Floor
297-4997

DATE: December 1, 1987

SUBJECT: Resubmission of Emergency Rule for Attorney General's Review; Child Foster Care Difficulty of Care Payments, Minnesota Rules, parts 9560.0650 to 9560.0656

Enclosed are the documents required for the resubmission of an emergency rule under Minnesota Rules, part 2010.1300 for your review of the above entitled matter.

Official documents in this submitted material include:

1. Four copies of the emergency rule as adopted. Any modification made to the proposed rule is reflected on the rule as adopted and is approved as to form by the revisor of statutes.

2. Supplemental findings of fact, conclusions, and order adopting the emergency rule.

3. The declaration of the attorney in the attorney general's office who represents the agency.

No requests were received for a notice of submission of the rule to the attorney general. Therefore, no notice nor affidavit of mailing the notice is enclosed.

If you have any questions on this submitted material, please call me at 297-4997.

AG COPY

Department of Human Services

Adopted Emergency Amendments to Permanent Rules and Emergency Rules Relating to Foster Care Difficulty of Care Payments

Emergency Amendments to Rules as Adopted

9560.0650 MAINTENANCE STANDARDS.

Subpart 1. [Unchanged.]

Subp. 3. **Agency contract care.** When foster care is provided for a child by a provider licensed under parts 9545.0010 to 9545.0260 through contract with a public or private agency, foster care maintenance payments and difficulty of care payments shall be determined according to the rate schedules in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency]. If the local social services agency is contracting for administrative or social services costs, the payments to the contracting agency shall be in addition to the rates established in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency].

Subp. 4. and 5. [Unchanged.]

9560.0651 [Emergency] DIFFICULTY OF CARE ASSESSMENTS AND PAYMENTS.

Parts 9560.0652 to 9560.0656 [Emergency] provide criteria for assessing the difficulty of care of a child in foster care and the payment rate.

9560.0652 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9560.0653 to 9560.0656 [Emergency] have the meanings given them in this part.

Subp. 2. **Activities of daily living.** "Activities of daily living" means activities of basic self-care, including eating, dressing, grooming, hygiene, and toileting.

Subp. 3. **Mental retardation.** "Mental retardation" means the condition of a person with mental retardation as defined in part 9525.0015, subpart 20.

Subp. 4. **Mental illness.** "Mental illness" has the meaning



Approved by Revisor

given in Minnesota Statutes, section 245.462, subdivision 20.

9560.0653 [Emergency] DIFFICULTY OF CARE PAYMENTS.

The local social services agency shall make payments in addition to the basic maintenance standards of part 9560.0650, subpart 1, for children with mental, physical, or emotional handicaps who require additional supervision or assistance in behavior management, activities of daily living, management of medical problems, or interaction with the natural parents and the community. The local social services agency shall assess each child under this part and the difficulty of care levels in part 9560.0654 [Emergency].

9560.0654 [Emergency] DIFFICULTY OF CARE ASSESSMENTS.

Subpart 1. **General.** Within the highest appropriate level and the respective point range of subparts 2 to 7, a single point value shall be assigned based on the age of the child, the number of conditions requiring special care, and the degree of difficulty of caring for each condition.

Subp. 2. **Level A.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level A if the child requires a moderate amount of additional supervision or assistance, including that required by:

(1) ~~**care-required-by-a-moderate**~~ an unusual degree of dependency, passivity, or lack of responsiveness and ability to relate to others;

(2) ~~**moderate-care-for-medical-disorders**~~ abnormal seeking of affection or attention;

(3) serious problems with separation from the natural parents or attachment to the foster parents;

(4) severe psychosomatic complaints;

(5) severe night terrors;

(6) irresponsible behavior, such as minor destructiveness;

(7) immaturity or poor social skills;

(8) problems with authority figures;



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(9) chronic disorders with some physical incapacity;

~~(3) supervision because of~~ (10) a physical handicap, although the child is self sufficient;

~~(4) moderate help with activities of daily living beyond that ordinarily required for the child's age; or~~

~~(5) moderate assistance to the child in relating to the natural parents; and~~

(11) a need for monthly trips for medical appointments;

(12) presence of long-term infections or contagion;

(13) delayed growth and maturation;

(14) diagnosed failure to thrive;

(15) need for occasional help with eating and toileting, if the child is over five years of age;

(16) need for help with hygiene and dressing beyond that normally required at the child's age level;

(17) need for a special diet prescribed by a physician;

(18) need for weekly therapy for medical, physical, or emotional problems, which the foster parent attends with the child;

(19) need for home tutoring provided by the foster parent if the child is learning disabled; or

(20) need for supervision of visits by the natural parents in the foster home at least weekly; and

B. within level A, shall be assigned no fewer than one ~~difficulty of care point~~ and no more than 35 difficulty of care points.

Subp. 3. **Level B.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level B if the child requires a significant amount of additional supervision or assistance, including that required by:

(1) ~~significant need for structure, guidance, and~~



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~~direction;~~

~~(2) significant need for motivational stimulation and skill development;~~

~~(3) additional care required by developmental delay, including mental retardation;~~

~~(4) significant care for medical disorders;~~

~~(5) help with activities of daily living significantly beyond that ordinarily required for the child's age;~~ need for a structured behavioral program;

(2) difficulty with peers;

(3) lack of verbal responsiveness;

(4) severe fear of or hostility to adults;

(5) infrequent running away overnight;

(6) negativism, lying, or stealing;

(7) significant problems with authority figures;

(8) chemical abuse;

(9) suicidal thoughts;

(10) chronic medical disorders or developmental delay, including mental retardation, with significant incapacity and need for motivation or skill development;

(11) a program of physical therapy prescribed by a professional for up to one hour per day to be provided by a foster parent;

(12) speech and hearing problems, such as those that require a communication board or sign language;

(13) presence of infections or contagion, which present a risk to the family;

(14) need for help with eating, toileting, hygiene, and dressing significantly beyond that normally required of the child's age level;

(15) occasional bowel and bladder accidents, if child is over five years of age;

(16) need for help with braces, prosthetics, or casts;

~~(6) attention to~~ (17) school truancy ~~or~~, behavior , or performance problems requiring increased contact by the



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foster parents with the school;

~~(7) significant care for~~ (18) sexual acting out; ~~or~~

~~(8) significant~~ (19) need for assistance to the child in relating to the natural parents; ~~and~~ or

(20) need for supervision of parental visits in the foster home more than once weekly; and

B. within level B, shall be assigned no fewer than 36 ~~difficulty of care points~~ and no more than 70 difficulty of care points.

Subp. 4. **Level C.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level C if the child requires an extensive amount of additional supervision or assistance, including that required by:

(1) ~~care required by~~ extreme attention-seeking ~~behavior, aggressive acting out, or~~, unsocialized ~~and~~, or withdrawn behavior;

(2) ~~extensive care required by developmental delay, including mental retardation;~~

~~(3) extensive care for medical disorders or physical handicaps;~~ self destructive or self-defeating behavior with suicidal thoughts;

(3) extreme hyperactivity;

(4) frequent running away;

(5) severe emotional disturbance, requiring ongoing treatment;

(6) the child having been a victim of sexual or physical abuse;

(7) destructive acting-out, either physically, verbally, or sexually;

(8) repeated violations of law concerning persons or property;

(9) chemical abuse;

(10) extreme problems with authority figures;

(11) chronic medical disorders or severe



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developmental delay including mental retardation, with extreme incapacity which may require frequent hospitalizations;

(12) a severe physical handicap, and the child is not ambulatory or is oppositional;

(13) feeding problems, including swallowing problems or vomiting after meals, or the need for structured or forced feedings;

(14) a program of physical therapy prescribed by a professional for between one and two hours per day to be provided by a foster parent;

(15) need for help in eating and toileting, including spoon feeding, toilet training, and diapering, if the child is over five years of age;

(16) need for help in dressing and hygiene, if the child is over 12 years of age;

(17) need for therapy for medical, physical, or emotional problems, which the foster parent attends with the child at least twice weekly;

~~(4) extensive attention to~~ (18) school truancy, behavior, or performance problems requiring extensive contact by the foster parents with the school; ~~or~~

~~(5) extensive assistance to the child in relating to the natural parents; and~~

(19) need for parenting education for the natural parents by the foster parents during visitations; or

(20) need for protection of the child from threatening natural parents; and

B. within level C, shall be assigned no fewer than 71 ~~difficulty of care points~~ and no more than 105 difficulty of care points.

Subp. 5. **Level D.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level D if the child requires an exceptional amount of additional supervision or assistance, including that required by:

(1) ~~care required because the child is dangerous~~



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~~to-himself-or-herself-or-others;~~ phobic or compulsive behavior or other severe emotional disturbance;

(2) inappropriate sexual aggressiveness or extreme vulnerability;

(3) assaultive behavior;

(4) diagnosed character disorder with asocial behavior;

(5) chemical abuse;

(6) a recent suicidal attempt;

(7) a severe handicap with multiple disabilities;

~~(2) exceptional care required by mental illness;~~ (8) developmental delay including mental retardation~~, or physical handicaps~~;

~~(3) exceptional care for medical disorders;~~

~~(4) exceptional care for activities of daily living such as lifting, feeding, or diapering;~~

~~(5) exceptional care for sexual acting out;~~

~~(6) exceptional assistance to the child in relating to the natural parents; or~~

(9) hyperkinetic behavior;

(10) need for frequent supervision of a prosthesis or appliance, such as a shunt, colostomy, or ilial conduit;

(11) lack of bowel or bladder control, if child is over 12 years of age;

(12) a program of physical therapy prescribed by a professional for between two and three hours per day to be provided by a foster parent;

(13) uncontrollable seizures;

(14) aspiration, or need for suctioning;

(15) a gastrostomy;

(16) heavy weight, needing lifting;

(17) disabilities requiring feeding and diapering or dressing and hygiene performed by a foster parent;

(18) need for therapeutic visits for physical, mental, or emotional problems, attended by a foster parent more



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often than twice weekly; or

~~(7)~~ (19) need for relief of the foster parent by another adult; and

B. within level D, shall be assigned no fewer than 106 ~~difficulty-of-care-points~~ and no more than 140 difficulty of care points.

Subp. 6. **Level E.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level E if the child ~~cannot be maintained in a typical family setting and~~ requires ~~highly skilled foster care~~ an extraordinary amount of supervision or assistance, including that required by:

(1) ~~care of extensive medical disorders; or~~

~~(2) care of severely disturbed behavior, such as when the child extensively acts out sexually, or is dangerous to himself or herself or others~~ frequent and recent suicide attempts;

(2) frequent and recent arsonist behavior;

(3) high risk of danger to the child or others by the child;

(4) life threatening illness with a guarded prognosis or expectation of death, which may require frequent hospitalization;

(5) need for a heart monitor;

(6) need for tracheotomy suctioning;

(7) need for gavage feeding;

(8) need for intravenous feeding or intestinal massage;

(9) need for extensive burn care; or

(10) a program of physical therapy prescribed by a professional for between three and four hours per day to be provided by a foster parent; and

B. within level E, shall be assigned no fewer than 141 ~~difficulty-of-care-points~~ and no more than 175 difficulty of care points.

Subp. 7. **Level F.** A child eligible for difficulty of care



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payments under part 9560.0653 [Emergency]:

A. shall be assessed at level F if the child ~~has an extraordinary condition that~~ requires supervision or assistance in excess of that of Level E under subpart 6; and

B. within level F, shall be assigned no fewer than 176 ~~difficulty of care points~~ and no more than 225 difficulty of care points.

9560.0655 [Emergency] DIFFICULTY OF CARE PAYMENT RATE.

Subpart 1. **Payment rate.** Except as provided by subpart 2, the local social services agency shall make payments to the foster care provider at the rate of $3.70 per month for each point assessed under part 9560.0654 [Emergency].

Subp. 2. **Existing placements.** In a placement for which a difficulty of care payment was established and was being made prior to the effective date of parts 9560.0650 to 9560.0656, and the payment is greater than the payment which would be made under subpart 1, the local social services agency shall continue to pay the greater amount until the child's difficulty of care ~~is reassessed at a different level~~ changes or the placement terminates.

9560.0656 [Emergency] DOCUMENTATION.

Subpart 1. **Assessment instrument.** The local social services agency shall document the assessment of the difficulty of care under parts 9560.0653 [Emergency] and 9560.0654 [Emergency] using a written assessment instrument consistent with parts 9560.0653 [Emergency] and 9560.0654 [Emergency]. The case record shall include a description of each condition on which the assessment is based.

Subp. 2. **Approval of assessment instrument.** The assessment instrument required by subpart 1 must be approved by the commissioner.

EFFECT OF EMERGENCY AMENDMENTS. After the emergency amendments to part 9560.0650 expire, the permanent rule as it read prior to those amendments shall again be in effect, except



Approved by Revisor _____

as may be amended by permanent rule.

EFFECTIVE DATE. These rules are effective January 1, 1988.



Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

DEC 9 - 1987

Joan Anderson Growe
Secretary of State

2:29 PM

APPROVED AS TO FORM AND LEGALITY

December 8 1987

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Julie A. Zappanti
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendment and Adoption of Rules of the State Department of Human Services Governing Child Foster Care Difficulty of Care Payments, Minnesota Rules, parts 9560.0650 to 9560.0656

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE

Notice of the Commissioner's intent to adopt the above-entitled emergency rule was published in the State Register on September 28, 1987 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.30 on September 23, 1987.

All persons were given the opportunity to submit written comment on the rule for at least 25 days after notice of proposed rulemaking. No requests for notice of submission to the attorney general were received by the agency.

Based on the comments and evidence in the record before the agency, I find the following:

1. The rule as proposed, with the changes described below, is necessary and reasonable to implement Minnesota Statutes, section 256.82, subdivisions 3 and 3a.

2. The agency received no comments suggesting any changes to the proposed rule in response to the Notice of Intent to Adopt an Emergency Rule.

3. Changes were made to part 9560.0654 of the proposed rule to incorporate specific provisions of the assessment instrument required by part 9560.0656. These changes more precisely define the scope of the various levels of care and define the assessment instrument, but make no substantive changes.

4. An effective date was added to make the rule effective on January 1, 1988.

5. The changes made to part 9560.0654 do not constitute substantial changes, as they only clarify the provisions of the rule as proposed and define the assessment instrument, but make no substantive changes. The addition of the effective date is not a substantial change as it only specifies the date upon which the rule will take effect.

6. The Department has complied with all applicable provisions of law and rule in the promulgation of these rules.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Foster Care Difficulty of Care Payments, is adopted this 1st day of December, 1987, pursuant to authority vested in me by Minnesota Statutes, section 256.82, subdivisions 3 and 3a.

for SANDRA S. GARDEBRING
Commissioner

In the Matter of the Proposed Amendment and Adoption of Rules of the State Department of Human Services Governing Child Foster Care Difficulty of Care Payments, Minnesota Rules, parts 9560.0650 to 9560.0656

DECLARATION OF COUNSEL

I, Julie K. Harris, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting supplemental rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is ~~T653~~ 0850.

Julie K. Harris
Special Assistant
Attorney General

Dated: December 1, 1987

STATE OF MINNESOTA

# Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : November 18, 1987

TO : DAVID SIEGAL
Department of Human Services
Rules Division

FROM : JULIE HARRIS
Special Assistant
Attorney General

PHONE : JULIE A. LEPPINK
Special Assistant
Attorney General

Julie A. Leppink

SUBJECT : 7-3493

Rule 1414 - Department of Human Services Foster Care Difficulty of Care Payments

The above captioned rule has not been approved by the Attorney General because large portions of the rule are impermissibly vague and grant the local social services agencies unbridled discretion. When a rule is vague and allows officials to act at their own discretion, the risk of inconsistent application of the rule exists.

The portions of the rule listed in Attachment A grant local social service agencies almost unlimited and unguided discretion in making difficulty of care determinations. Instead of specific standards or examples for each level of care, the rule provides only general criteria which include vague adjectives such as "moderate", "significant", "exceptional", "extreme", and "extensive". Because these descriptive terms are not defined in the rule, local administrators are left to make their own decisions as to whether a certain behavior, medical condition, or mental state requires a "moderate" or a "significant" amount of care.

A rule is legally infirm if it grants an agency unbridled discretion. Specific standards are necessary to give interested persons notice of requirements and criteria. In addition, specific standards are important both as a guide in the administration of the rule and as a basis for determining whether the administering official acted in an arbitrary or capricious manner. In this rule, there are few standards for difficulty payments which are specific enough to serve these purposes.

There are several options available for correcting the deficiencies in the rule. First, the terms "moderate," "significant", "extensive" and "exceptional," could be defined in the definition section of the rule. Another option would be to

incorporate specific examples by reference. However, incorporation by reference could be confusing and inconvenient for a reader of the rules.

Perhaps the most logical approach would be to add specific examples of "moderate", "significant", etc., conduct to the rules. Concrete examples would give persons interested in the rule notice of what the levels of difficulty encompass and would also provide guidance for those administering the rule.

This rule may be resubmitted to the Attorney General for review after agency action. The procedure detailed in Minn. Rules pt. 2010.1300 must be followed.

**2010.1300 RESUBMISSION.**

Subpart 1. Resubmission. To resubmit a rule which was withdrawn or disapproved by the attorney general, the following documents must be submitted:

A. A supplemental findings of fact, conclusions, and order adopting the rule. The order must be signed by a person authorized to adopt the rule or authorized to sign the findings of fact, conclusion, and order adopting the rule. If any modifications were made to the rule since the rule was withdrawn or disapproved, findings of fact and conclusions must be set forth supporting the reasons for the changes and explain why the changes do not constitute substantial changes.

B. A supplemental certificate of the multimember agency's resolution if:

(1) the agency is a multimember agency as provided in Minnesota Statutes, section 15.0597, subdivision 1a;
(2) modifications were made to the rule since the rule was withdrawn or disapproved; and

(3) the certificate of the agency's resolution submitted in accordance with part 2010.0300, item J, or 2010.0400, item I does not authorize the modification by the person who signed the supplemental findings of fact, conclusions, and order. The supplemental certificate of the agency's resolution must be in accordance with part 2010.0300, item J or 2010.0400, item I.

C. If any modifications were made to the rule as adopted since the rule was withdrawn or disapproved, four copies of the rule as adopted with the modifications reflected and approved as to form by the revisor of statutes.

D. A new notice of submission of the rule to the attorney general mailed to any persons who requested notification pursuant to Minnesota Statutes, section 14.26 or 14.32. The notice of submission to the attorney general must comply with part 2010.0300, item N or 2010.0400, item M.

E. The affidavit of mailing for the notice of submission of the rule to the attorney general, if applicable. The affidavit must comply with part 2010.0300, item O or 2010.0400, item N.

F. Any other documents necessary to demonstrate that the procedural or substantive deficiencies have been remedied.

Subp. 2. Resubmission review time period. The attorney general review period for resubmission is the same as for the initial submission of the rule with one exception. If the resubmitted rule was adopted without a public hearing and does not raise significant new legal issues, the eight-day minimum review period does not apply. For the general review period, see part 2010.0800

When you submit the rule to our office, please indicate that it is a resubmission and refer to our file number 1414. If you have any questions, please contact me.

JAL:nah

Enclosure - Attachment A

cc: Duane Harves
Maryanne Hruby
Paul Marinac
Marty Casserly

**ATTACHMENT A**

Subp. 2.A.

(1) care required by a moderate degree of dependency, passivity, or lack of responsiveness and ability to relate to others;

(2) moderate care for medical disorders;

(4) moderate help with activities of dailing living beyond that ordinarily required for the child's age; or

(5) moderate assistance to the child in relating to the natural parents;

Subp. 3.A.

(1) significant need for structure, guidance, and direction;

(2) significant need for motivational stimulation and skill development;

(3) additional care required by developmental delay, including mental retardation;

(4) significant care for medical disorders;

(5) help with activities of daily living significantly beyond that ordinarily required for the child's age;

(7) significant care for sexual acting out; or

(8) significant assistance to the child in relating to the natural parents; and

Subpt. 4.A.

(1) care required by extreme attention-seeking behavior, aggressive acting out, unsocialized and withdrawn behavior;

(2) extensive care required by developmental delay, including mental retardation;

(3) extensive care for medical disorders or physical handicaps;

(4) extensive attention to school problems; or

(5) extensive assistance to the child in relating to the natural parents;

Subpt. 5.A.

(1) care required because the child is dangerous to himself or herself or others;

(2) exceptional care required by mental illness, developmental delay including mental retardation, or physical handicaps;

(3) exceptional care for medical disorders;

(5) exceptional care for sexual acting out;

(6) exceptional assistance to the child in relating to the natural parents; or

Subpt. 6.A.

(1) care of extensive medical disorders; or

(2) care of severely disturbed behavior, such as when the child extensively acts out sexually, or is dangerous to himself or herself or others;

# RULE REVIEW CHECKLIST

File No. 1414 Docket No. 05.0009.0850

DATE RECEIVED 10/29/87 ADOPTED W/O HEARING _____

REVIEW DATE - EMERGENCY RULE X

DUE DATE 11/8/87 13-87

REVISOR APPROVED X

APPROVED _____ REVISOR DISAPPROVED _____

DISAPPROVED ✓ 11/13/87 992 FILED W/SEC.STATE _____

WITHDRAWN _____ RETURNED TO AGENCY _____

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✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion

8/24/87 Date published in State Register

yes Comments

~~Petition for Adoption of a Rule~~

~~Board's Authorizing Resolution~~

✓ Proposed rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

256.82 subd 3+3a Statutory Authority

no Small Business Statement

yes Expenditure of public money statement

yes Signature

~~Statement of Need and Reasonableness~~

_____ Small Business Statement

_____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

9/23/87 Date [redacted]/25 days before adoption

✓ Publication in State Register

9/28/87 Date [redacted]/25 days before adoption

Resolution Adopting

✓ Findings of Fact, Conclusions & Order Adopting

10/26/87 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney

Julie Harris Name of SAAG representing agency

~~Notice of Submission to Attorney General~~

~~Affidavit of Mailing Notice to Attorney General~~

Citation in State Register also incorrect



COPY

Department of Human Services

Adopted Emergency Amendments to Permanent Rules and Emergency Rules Relating to Foster Care Difficulty of Care Payments

Emergency Amendments to Rules as Adopted

9560.0650 MAINTENANCE STANDARDS.

Subpart 1. [Unchanged.]

Subp. 3. **Agency contract care.** When foster care is provided for a child by a provider licensed under parts 9545.0010 to 9545.0260 through contract with a public or private agency, foster care maintenance payments and difficulty of care payments shall be determined according to the rate schedules in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency]. If the local social services agency is contracting for administrative or social services costs, the payments to the contracting agency shall be in addition to the rates established in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency].

Subp. 4. and 5. [Unchanged.]

9560.0651 [Emergency] DIFFICULTY OF CARE ASSESSMENTS AND PAYMENTS.

Parts 9560.0652 to 9560.0656 [Emergency] provide criteria for assessing the difficulty of care of a child in foster care and the payment rate.

9560.0652 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9560.0653 to 9560.0656 [Emergency] have the meanings given them in this part.

Subp. 2. **Activities of daily living.** "Activities of daily living" means activities of basic self-care, including eating, dressing, grooming, hygiene, and toileting.

Subp. 3. **Mental retardation.** "Mental retardation" means the condition of a person with mental retardation as defined in part 9525.0015, subpart 20.

Subp. 4. **Mental illness.** "Mental illness" has the meaning

given in Minnesota Statutes, section 245.462, subdivision 20.

9560.0653 [Emergency] DIFFICULTY OF CARE PAYMENTS.

The local social services agency shall make payments in addition to the basic maintenance standards of part 9560.0650, subpart 1, for children with mental, physical, or emotional handicaps who require additional supervision or assistance in behavior management, activities of daily living, management of medical problems, or interaction with the natural parents and the community. The local social services agency shall assess each child under this part and the difficulty of care levels in part 9560.0654 [Emergency].

9560.0654 [Emergency] DIFFICULTY OF CARE ASSESSMENTS.

Subpart 1. **General.** Within the highest appropriate level and the respective point range of subparts 2 to 7, a single point value shall be assigned based on the age of the child, the number of conditions requiring special care, and the degree of difficulty of caring for each condition. ??

Subp. 2. **Level A.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level A if the child requires a moderate amount of additional supervision or assistance, including: ok if specific criteria

(1) care required by a moderate degree of dependency, passivity, or lack of responsiveness and ability to relate to others; vague, though not same as another §

(2) moderate care for medical disorders; see 3(A)(1); 4(A)(3); 5(A)(3); 6(A)(1)

(3) supervision because of a physical handicap, although the child is self sufficient;

(4) moderate help with activities of daily living beyond that ordinarily required for the child's age; or see 3(A)(5);

(5) moderate assistance to the child in relating to the natural parents; and see 3(A)(8); 4(A)(5); 5(A)(6)

B. within level A, shall be assigned no fewer than one difficulty of care point and no more than 35 points.

Subp. 3. **Level B.** A child eligible for difficulty of care

payments under part 9560.0653 [Emergency]:

A. shall be assessed at level B if the child requires a significant amount of additional supervision or assistance, including:

(1) significant need for structure, guidance, and direction;

(2) significant need for motivational stimulation and skill development;

(3) additional care required by developmental delay, including mental retardation;

(4) significant care for medical disorders;

(5) help with activities of daily living significantly beyond that ordinarily required for the child's age;

(6) attention to school truancy or behavior problems;

(7) significant care for sexual acting out; or

(8) significant assistance to the child in relating to the natural parents; and

B. within level B, shall be assigned no fewer than 36 difficulty of care points and no more than 70 points.

Subp. 4. **Level C.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level C if the child requires an extensive amount of additional supervision or assistance, including:

(1) care required by extreme attention-seeking behavior, aggressive acting out, or unsocialized and withdrawn behavior;

(2) extensive care required by developmental delay, including mental retardation;

(3) extensive care for medical disorders or physical handicaps;

(4) extensive attention to school problems; or

(5) extensive assistance to the child in relating to the natural parents; and

B. within level C, shall be assigned no fewer than 71 difficulty of care points and no more than 105 points.

Subp. 5. **Level D.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level D if the child requires an exceptional amount of additional supervision or assistance, including:

(1) care required because the child is dangerous to himself or herself or others;

(2) exceptional care required by mental illness, developmental delay including mental retardation, or physical handicaps;

(3) exceptional care for medical disorders;

(4) exceptional care for activities of daily living such as lifting, feeding, or diapering;

(5) exceptional care for sexual acting out;

(6) exceptional assistance to the child in relating to the natural parents; or

(7) need for relief of the foster parent by another adult; and

B. within level D, shall be assigned no fewer than 106 difficulty of care points and no more than 140 points.

Subp. 6. **Level E.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level E if the child cannot be maintained in a typical family setting and requires highly skilled foster care, including:

(1) care of extensive medical disorders; or

(2) care of severely disturbed behavior, such as when the child extensively acts out sexually, or is dangerous to himself or herself or others; and

B. within level E, shall be assigned no fewer than 141 difficulty of care points and no more than 175 points.

Subp. 7. **Level F.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level F if the child has an

this may be ok if level E re-written

extraordinary condition that requires supervision or assistance in excess of that of Level E under subpart 6; and

B. within level F, shall be assigned no fewer than 176 difficulty of care points and no more than 225 points.

9560.0655 [Emergency] DIFFICULTY OF CARE PAYMENT RATE.

Subpart 1. **Payment rate.** Except as provided by subpart 2, the local social services agency shall make payments to the foster care provider at the rate of $3.70 per month for each point assessed under part 9560.0654 [Emergency].

Subp. 2. **Existing placements.** In a placement for which a difficulty of care payment was established and was being made prior to the effective date of parts 9560.0650 to 9560.0656, and the payment is greater than the payment which would be made under subpart 1, the local social services agency shall continue to pay the greater amount until the child's difficulty of care is reassessed at a different level or the placement terminates.

9560.0656 [Emergency] DOCUMENTATION.

Subpart 1. **Assessment instrument.** The local social services agency shall document the assessment of the difficulty of care under parts 9560.0653 [Emergency] and 9560.0654 [Emergency] using a written assessment instrument consistent with parts 9560.0653 [Emergency] and 9560.0654 [Emergency]. The case record shall include a description of each condition on which the assessment is based.

Subp. 2. **Approval of assessment instrument.** The assessment instrument required by subpart 1 must be approved by the commissioner.

EFFECT OF EMERGENCY AMENDMENTS. After the emergency amendments to part 9560.0650 expire, the permanent rule as it read prior to those amendments shall again be in effect, except as may be amended by permanent rule.

Citation in State Register also incorrect

09/30/87 [REVISOR ] SEQ/MM AR1160

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Department of Human Services

Adopted Emergency Amendments to Permanent Rules and Emergency Rules Relating to Foster Care Difficulty of Care Payments

Emergency Amendments to Rules as Adopted

9560.0650 MAINTENANCE STANDARDS.

Subpart 1. [Unchanged.]

Subp. 3. **Agency contract care.** When foster care is provided for a child by a provider licensed under parts 9545.0010 to 9545.0260 through contract with a public or private agency, foster care maintenance payments and difficulty of care payments shall be determined according to the rate schedules in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency]. If the local social services agency is contracting for administrative or social services costs, the payments to the contracting agency shall be in addition to the rates established in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency].

Subp. 4. and 5. [Unchanged.]

9560.0651 [Emergency] DIFFICULTY OF CARE ASSESSMENTS AND PAYMENTS.

Parts 9560.0652 to 9560.0656 [Emergency] provide criteria for assessing the difficulty of care of a child in foster care and the payment rate.

9560.0652 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9560.0653 to 9560.0656 [Emergency] have the meanings given them in this part.

Subp. 2. **Activities of daily living.** "Activities of daily living" means activities of basic self-care, including eating, dressing, grooming, hygiene, and toileting.

Subp. 3. **Mental retardation.** "Mental retardation" means the condition of a person with mental retardation as defined in part 9525.0015, subpart 20.

Subp. 4. **Mental illness.** "Mental illness" has the meaning

given in Minnesota Statutes, section 245.462, subdivision 20.

9560.0653 [Emergency] DIFFICULTY OF CARE PAYMENTS.

The local social services agency shall make payments in addition to the basic maintenance standards of part 9560.0650, subpart 1, for children with mental, physical, or emotional handicaps who require additional supervision or assistance in behavior management, activities of daily living, management of medical problems, or interaction with the natural parents and the community. The local social services agency shall assess each child under this part and the difficulty of care levels in part 9560.0654 [Emergency].

9560.0654 [Emergency] DIFFICULTY OF CARE ASSESSMENTS.

Subpart 1. **General.** Within the highest appropriate level and the respective point range of subparts 2 to 7, a single point value shall be assigned based on the age of the child, the number of conditions requiring special care, and the degree of difficulty of caring for each condition. ??

Subp. 2. **Level A.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level A if the child requires a moderate amount of additional supervision or assistance, including: ok if specific criteria

(1) care required by a moderate degree of dependency, passivity, or lack of responsiveness and ability to relate to others; OK?

(2) moderate care for medical disorders; vague, though not same as another § see 3(A)(1); 4(A)(3); 5(A)(3); 6(A)(1) ✓

(3) supervision because of a physical handicap, although the child is self sufficient;

(4) moderate help with activities of daily living beyond that ordinarily required for the child's age; or see 3(A)(5); ✓

(5) moderate assistance to the child in relating to the natural parents; and see 3(A)(8); 4(A)(5); 5(A)(6) ✓

B. within level A, shall be assigned no fewer than one difficulty of care point and no more than 35 points.

Subp. 3. **Level B.** A child eligible for difficulty of care

payments under part 9560.0653 [Emergency]:

A. shall be assessed at level B if the child requires a significant amount of additional supervision or assistance, including: ok if specific criteria

(1) significant need for structure, guidance, and direction; vague

(2) significant need for motivational stimulation and skill development; vague

(3) additional care required by developmental delay, including mental retardation; see 4(A)(2); 5(A)(2)

(4) significant care for medical disorders; see 2(A)(2); 4(A)(3); 5(A)(3); 6(A)(1)

(5) help with activities of daily living significantly beyond that ordinarily required for the child's age; see 2(A)(4);

(6) attention to school truancy or behavior problems; see 4(A)(4) (school problems) ?

(7) significant care for sexual acting out; or see 5(A)(5); 6(A)(2)

(8) significant assistance to the child in relating to the natural parents; and see 2(A)(5); 4(A)(5); 5(A)(6)

B. within level B, shall be assigned no fewer than 36 difficulty of care points and no more than 70 points.

Subp. 4. **Level C.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level C if the child requires an extensive amount of additional supervision or assistance, including: ok if specific criteria

(1) care required by extreme attention-seeking behavior, aggressive acting out, or unsocialized and withdrawn behavior; makes vague ? vague

(2) extensive care required by developmental delay, including mental retardation; see 3(A)(3); 5(A)(2)

(3) extensive care for medical disorders or physical handicaps; see 1(A)(2); 3(A)(1); 5(A)(3); 6(A)(1) ✓

(4) extensive attention to school problems; or see 3(A)(6) ?

(5) extensive assistance to the child in relating to the natural parents; and see 3(A)(8); 2(A)(5); 5(A)(6)

B. within level C, shall be assigned no fewer than 71 difficulty of care points and no more than 105 points.

Subp. 5. **Level D.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level D if the child requires an exceptional amount of additional supervision or assistance, including:

(1) care required because the child is dangerous to himself or herself or others;

(2) exceptional care required by mental illness, developmental delay including mental retardation, or physical handicaps;

(3) exceptional care for medical disorders;

(4) exceptional care for activities of daily living such as lifting, feeding, or diapering;

(5) exceptional care for sexual acting out;

(6) exceptional assistance to the child in relating to the natural parents; or

(7) need for relief of the foster parent by another adult; and

B. within level D, shall be assigned no fewer than 106 difficulty of care points and no more than 140 points.

Subp. 6. **Level E.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level E if the child cannot be maintained in a typical family setting and requires highly skilled foster care, including:

(1) care of extensive medical disorders; or

(2) care of severely disturbed behavior, such as when the child extensively acts out sexually, or is dangerous to himself or herself or others; and

B. within level E, shall be assigned no fewer than 141 difficulty of care points and no more than 175 points.

Subp. 7. **Level F.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level F if the child has an

this may be ok if level E re-written

extraordinary condition that requires supervision or assistance in excess of that of Level E under subpart 6; and

B. within level F, shall be assigned no fewer than 176 difficulty of care points and no more than 225 points.

9560.0655 [Emergency] DIFFICULTY OF CARE PAYMENT RATE.

Subpart 1. **Payment rate.** Except as provided by subpart 2, the local social services agency shall make payments to the foster care provider at the rate of $3.70 per month for each point assessed under part 9560.0654 [Emergency].

Subp. 2. **Existing placements.** In a placement for which a difficulty of care payment was established and was being made prior to the effective date of parts 9560.0650 to 9560.0656, and the payment is greater than the payment which would be made under subpart 1, the local social services agency shall continue to pay the greater amount until the child's difficulty of care is reassessed at a different level or the placement terminates.

9560.0656 [Emergency] DOCUMENTATION.

Subpart 1. **Assessment instrument.** The local social services agency shall document the assessment of the difficulty of care under parts 9560.0653 [Emergency] and 9560.0654 [Emergency] using a written assessment instrument consistent with parts 9560.0653 [Emergency] and 9560.0654 [Emergency]. The case record shall include a description of each condition on which the assessment is based.

Subp. 2. **Approval of assessment instrument.** The assessment instrument required by subpart 1 must be approved by the commissioner.

EFFECT OF EMERGENCY AMENDMENTS. After the emergency amendments to part 9560.0650 expire, the permanent rule as it read prior to those amendments shall again be in effect, except as may be amended by permanent rule.

Department of Human Services

Adopted Emergency Amendments to Permanent Rules and Emergency Rules Relating to Foster Care Difficulty of Care Payments

Emergency Amendments to Rules as Adopted

9560.0650 MAINTENANCE STANDARDS.

Subpart 1. [Unchanged.]

Subp. 3. **Agency contract care.** When foster care is provided for a child by a provider licensed under parts 9545.0010 to 9545.0260 through contract with a public or private agency, foster care maintenance payments and difficulty of care payments shall be determined according to the rate schedules in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency]. If the local social services agency is contracting for administrative or social services costs, the payments to the contracting agency shall be in addition to the rates established in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency].

Subp. 4. and 5. [Unchanged.]

9560.0651 [Emergency] DIFFICULTY OF CARE ASSESSMENTS AND PAYMENTS.

Parts 9560.0652 to 9560.0656 [Emergency] provide criteria for assessing the difficulty of care of a child in foster care and the payment rate.

9560.0652 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9560.0653 to 9560.0656 [Emergency] have the meanings given them in this part.

Subp. 2. **Activities of daily living.** "Activities of daily living" means activities of basic self-care, including eating, dressing, grooming, hygiene, and toileting.

Subp. 3. **Mental retardation.** "Mental retardation" means the condition of a person with mental retardation as defined in part 9525.0015, subpart 20.

Subp. 4. **Mental illness.** "Mental illness" has the meaning

given in Minnesota Statutes, section 245.462, subdivision 20.

9560.0653 [Emergency] DIFFICULTY OF CARE PAYMENTS.

The local social services agency shall make payments in addition to the basic maintenance standards of part 9560.0650, subpart 1, for children with mental, physical, or emotional handicaps who require additional supervision or assistance in behavior management, activities of daily living, management of medical problems, or interaction with the natural parents and the community. The local social services agency shall assess each child under this part and the difficulty of care levels in part 9560.0654 [Emergency].

9560.0654 [Emergency] DIFFICULTY OF CARE ASSESSMENTS.

Subpart 1. **General.** Within the highest appropriate level and the respective point range of subparts 2 to 7, a single point value shall be assigned based on the age of the child, the number of conditions requiring special care, and the degree of difficulty of caring for each condition.

Subp. 2. **Level A.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level A if the child requires a moderate amount of additional supervision or assistance, including:

(1) care required by a moderate degree of dependency, passivity, or lack of responsiveness and ability to relate to others;

(2) moderate care for medical disorders;

(3) supervision because of a physical handicap, although the child is self sufficient;

(4) moderate help with activities of daily living beyond that ordinarily required for the child's age; or

(5) moderate assistance to the child in relating to the natural parents; and

B. within level A, shall be assigned no fewer than one difficulty of care point and no more than 35 points.

Subp. 3. **Level B.** A child eligible for difficulty of care

payments under part 9560.0653 [Emergency]:

A. shall be assessed at level B if the child requires a significant amount of additional supervision or assistance, including:

(1) significant need for structure, guidance, and direction;

(2) significant need for motivational stimulation and skill development;

(3) additional care required by developmental delay, including mental retardation;

(4) significant care for medical disorders;

(5) help with activities of daily living significantly beyond that ordinarily required for the child's age;

(6) attention to school truancy or behavior problems;

(7) significant care for sexual acting out; or

(8) significant assistance to the child in relating to the natural parents; and

B. within level B, shall be assigned no fewer than 36 difficulty of care points and no more than 70 points.

Subp. 4. Level C. A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level C if the child requires an extensive amount of additional supervision or assistance, including:

(1) care required by extreme attention-seeking behavior, aggressive acting out, or unsocialized and withdrawn behavior;

(2) extensive care required by developmental delay, including mental retardation;

(3) extensive care for medical disorders or physical handicaps;

(4) extensive attention to school problems; or

(5) extensive assistance to the child in relating to the natural parents; and

B. within level C, shall be assigned no fewer than 71 difficulty of care points and no more than 105 points.

Subp. 5. **Level D.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level D if the child requires an exceptional amount of additional supervision or assistance, including:

(1) care required because the child is dangerous to himself or herself or others; same as E-2

(2) exceptional care required by mental illness, developmental delay including mental retardation, or physical handicaps;

(3) exceptional care for medical disorders;

(4) exceptional care for activities of daily living such as lifting, feeding, or diapering;

(5) exceptional care for sexual acting out;

(6) exceptional assistance to the child in relating to the natural parents; or

(7) need for relief of the foster parent by another adult; and

B. within level D, shall be assigned no fewer than 106 difficulty of care points and no more than 140 points.

Subp. 6. **Level E.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level E if the child cannot be maintained in a typical family setting and requires highly skilled foster care, including:

(1) care of extensive medical disorders; or

(2) care of severely disturbed behavior, such as when the child extensively acts out sexually, or is dangerous to himself or herself or others; and same as B-7 same as D-1

B. within level E, shall be assigned no fewer than 141 difficulty of care points and no more than 175 points.

Subp. 7. **Level F.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level F if the child has an

extraordinary condition that requires supervision or assistance in excess of that of Level E under subpart 6; and

B. within level F, shall be assigned no fewer than 176 difficulty of care points and no more than 225 points.

9560.0655 [Emergency] DIFFICULTY OF CARE PAYMENT RATE.

Subpart 1. **Payment rate.** Except as provided by subpart 2, the local social services agency shall make payments to the foster care provider at the rate of $3.70 per month for each point assessed under part 9560.0654 [Emergency].

Subp. 2. **Existing placements.** In a placement for which a difficulty of care payment was established and was being made prior to the effective date of parts 9560.0650 to 9560.0656, and the payment is greater than the payment which would be made under subpart 1, the local social services agency shall continue to pay the greater amount until the child's difficulty of care is reassessed at a different level or the placement terminates.

9560.0656 [Emergency] DOCUMENTATION.

Subpart 1. **Assessment instrument.** The local social services agency shall document the assessment of the difficulty of care under parts 9560.0653 [Emergency] and 9560.0654 [Emergency] using a written assessment instrument consistent with parts 9560.0653 [Emergency] and 9560.0654 [Emergency]. The case record shall include a description of each condition on which the assessment is based.

Subp. 2. **Approval of assessment instrument.** The assessment instrument required by subpart 1 must be approved by the commissioner.

EFFECT OF EMERGENCY AMENDMENTS. After the emergency amendments to part 9560.0650 expire, the permanent rule as it read prior to those amendments shall again be in effect, except as may be amended by permanent rule.

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Department of Human Services

Adopted Emergency Amendments to Permanent Rules and Emergency Rules Relating to Foster Care Difficulty of Care Payments

Emergency Amendments to Rules as Adopted

9560.0650 MAINTENANCE STANDARDS.

Subpart 1. [Unchanged.]

Subp. 3. **Agency contract care.** When foster care is provided for a child by a provider licensed under parts 9545.0010 to 9545.0260 through contract with a public or private agency, foster care maintenance payments and difficulty of care payments shall be determined according to the rate schedules in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency]. If the local social services agency is contracting for administrative or social services costs, the payments to the contracting agency shall be in addition to the rates established in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency].

Subp. 4. and 5. [Unchanged.]

9560.0651 [Emergency] DIFFICULTY OF CARE ASSESSMENTS AND PAYMENTS.

Parts 9560.0652 to 9560.0656 [Emergency] provide criteria for assessing the difficulty of care of a child in foster care and the payment rate.

9560.0652 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9560.0653 to 9560.0656 [Emergency] have the meanings given them in this part.

Subp. 2. **Activities of daily living.** "Activities of daily living" means activities of basic self-care, including eating, dressing, grooming, hygiene, and toileting.

Subp. 3. **Mental retardation.** "Mental retardation" means the condition of a person with mental retardation as defined in part 9525.0015, subpart 20.

Subp. 4. **Mental illness.** "Mental illness" has the meaning

given in Minnesota Statutes, section 245.462, subdivision 20.

9560.0653 [Emergency] DIFFICULTY OF CARE PAYMENTS.

The local social services agency shall make payments in addition to the basic maintenance standards of part 9560.0650, subpart 1, for children with mental, physical, or emotional handicaps who require additional supervision or assistance in behavior management, activities of daily living, management of medical problems, or interaction with the natural parents and the community. The local social services agency shall assess each child under this part and the difficulty of care levels in part 9560.0654 [Emergency].

9560.0654 [Emergency] DIFFICULTY OF CARE ASSESSMENTS.

Subpart 1. **General.** Within the highest appropriate level and the respective point range of subparts 2 to 7, a single point value shall be assigned based on the age of the child, the number of conditions requiring special care, and the degree of difficulty of caring for each condition.

Subp. 2. **Level A.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level A if the child requires a moderate amount of additional supervision or assistance, including:

(1) care required by a moderate degree of dependency, passivity, or lack of responsiveness and ability to relate to others;

(2) moderate care for medical disorders;

(3) supervision because of a physical handicap, although the child is self sufficient;

(4) moderate help with activities of daily living beyond that ordinarily required for the child's age; or

(5) moderate assistance to the child in relating to the natural parents; and

B. within level A, shall be assigned no fewer than one difficulty of care point and no more than 35 points.

Subp. 3. **Level B.** A child eligible for difficulty of care

payments under part 9560.0653 [Emergency]:

A. shall be assessed at level B if the child requires a significant amount of additional supervision or assistance, including:

(1) significant need for structure, guidance, and direction;

(2) significant need for motivational stimulation and skill development;

(3) additional care required by developmental delay, including mental retardation;

(4) significant care for medical disorders;

(5) help with activities of daily living significantly beyond that ordinarily required for the child's age;

(6) attention to school truancy or behavior problems;

(7) significant care for sexual acting out; or

(8) significant assistance to the child in relating to the natural parents; and

B. within level B, shall be assigned no fewer than 36 difficulty of care points and no more than 70 points.

Subp. 4. **Level C.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level C if the child requires an extensive amount of additional supervision or assistance, including:

(1) care required by extreme attention-seeking behavior, aggressive acting out, or unsocialized and withdrawn behavior;

(2) extensive care required by developmental delay, including mental retardation;

(3) extensive care for medical disorders or physical handicaps;

(4) extensive attention to school problems; or

(5) extensive assistance to the child in relating to the natural parents; and

B. within level C, shall be assigned no fewer than 71 difficulty of care points and no more than 105 points.

Subp. 5. **Level D.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level D if the child requires an exceptional amount of additional supervision or assistance, including:

What is exceptional?

(1) care required because the child is dangerous to himself or herself or others;

(2) exceptional care required by mental illness, developmental delay including mental retardation, or physical handicaps;

(3) exceptional care for medical disorders;

(4) exceptional care for activities of daily living such as lifting, feeding, or diapering;

(5) exceptional care for sexual acting out;

(6) exceptional assistance to the child in relating to the natural parents; or

(7) need for relief of the foster parent by another adult; and

B. within level D, shall be assigned no fewer than 106 difficulty of care points and no more than 140 points.

Subp. 6. **Level E.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level E if the child cannot be maintained in a typical family setting and requires highly skilled foster care, including:

(1) care of extensive medical disorders; or

(2) care of severely disturbed behavior, such as when the child extensively acts out sexually, or is dangerous to himself or herself or others; and

B. within level E, shall be assigned no fewer than 141 difficulty of care points and no more than 175 points.

Subp. 7. **Level F.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level F if the child has an

extraordinary condition that requires supervision or assistance in excess of that of Level E under subpart 6; and

B. within level F, shall be assigned no fewer than 176 difficulty of care points and no more than 225 points.

9560.0655 [Emergency] DIFFICULTY OF CARE PAYMENT RATE.

Subpart 1. **Payment rate.** Except as provided by subpart 2, the local social services agency shall make payments to the foster care provider at the rate of $3.70 per month for each point assessed under part 9560.0654 [Emergency].

Subp. 2. **Existing placements.** In a placement for which a difficulty of care payment was established and was being made prior to the effective date of parts 9560.0650 to 9560.0656, and the payment is greater than the payment which would be made under subpart 1, the local social services agency shall continue to pay the greater amount until the child's difficulty of care is reassessed at a different level or the placement terminates.

9560.0656 [Emergency] DOCUMENTATION.

Subpart 1. **Assessment instrument.** The local social services agency shall document the assessment of the difficulty of care under parts 9560.0653 [Emergency] and 9560.0654 [Emergency] using a written assessment instrument consistent with parts 9560.0653 [Emergency] and 9560.0654 [Emergency]. The case record shall include a description of each condition on which the assessment is based.

Subp. 2. **Approval of assessment instrument.** The assessment instrument required by subpart 1 must be approved by the commissioner.

EFFECT OF EMERGENCY AMENDMENTS. After the emergency amendments to part 9560.0650 expire, the permanent rule as it read prior to those amendments shall again be in effect, except as may be amended by permanent rule.

Department of Human Services

Adopted Emergency Amendments to Permanent Rules and Emergency Rules Relating to Foster Care Difficulty of Care Payments

Emergency Amendments to Rules as Adopted

9560.0650 MAINTENANCE STANDARDS.

Subpart 1. [Unchanged.]

Subp. 3. **Agency contract care.** When foster care is provided for a child by a provider licensed under parts 9545.0010 to 9545.0260 through contract with a public or private agency, foster care maintenance payments and difficulty of care payments shall be determined according to the rate schedules in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency]. If the local social services agency is contracting for administrative or social services costs, the payments to the contracting agency shall be in addition to the rates established in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency].

Subp. 4. and 5. [Unchanged.]

9560.0651 [Emergency] DIFFICULTY OF CARE ASSESSMENTS AND PAYMENTS.

Parts 9560.0652 to 9560.0656 [Emergency] provide criteria for assessing the difficulty of care of a child in foster care and the payment rate.

9560.0652 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9560.0653 to 9560.0656 [Emergency] have the meanings given them in this part.

Subp. 2. **Activities of daily living.** "Activities of daily living" means activities of basic self-care, including eating, dressing, grooming, hygiene, and toileting.

Subp. 3. **Mental retardation.** "Mental retardation" means the condition of a person with mental retardation as defined in part 9525.0015, subpart 20.

Subp. 4. **Mental illness.** "Mental illness" has the meaning

given in Minnesota Statutes, section 245.462, subdivision 20.

9560.0653 [Emergency] DIFFICULTY OF CARE PAYMENTS.

The local social services agency shall make payments in addition to the basic maintenance standards of part 9560.0650, subpart 1, for children with mental, physical, or emotional handicaps who require additional supervision or assistance in behavior management, activities of daily living, management of medical problems, or interaction with the natural parents and the community. The local social services agency shall assess each child under this part and the difficulty of care levels in part 9560.0654 [Emergency].

9560.0654 [Emergency] DIFFICULTY OF CARE ASSESSMENTS.

Subpart 1. **General.** Within the highest appropriate level and the respective point range of subparts 2 to 7, a single point value shall be assigned based on the age of the child, the number of conditions requiring special care, and the degree of difficulty of caring for each condition.

Subp. 2. **Level A.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level A if the child requires a moderate amount of additional supervision or assistance, including:

(1) care required by a moderate degree of dependency, passivity, or lack of responsiveness and ability to relate to others;

(2) moderate care for medical disorders;

(3) supervision because of a physical handicap, although the child is self sufficient;

(4) moderate help with activities of daily living beyond that ordinarily required for the child's age; or

(5) moderate assistance to the child in relating to the natural parents; and

B. within level A, shall be assigned no fewer than one difficulty of care point and no more than 35 points.

Subp. 3. **Level B.** A child eligible for difficulty of care

payments under part 9560.0653 [Emergency]:

A. shall be assessed at level B if the child requires a significant amount of additional supervision or assistance, including:

(1) significant need for structure, guidance, and direction;

(2) significant need for motivational stimulation and skill development;

(3) additional care required by developmental delay, including mental retardation;

(4) significant care for medical disorders;

(5) help with activities of daily living significantly beyond that ordinarily required for the child's age;

(6) attention to school truancy or behavior problems;

(7) significant care for sexual acting out; or

(8) significant assistance to the child in relating to the natural parents; and

B. within level B, shall be assigned no fewer than 36 difficulty of care points and no more than 70 points.

Subp. 4. **Level C.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level C if the child requires an extensive amount of additional supervision or assistance, including:

(1) care required by extreme attention-seeking behavior, aggressive acting out, or unsocialized and withdrawn behavior;

(2) extensive care required by developmental delay, including mental retardation;

(3) extensive care for medical disorders or physical handicaps;

(4) extensive attention to school problems; or

(5) extensive assistance to the child in relating to the natural parents; and

B. within level C, shall be assigned no fewer than 71 difficulty of care points and no more than 105 points.

Subp. 5. **Level D.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level D if the child requires an exceptional amount of additional supervision or assistance, including:

(1) care required because the child is dangerous to himself or herself or others;

(2) exceptional care required by mental illness, developmental delay including mental retardation, or physical handicaps;

(3) exceptional care for medical disorders;

(4) exceptional care for activities of daily living such as lifting, feeding, or diapering;

(5) exceptional care for sexual acting out;

(6) exceptional assistance to the child in relating to the natural parents; or

(7) need for relief of the foster parent by another adult; and

B. within level D, shall be assigned no fewer than 106 difficulty of care points and no more than 140 points.

Subp. 6. **Level E.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level E if the child cannot be maintained in a typical family setting and requires highly skilled foster care, including:

(1) care of extensive medical disorders; or

(2) care of severely disturbed behavior, such as when the child extensively acts out sexually, or is dangerous to himself or herself or others; and

B. within level E, shall be assigned no fewer than 141 difficulty of care points and no more than 175 points.

Subp. 7. **Level F.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level F if the child has an

extraordinary condition that requires supervision or assistance in excess of that of Level E under subpart 6; and

B. within level F, shall be assigned no fewer than 176 difficulty of care points and no more than 225 points.

9560.0655 [Emergency] DIFFICULTY OF CARE PAYMENT RATE.

Subpart 1. **Payment rate.** Except as provided by subpart 2, the local social services agency shall make payments to the foster care provider at the rate of $3.70 per month for each point assessed under part 9560.0654 [Emergency].

Subp. 2. **Existing placements.** In a placement for which a difficulty of care payment was established and was being made prior to the effective date of parts 9560.0650 to 9560.0656, and the payment is greater than the payment which would be made under subpart 1, the local social services agency shall continue to pay the greater amount until the child's difficulty of care is reassessed at a different level or the placement terminates.

9560.0656 [Emergency] DOCUMENTATION.

Subpart 1. **Assessment instrument.** The local social services agency shall document the assessment of the difficulty of care under parts 9560.0653 [Emergency] and 9560.0654 [Emergency] using a written assessment instrument consistent with parts 9560.0653 [Emergency] and 9560.0654 [Emergency]. The case record shall include a description of each condition on which the assessment is based.

Subp. 2. **Approval of assessment instrument.** The assessment instrument required by subpart 1 must be approved by the commissioner.

EFFECT OF EMERGENCY AMENDMENTS. After the emergency amendments to part 9560.0650 expire, the permanent rule as it read prior to those amendments shall again be in effect, except as may be amended by permanent rule.

Department of Human Services

Adopted Emergency Amendments to Permanent Rules and Emergency Rules Relating to Foster Care Difficulty of Care Payments

Emergency Amendments to Rules as Adopted

9560.0650 MAINTENANCE STANDARDS.

Subpart 1. [Unchanged.]

Subp. 3. **Agency contract care.** When foster care is provided for a child by a provider licensed under parts 9545.0010 to 9545.0260 through contract with a public or private agency, foster care maintenance payments and difficulty of care payments shall be determined according to the rate schedules in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency]. If the local social services agency is contracting for administrative or social services costs, the payments to the contracting agency shall be in addition to the rates established in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency].

Subp. 4. and 5. [Unchanged.]

9560.0651 [Emergency] DIFFICULTY OF CARE ASSESSMENTS AND PAYMENTS.

Parts 9560.0652 to 9560.0656 [Emergency] provide criteria for assessing the difficulty of care of a child in foster care and the payment rate.

9560.0652 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9560.0653 to 9560.0656 [Emergency] have the meanings given them in this part.

Subp. 2. **Activities of daily living.** "Activities of daily living" means activities of basic self-care, including eating, dressing, grooming, hygiene, and toileting.

Subp. 3. **Mental retardation.** "Mental retardation" means the condition of a person with mental retardation as defined in part 9525.0015, subpart 20.

Subp. 4. **Mental illness.** "Mental illness" has the meaning

given in Minnesota Statutes, section 245.462, subdivision 20.

9560.0653 [Emergency] DIFFICULTY OF CARE PAYMENTS.

The local social services agency shall make payments in addition to the basic maintenance standards of part 9560.0650, subpart 1, for children with mental, physical, or emotional handicaps who require additional supervision or assistance in behavior management, activities of daily living, management of medical problems, or interaction with the natural parents and the community. The local social services agency shall assess each child under this part and the difficulty of care levels in part 9560.0654 [Emergency].

9560.0654 [Emergency] DIFFICULTY OF CARE ASSESSMENTS.

Subpart 1. **General.** Within the highest appropriate level and the respective point range of subparts 2 to 7, a single point value shall be assigned based on the age of the child, the number of conditions requiring special care, and the degree of difficulty of caring for each condition.

Subp. 2. **Level A.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level A if the child requires a moderate amount of additional supervision or assistance, including:

(1) care required by a moderate degree of dependency, passivity, or lack of responsiveness and ability to relate to others;

(2) moderate care for medical disorders;

(3) supervision because of a physical handicap, although the child is self sufficient;

(4) moderate help with activities of daily living beyond that ordinarily required for the child's age; or

(5) moderate assistance to the child in relating to the natural parents; and

B. within level A, shall be assigned no fewer than one difficulty of care point and no more than 35 points.

Subp. 3. **Level B.** A child eligible for difficulty of care

payments under part 9560.0653 [Emergency]:

A. shall be assessed at level B if the child requires a significant amount of additional supervision or assistance, including:

(1) significant need for structure, guidance, and direction;

(2) significant need for motivational stimulation and skill development;

(3) additional care required by developmental delay, including mental retardation;

(4) significant care for medical disorders;

(5) help with activities of daily living significantly beyond that ordinarily required for the child's age;

(6) attention to school truancy or behavior problems;

(7) significant care for sexual acting out; or

(8) significant assistance to the child in relating to the natural parents; and

B. within level B, shall be assigned no fewer than 36 difficulty of care points and no more than 70 points.

Subp. 4. **Level C.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level C if the child requires an extensive amount of additional supervision or assistance, including:

(1) care required by extreme attention-seeking behavior, aggressive acting out, or unsocialized and withdrawn behavior;

(2) extensive care required by developmental delay, including mental retardation;

(3) extensive care for medical disorders or physical handicaps;

(4) extensive attention to school problems; or

(5) extensive assistance to the child in relating to the natural parents; and

B. within level C, shall be assigned no fewer than 71 difficulty of care points and no more than 105 points.

Subp. 5. **Level D.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level D if the child requires an exceptional amount of additional supervision or assistance, including:

(1) care required because the child is dangerous to himself or herself or others;

(2) exceptional care required by mental illness, developmental delay including mental retardation, or physical handicaps;

(3) exceptional care for medical disorders;

(4) exceptional care for activities of daily living such as lifting, feeding, or diapering;

(5) exceptional care for sexual acting out;

(6) exceptional assistance to the child in relating to the natural parents; or

(7) need for relief of the foster parent by another adult; and

B. within level D, shall be assigned no fewer than 106 difficulty of care points and no more than 140 points.

Subp. 6. **Level E.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level E if the child cannot be maintained in a typical family setting and requires highly skilled foster care, including:

(1) care of extensive medical disorders; or

(2) care of severely disturbed behavior, such as when the child extensively acts out sexually, or is dangerous to himself or herself or others; and

B. within level E, shall be assigned no fewer than 141 difficulty of care points and no more than 175 points.

Subp. 7. **Level F.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level F if the child has an

extraordinary condition that requires supervision or assistance in excess of that of Level E under subpart 6; and

B. within level F, shall be assigned no fewer than 176 difficulty of care points and no more than 225 points.

9560.0655 [Emergency] DIFFICULTY OF CARE PAYMENT RATE.

Subpart 1. **Payment rate.** Except as provided by subpart 2, the local social services agency shall make payments to the foster care provider at the rate of $3.70 per month for each point assessed under part 9560.0654 [Emergency].

Subp. 2. **Existing placements.** In a placement for which a difficulty of care payment was established and was being made prior to the effective date of parts 9560.0650 to 9560.0656, and the payment is greater than the payment which would be made under subpart 1, the local social services agency shall continue to pay the greater amount until the child's difficulty of care is reassessed at a different level or the placement terminates.

9560.0656 [Emergency] DOCUMENTATION.

Subpart 1. **Assessment instrument.** The local social services agency shall document the assessment of the difficulty of care under parts 9560.0653 [Emergency] and 9560.0654 [Emergency] using a written assessment instrument consistent with parts 9560.0653 [Emergency] and 9560.0654 [Emergency]. The case record shall include a description of each condition on which the assessment is based.

Subp. 2. **Approval of assessment instrument.** The assessment instrument required by subpart 1 must be approved by the commissioner.

EFFECT OF EMERGENCY AMENDMENTS. After the emergency amendments to part 9560.0650 expire, the permanent rule as it read prior to those amendments shall again be in effect, except as may be amended by permanent rule.

# Office of the Revisor of Statutes

## Administrative Rules

**TITLE:** Adopted Emergency Amendments to Permanent Rules and Emergency Rules Relating to Foster Care Difficulty of Care Payments

**AGENCY:** Department of Human Services

**MINNESOTA RULES:** Chapter 9560

The attached rules are approved for filing with the Secretary of State

SEQ /

Susan E. Quayle
Assistant Revisor

Department of Human Services

Adopted Emergency Amendments to Permanent Rules and Emergency Rules Relating to Foster Care Difficulty of Care Payments

Emergency Amendments to Rules as Adopted

9560.0650 MAINTENANCE STANDARDS.

Subpart 1. [Unchanged.]

Subp. 3. **Agency contract care.** When foster care is provided for a child by a provider licensed under parts 9545.0010 to 9545.0260 through contract with a public or private agency, foster care maintenance payments and difficulty of care payments shall be determined according to the rate schedules in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency]. If the local social services agency is contracting for administrative or social services costs, the payments to the contracting agency shall be in addition to the rates established in subpart 1 and parts 9560.0653 to 9560.0655 [Emergency].

Subp. 4. and 5. [Unchanged.]

9560.0651 [Emergency] DIFFICULTY OF CARE ASSESSMENTS AND PAYMENTS.

Parts 9560.0652 to 9560.0656 [Emergency] provide criteria for assessing the difficulty of care of a child in foster care and the payment rate.

9560.0652 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9560.0653 to 9560.0656 [Emergency] have the meanings given them in this part.

Subp. 2. **Activities of daily living.** "Activities of daily living" means activities of basic self-care, including eating, dressing, grooming, hygiene, and toileting.

Subp. 3. **Mental retardation.** "Mental retardation" means the condition of a person with mental retardation as defined in part 9525.0015, subpart 20.

Subp. 4. **Mental illness.** "Mental illness" has the meaning

given in Minnesota Statutes, section 245.462, subdivision 20.

9560.0653 [Emergency] DIFFICULTY OF CARE PAYMENTS.

The local social services agency shall make payments in addition to the basic maintenance standards of part 9560.0650, subpart 1, for children with mental, physical, or emotional handicaps who require additional supervision or assistance in behavior management, activities of daily living, management of medical problems, or interaction with the natural parents and the community. The local social services agency shall assess each child under this part and the difficulty of care levels in part 9560.0654 [Emergency].

9560.0654 [Emergency] DIFFICULTY OF CARE ASSESSMENTS.

Subpart 1. **General.** Within the highest appropriate level and the respective point range of subparts 2 to 7, a single point value shall be assigned based on the age of the child, the number of conditions requiring special care, and the degree of difficulty of caring for each condition.

Subp. 2. **Level A.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level A if the child requires a moderate amount of additional supervision or assistance, including:

(1) care required by a moderate degree of dependency, passivity, or lack of responsiveness and ability to relate to others;

(2) moderate care for medical disorders;

(3) supervision because of a physical handicap, although the child is self sufficient;

(4) moderate help with activities of daily living beyond that ordinarily required for the child's age; or

(5) moderate assistance to the child in relating to the natural parents; and

B. within level A, shall be assigned no fewer than one difficulty of care point and no more than 35 points.

Subp. 3. **Level B.** A child eligible for difficulty of care

payments under part 9560.0653 [Emergency]:

A. shall be assessed at level B if the child requires a significant amount of additional supervision or assistance, including:

(1) significant need for structure, guidance, and direction;

(2) significant need for motivational stimulation and skill development;

(3) additional care required by developmental delay, including mental retardation;

(4) significant care for medical disorders;

(5) help with activities of daily living significantly beyond that ordinarily required for the child's age;

(6) attention to school truancy or behavior problems;

(7) significant care for sexual acting out; or

(8) significant assistance to the child in relating to the natural parents; and

B. within level B, shall be assigned no fewer than 36 difficulty of care points and no more than 70 points.

Subp. 4. **Level C.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level C if the child requires an extensive amount of additional supervision or assistance, including:

(1) care required by extreme attention-seeking behavior, aggressive acting out, or unsocialized and withdrawn behavior;

(2) extensive care required by developmental delay, including mental retardation;

(3) extensive care for medical disorders or physical handicaps;

(4) extensive attention to school problems; or

(5) extensive assistance to the child in relating to the natural parents; and

B. within level C, shall be assigned no fewer than 71 difficulty of care points and no more than 105 points.

Subp. 5. **Level D.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level D if the child requires an exceptional amount of additional supervision or assistance, including:

(1) care required because the child is dangerous to himself or herself or others;

(2) exceptional care required by mental illness, developmental delay including mental retardation, or physical handicaps;

(3) exceptional care for medical disorders;

(4) exceptional care for activities of daily living such as lifting, feeding, or diapering;

(5) exceptional care for sexual acting out;

(6) exceptional assistance to the child in relating to the natural parents; or

(7) need for relief of the foster parent by another adult; and

B. within level D, shall be assigned no fewer than 106 difficulty of care points and no more than 140 points.

Subp. 6. **Level E.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level E if the child cannot be maintained in a typical family setting and requires highly skilled foster care, including:

(1) care of extensive medical disorders; or

(2) care of severely disturbed behavior, such as when the child extensively acts out sexually, or is dangerous to himself or herself or others; and

B. within level E, shall be assigned no fewer than 141 difficulty of care points and no more than 175 points.

Subp. 7. **Level F.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level F if the child has an

extraordinary condition that requires supervision or assistance in excess of that of Level E under subpart 6; and

B. within level F, shall be assigned no fewer than 176 difficulty of care points and no more than 225 points.

9560.0655 [Emergency] DIFFICULTY OF CARE PAYMENT RATE.

Subpart 1. **Payment rate.** Except as provided by subpart 2, the local social services agency shall make payments to the foster care provider at the rate of $3.70 per month for each point assessed under part 9560.0654 [Emergency].

Subp. 2. **Existing placements.** In a placement for which a difficulty of care payment was established and was being made prior to the effective date of parts 9560.0650 to 9560.0656, and the payment is greater than the payment which would be made under subpart 1, the local social services agency shall continue to pay the greater amount until the child's difficulty of care is reassessed at a different level or the placement terminates.

9560.0656 [Emergency] DOCUMENTATION.

Subpart 1. **Assessment instrument.** The local social services agency shall document the assessment of the difficulty of care under parts 9560.0653 [Emergency] and 9560.0654 [Emergency] using a written assessment instrument consistent with parts 9560.0653 [Emergency] and 9560.0654 [Emergency]. The case record shall include a description of each condition on which the assessment is based.

Subp. 2. **Approval of assessment instrument.** The assessment instrument required by subpart 1 must be approved by the commissioner.

EFFECT OF EMERGENCY AMENDMENTS. After the emergency amendments to part 9560.0650 expire, the permanent rule as it read prior to those amendments shall again be in effect, except as may be amended by permanent rule.

# Office of the Revisor of Statutes

## Administrative Rules

**TITLE:** Adopted Emergency Amendments to Permanent Rules and Emergency Rules Relating to Foster Care Difficulty of Care Payments

**AGENCY:** Department of Human Services

**MINNESOTA RULES:** Chapter 9560

The attached rules are approved for filing with the Secretary of State

SEQ

Susan E. Quayle
Assistant Revisor

Department of Human Services

Proposed Emergency Amendments to Permanent Rules and Emergency Rules Relating to Foster Care Difficulty of Care Payments

Emergency Amendments to Rules as Proposed

9560.0650 MAINTENANCE STANDARDS.

Subpart 1. [Unchanged.]

~~Subp. 2. Additional maintenance needs. In addition to the basic maintenance standard, monthly payments for additional maintenance needs shall be made as determined by the local social services agency. The local county board shall establish difficulty of care payments for all children in foster care.~~

Subp. 3. **Agency contract care.** When foster care is provided for a child by a provider licensed under parts 9545.0010 to 9545.0260 through contract with ~~another~~ a public or private agency, foster care maintenance payments and difficulty of care payments shall be determined according to the rate ~~schedule~~ schedules in ~~subparts~~ subpart 1 and ~~2~~ parts 9560.0653 to 9560.0655 [Emergency]. If the local social ~~service~~ services agency is contracting for administrative or social ~~service~~ services costs, the payments to the ~~cooperating~~ contracting agency shall be in ~~an amount which is additional~~ addition to the ~~maintenance rate~~ rates established in ~~subparts~~ subpart 1 and ~~2~~ parts 9560.0653 to 9560.0655 [Emergency].

Subp. 4. and 5. [Unchanged.]

Emergency Rules as Proposed (all new material)

9560.0651 [Emergency] DIFFICULTY OF CARE ASSESSMENTS AND PAYMENTS.

Parts 9560.0652 to 9560.0656 [Emergency] provide criteria for assessing the difficulty of care of a child in foster care and the payment rate.

9560.0652 [Emergency] DEFINITIONS.



Approved by Revisor SEQ

Subpart 1. **Scope.** The terms used in parts 9560.0653 to 9560.0656 [Emergency] have the meanings given them in this part.

Subp. 2. **Activities of daily living.** "Activities of daily living" means activities of basic self-care, including eating, dressing, grooming, hygiene, and toileting.

Subp. 3. **Mental retardation.** "Mental retardation" means the condition of a person with mental retardation as defined in part 9525.0015, subpart 20.

Subp. 4. **Mental illness.** "Mental illness" has the meaning given in Minnesota Statutes, section 245.462, subdivision 20.

9560.0653 [Emergency] DIFFICULTY OF CARE PAYMENTS.

The local social services agency shall make payments in addition to the basic maintenance standards of part 9560.0650, subpart 1, for children with mental, physical, or emotional handicaps who require additional supervision or assistance in behavior management, activities of daily living, management of medical problems, or interaction with the natural parents and the community. The local social services agency shall assess each child under this part and the difficulty of care levels in part 9560.0654 [Emergency].

9560.0654 [Emergency] DIFFICULTY OF CARE ASSESSMENTS.

Subpart 1. **General.** Within the highest appropriate level and the respective point range of subparts 2 to 7, a single point value shall be assigned based on the age of the child, the number of conditions requiring special care, and the degree of difficulty of caring for each condition.

Subp. 2. **Level A.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level A if the child requires a moderate amount of additional supervision or assistance, including:

(1) care required by a moderate degree of dependency, passivity, or lack of responsiveness and ability to relate to others;

(2) moderate care for medical disorders;



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(3) supervision because of a physical handicap, although the child is self sufficient;

(4) moderate help with activities of daily living beyond that ordinarily required for the child's age; or

(5) moderate assistance to the child in relating to the natural parents; and

B. within level A, shall be assigned no fewer than one difficulty of care point and no more than 35 points.

Subp. 3. **Level B.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level B if the child requires a significant amount of additional supervision or assistance, including:

(1) significant need for structure, guidance, and direction;

(2) significant need for motivational stimulation and skill development;

(3) additional care required by developmental delay, including mental retardation;

(4) significant care for medical disorders;

(5) help with activities of daily living significantly beyond that ordinarily required for the child's age;

(6) attention to school truancy or behavior problems;

(7) significant care for sexual acting out; or

(8) significant assistance to the child in relating to the natural parents; and

B. within level B, shall be assigned no fewer than 36 difficulty of care points and no more than 70 points.

Subp. 4. **Level C.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level C if the child requires an extensive amount of additional supervision or assistance, including:

(1) care required by extreme attention-seeking



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behavior, aggressive acting out, or unsocialized and withdrawn behavior;

(2) extensive care required by developmental delay, including mental retardation;

(3) extensive care for medical disorders or physical handicaps;

(4) extensive attention to school problems; or

(5) extensive assistance to the child in relating to the natural parents; and

B. within level C, shall be assigned no fewer than 71 difficulty of care points and no more than 105 points.

Subp. 5. **Level D.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level D if the child requires an exceptional amount of additional supervision or assistance, including:

(1) care required because the child is dangerous to himself or herself or others;

(2) exceptional care required by mental illness, developmental delay including mental retardation, or physical handicaps;

(3) exceptional care for medical disorders;

(4) exceptional care for activities of daily living such as lifting, feeding, or diapering;

(5) exceptional care for sexual acting out;

(6) exceptional assistance to the child in relating to the natural parents; or

(7) need for relief of the foster parent by another adult; and

B. within level D, shall be assigned no fewer than 106 difficulty of care points and no more than 140 points.

Subp. 6. **Level E.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level E if the child cannot be maintained in a typical family setting and requires highly skilled foster care, including:



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(1) care of extensive medical disorders; or

(2) care of severely disturbed behavior, such as when the child extensively acts out sexually, or is dangerous to himself or herself or others; and

B. within level E, shall be assigned no fewer than 141 difficulty of care points and no more than 175 points.

Subp. 7. **Level F.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level F if the child has an extraordinary condition that requires supervision or assistance in excess of that of Level E under subpart 6; and

B. within level F, shall be assigned no fewer than 176 difficulty of care points and no more than 225 points.

9560.0655 [Emergency] DIFFICULTY OF CARE PAYMENT RATE.

Subpart 1. **Payment rate.** Except as provided by subpart 2, the local social services agency shall make payments to the foster care provider at the rate of $3.70 per month for each point assessed under part 9560.0654 [Emergency].

Subp. 2. **Existing placements.** In a placement for which a difficulty of care payment was established and was being made prior to the effective date of parts 9560.0650 to 9560.0656, and the payment is greater than the payment which would be made under subpart 1, the local social services agency shall continue to pay the greater amount until the child's difficulty of care is reassessed at a different level or the placement terminates.

9560.0656 [Emergency] DOCUMENTATION.

Subpart 1. **Assessment instrument.** The local social services agency shall document the assessment of the difficulty of care under parts 9560.0653 [Emergency] and 9560.0654 [Emergency] using a written assessment instrument consistent with parts 9560.0653 [Emergency] and 9560.0654 [Emergency]. The case record shall include a description of each condition on which the assessment is based.

Subp. 2. **Approval of assessment instrument.** The assessment instrument required by subpart 1 must be approved by



Approved
by Revisor _____

the commissioner.

EFFECT OF EMERGENCY AMENDMENTS. After the emergency amendments to part 9560.0650 expire, the permanent rule as it read prior to those amendments shall again be in effect, except as may be amended by permanent rule.



Approved
by Revisor _____

# Office of the Revisor of Statutes

## Administrative Rules

**TITLE:** Proposed Emergency Amendments to Permanent Rules and Emergency Rules Relating to Foster Care Difficulty of Care Payments

**AGENCY:** Department of Human Services

**MINNESOTA RULES:** Chapter 9560

The attached rules are approved for publication in the State Register

Susan E. Quayle

Susan E. Quayle
Assistant Revisor

Julie Harris

**STATE OF MINNESOTA**
**DEPARTMENT OF HUMAN SERVICES**
**444 LAFAYETTE ROAD**
**ST. PAUL, MINNESOTA 55155**

RECEIVED
ATTORNEY GENERAL'S OFFICE
OCT 29 1987
204 ADMINISTRATION BLDG.
50 SHERBURNE AVENUE
ST. PAUL, MN 55155

TO: Rita Desmond
Legal Assistant
Attorney General's Office, Administration Division

FROM: David Siegel DS
Rules Division
444 Lafayette Road, 2nd Floor
297-4997

DATE: October 29, 1987

SUBJECT: Attorney General's Review of Emergency Rule

Enclosed are the documents required to be submitted under Minnesota Rules, part 2010.0400 for your review of an emergency rule for the above entitled matter.

Official documents in this submitted material include:

1. A copy or photocopy of the notice of solicitation of outside information or opinions as published in the State Register.

2. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached.

3. The notice of intent to adopt an emergency rule as mailed.

4. The affidavit of mailing the notice of intent to adopt an emergency rule. The affidavits state that the mailing list maintained by the agency pursuant to Minnesota Statutes, sections 14.30, is accurate, complete, and current and that the notice of intent to adopt the emergency rule was mailed to all persons and groups whose names appear on the list.

5. A copy or photocopy of the notice of intent to adopt the emergency rule as published in the State Register.



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DHS-2489
(10-86)

6. Four copies of the emergency rule as adopted. Any modification made to the proposed rule is reflected on the rule as adopted and is approved as to form by the revisor of statutes.

7. The findings of fact, conclusions, and order adopting the emergency rule.

8. All written requests, submissions, or comments on the rule received by the agency except requests solely for copies of the rule.

9. The declaration of the attorney in the attorney general's office who represents the agency.

No requests were received for a notice of submission of the rule to the attorney general. Therefore, no notice nor affidavit of mailing the notice is enclosed.

Additional enclosures include:

1. A certificate that the mailing list maintained by the agency is accurate, complete, and current.

2. A copy of the notice to the Chairpersons of the Boards of County Commissioners of the fiscal impact of the proposed rule.

3. A copy of the notices to the Senate Finance Committee, House Appropriations Committee, and Department of Finance, of the fiscal impact of the proposed rule.

If you have any questions on this submitted material, please call me at 297-4997.

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED
ADOPTION OF EMERGENCY RULE OF
THE STATE DEPARTMENT OF HUMAN SERVICES
GOVERNING CHILD FOSTER CARE
DIFFICULTY OF CARE PAYMENTS,
MINNESOTA RULES, PARTS
9560.0650 TO 9560.0656

CERTIFICATE

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a, and 14.22 or 14.30, that their names be placed on the State Department of Human Services rulemaking mailing list is accurate, complete, and current as of this 23rd day of September, 1987.

Nancy Storlie

BUREAU OF SOCIAL SERVICES
A-2303 Government Center
Minneapolis, Minnesota 55487-0232

October 7, 1987

Marian Eisner
Minnesota Department of Human Services
4th Floor, Centennial Building
658 Cedar
St. Paul, MN 55155

Dear Ms. Eisner:

We have reviewed the proposed emergency rule governing difficulty of care payments for children in foster care and would like to support the rule as drafted.

The rule provides sufficient structure to assure statewide consistency in determining the level of care needed by children in foster care. It also allows counties the flexibility to develop assessment tools and to assign points within each level based on the unique problems (and combinations of problems) presented by these children. The grandfather clause will prevent any foster home or child currently in placement from being penalized by the new rule. Finally, the dollar value selected for each DOC point is consistent with our current system and also reflects payment levels for the majority of children in foster placement throughout the state.

We recognize how much effort went into the development of this emergency rule. Despite the time limits associated with writing emergency rules, you were able to solicit a great deal of input from rural and urban counties and foster care providers, and to obtain a high level of consensus from this very diverse group. We appreciate your energy and creativity throughout this process.

Sincerely,

Kevin P. Kenney
Associate Administrator

jm

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendment and Adoption of Rules of the State Department of Human Services Governing Child Foster Care Difficulty of Care Payments, Minnesota Rules, parts 9560.0650 to 9560.0656

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE

Notice of the Commissioner's intent to adopt the above-entitled emergency rule was published in the State Register on September 28, 1987 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.30 on September 23, 1987.

All persons were given the opportunity to submit written comment on the rule for at least 25 days after notice of proposed rulemaking. No requests for notice of submission to the attorney general were received by the agency.

Based on the comments and evidence in the record before the agency, I find the following:

1. The rule as proposed is necessary and reasonable to implement Minnesota Statutes, section 256.82, subdivisions 3 and 3a.
2. The agency received no comments suggesting any changes to the proposed rule in response to the Notice of Intent to Adopt an Emergency Rule.
3. No changes need be made to the rules as proposed.
4. The Department has complied with all applicable provisions of law and rule in the promulgation of these rules.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Foster Care Difficulty of Care Payments, is adopted this 26th day of October, 1987, pursuant to authority vested in me by Minnesota Statutes, section 256.82, subdivisions 3 and 3a.

SANDRA S. GARDEBRING
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF EMERGENCY RULE OF THE STATE DEPARTMENT OF HUMAN SERVICES GOVERNING CHILD FOSTER CARE DIFFICULTY OF CARE PAYMENTS, MINNESOTA RULES, PARTS 9560.0650 TO 9560.0656

AFFIDAVIT OF ADDITIONAL MAILING

Nancy Storelee, being first duly sworn, deposes and says:

That on the 23rd day of September, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt an Emergency Rule 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 parties:

.The 87 Minnesota County Human Services Agencies
.The Advisory Committee

Nancy Storelee

Subscribed and sworn to before me

this 24 day of Sept., 1987

Louise J. Breidel

LOUISE J. BREIDEL
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
MY COMM. EXP. SEPT. 22, 1990

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF EMERGENCY RULE OF THE STATE DEPARTMENT OF HUMAN SERVICES GOVERNING CHILD FOSTER CARE DIFFICULTY OF CARE PAYMENTS, MINNESOTA RULES, PARTS 9560.0650 TO 9560.0656

AFFIDAVIT OF MAILING

Nancy Storelee, being first duly sworn, deposes and says:

That on the 23rd day of September, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt an Emergency Rule by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who have requested that their names be placed on file with the Department of Human Services for the purpose of receiving notice of hearing by this Department.

Nancy Storelee

Subscribed and sworn to before me

this 24 day of September, 1987

Louise J. Breidel

LOUISE J. BREIDEL
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
MY COMM. EXP. SEPT. 22, 1990

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Emergency Rule of the State Department of Human Services Governing Child Foster Care Difficulty of Care Payments, Minnesota Rules, parts 9560.0650 to 9560.0656

NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Minnesota Statutes, section 256.82, subdivisions 3 and 3a. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

All persons have 25 days or until 4:30 p.m. on October 23, 1987 after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to:

Marian Eisner
Minnesota Department of Human Services
4th Floor, Centennial Office Building
658 Cedar
St. Paul, MN 55155
Telephone (612)297-2711

The proposed rule establishes a unified statewide system of difficulty of care payments for all children in foster care. Under the previous system, in place since 1984, each county established its own system of payments. The payments are to be made to foster care providers in addition to the basic maintenance rates. The rule provides a method of assessing the difficulty of care of children, and sets a single payment rate. The rule also provides that, for children currently in foster care, the difficulty of care payment will not be reduced as a result of the rule. The proposed rule affects children placed in foster care, foster care providers, and county governments.

The rule repeals Minnesota Rules, part 9560.0650, subpart 2, Additional maintenance needs; amends subpart 3, Agency contract care; and adds parts 9560.0651, Difficulty of care assessments and payments, 9560.0652, Definitions, 9560.0653, Difficulty of care payments, 9560.0654, Difficulty of care assessments, 9560.0655, Difficulty of care payment rate, and 9560.0656, Documentation.

A free copy of the proposed emergency rule is available by contacting Marian Eisner at the address noted above.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and does not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for reviews as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Marian Eisner at the address noted above.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

The adoption of this rule will increase aggregate local public body spending by over $100,000 in the year following the rule's adoption. See the fiscal note attached to this notice which contains the Department's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the year immediately following adoption of the rule.

Date:

SANDRA S. GARDEBRING
Commissioner

Notice fiscal note to Board Chair get labels mail with pac

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

Date: September 14, 1987

Dear Chairperson Board of County Commissioners:

As required by Minnesota Statutes, section 256E.05, subdivision 3 (c), we are providing you with timely advance notice and a written summary of the fiscal impact of a proposed department emergency rule, parts 9560.0650 TO 9560.0656.

Any questions or comments about this notice should be made to Marian Eisner, Minnesota Department of Human Services, 4th Floor, Centennial Office Building, 658 Cedar, St. Paul, MN 55155, (612)297-2711.

Sincerely,

Sandra Gardebring

SANDRA S. GARDEBRING
Commissioner

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DHS-825
(6-84)

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

September 14, 1987

Representative Glen Anderson
Chairperson
House Appropriations Committee
Room 363
State Office Buildiny

Dear Chairperson Anderson:

Minnesota Statutes, section 15.065 requires the Department of Human Services to submit to your office a fiscal note on rules that will have a fiscal impact on State and local spending of more than $100,000 in either of the first two years following promulgation of the rule.

The Department of Human Services is now proposing emergency amendments to rules governing child foster care difficulty of care payments, Minnesota Rules, parts 9560.0650 to 9560.0656, that would have a fiscal impact on State and local spending exceeding $100,000 during the year following promulgation of the amendments. Attached is the fiscal note, the proposed rule and the rulemaking notice.

The Department of Human Services will publish in the State Register on September 28, 1987, a Notice of Intent to Adopt an Emergency Rule.

If you have any questions about the fiscal note please contact Marian Eisner at 297-2711.

Sincerely,

SANDRA S. GARDEBRING
Commissioner

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

September 14, 1987

Nellie Johnson
Department of Finance
309 Administration Building

Dear Ms. Johnson:

Minnesota Statutes, section 15.065 requires the Department of Human Services to submit to the House Appropriations Committee and the Senate Finance Committee a fiscal note on rules that will have a fiscal impact on state and local spending of more than $100,000 in either of the first two years following promulgation of the rules. The Department is proposing an emergency rule on child foster care difficulty of care payments, Minnesota Rules, parts 9560.0650 to 9560.0656, that will have a fiscal impact of over $100,000 in the year following promulgation. For your information, enclosed are copies of the materials sent to the House Appropriations Committee and the Senate Finance Committee on September 14, 1987.

If you have any questions about the fiscal note please contact Marian Eisner at 297-2711.

Sincerely,

SANDRA S. GARDEBRING
Commissioner

AN EQUAL OPPORTUNITY EMPLOYER

DHS-825
(6-84)

# Departments of Human Services, Health, and Public Safety

## End of Solicitation Period for Comments Concerning Merit System Rules

Notice is hereby given that the comment period for the notice of intent to solicit outside opinion concerning Minnesota Merit System rules, published in the *State Register* July 13, 1987 will end on September 8, 1987.

Questions concerning the comment period may be addressed to:

Ralph W. Corey
Minnesota Merit System
Fourth Floor, Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155
Phone: (612) 296-3996

# Department of Human Services

## Notice of Hospital Cost Index

Pursuant to *Minnesota Rules*, Part 9500.1120 hospitals participating in the Medical Assistance and General Assistance Medical Care programs are subjected to a Health Cost Index that is used in the determination of prospective inpatient hospital rates. Each hospital whose fiscal year starts during a given calendar quarter shall be notified of the HCI to be used 30 days prior to the start of that quarter. It has been determined that the HCI is 5.0 percent according to an independent source, Data Resources, Inc., for Health Care Costs for hospitals whose fiscal years begin during the calendar quarter beginning October 1, 1987.

Sandra S. Gardebring, Commissioner
Department of Human Services

# Department of Human Services

## Social Services Division

## Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Child Foster Care Difficulty of Care Payments

Notice is hereby given that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose the amendment of the rule governing child foster care difficulty of care payments. The adoption of the rule is authorized by *Minnesota Statutes*, section 256.82, subdivisions 3 and 3a; which direct the agency to promulgate an emergency rule establishing a uniform statewide system of difficulty of care payments to child foster care providers.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Marian Eisner, Minnesota Department of Human Services, Centennial Office Building, 658 Cedar, St. Paul, MN 55155-1689. Oral statements will be received during regular business hours over the telephone at (612) 297-2711 and in person at the above address.

All statements of information and opinions will be accepted until further notice is published in the *State Register* or Notice of Intent to Adopt Emergency Rules is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

# Department of Labor and Industry

## Notice of Revision to Prevailing Wage Certifications

Effective July 30, 1987 the commissioner certified revised prevailing wage rates for commercial construction projects in Brown

A free copy of the proposed emergency rule is available by contacting Julie Kress at 296-2342.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Julie Kress.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with *Minnesota Statutes*, section 14.35.

Dated: 21 September 1987

Ray Bohn
Commissioner

### Emergency Rules as Proposed (all new material)

**5219.0010 [Emergency] PURPOSE.**

This chapter is intended to provide a schedule of reasonable charges for copies of health care provider records or reports substantiating the nature of a medical bill and its relationship to the work injury. The privacy of medical reports or records under other provisions of law is not to be affected by this chapter.

**5219.0020 [Emergency] SCOPE.**

This chapter is applicable to charges for copies from health care providers as defined in Minnesota Statutes, section 176.011, subdivision 24.

**5219.0030 [Emergency] COST OF MEDICAL RECORDS.**

Reasonable charges for copies of existing medical records or reports obtained from health care providers under Minnesota Statutes, section 176.135, subdivision 7, are as follows for each patient:

A. $20 for up to 20 pages;

B. 50 cents a page for the next 32 pages; and

C. 25 cents a page for all remaining pages.

# Department of Human Services

## Proposed Emergency Amendments to Permanent Rules and Emergency Rules Relating to Foster Care Difficulty of Care Payments

### Notice of Intent to Adopt an Emergency Rule

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in *Minnesota Statutes*, section 256.82, subdivisions 3 and 3a. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in *Minnesota Statutes*, sections 14.29 to 14.36.

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.

All persons have 25 days or until 4:30 p.m. on October 23, 1987 after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to:

Marian Eisner
Minnesota Department of Human Services
4th Floor, Centennial Office Building
658 Cedar
St. Paul, MN 55155
Telephone (612) 297-2711

The proposed rule establishes a unified statewide system of difficulty of care payments for all children in foster care. Under the previous system, in place since 1984, each county established its own system of payments. The payments are to be made to foster care providers in addition to the basic maintenance rates. The rule provides a method of assessing the difficulty of care of children, and sets a single payment rate. The rule also provides that, for children currently in foster care, the difficulty of care payment will not be reduced as a result of the rule. The proposed rule affects children placed in foster care, foster care providers, and county governments.

The rule repeals *Minnesota Rules*, part 9560.0650, subpart 2, Additional maintenance needs; amends subpart 3, Agency contract care; and adds parts 9560.0651, Difficulty of care assessments and payments, 9560.0652, Definitions, 9560.0653, Difficulty of care payments, 9560.0654, Difficulty of care assessments, 9560.0655, Difficulty of care payment rate, and 9560.0656, Documentation.

A free copy of the proposed emergency rule is available by contacting Marian Eisner at the address noted above.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and does not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the agency, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for reviews as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Marian Eisner at the address noted above.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with *Minnesota Statutes*, section 14.35.

The adoption of this rule will increase aggregate local public body spending by over $100,000 in the year following the rule's adoption. See the fiscal note attached to this notice which contains the Department's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the year immediately following adoption of the rule.

Dated: 11 September 1987

Sandra S. Gardebring, Commissioner

## FISCAL NOTE
## Proposed *Minnesota Rule*, parts 9560.0650 to 9560.0656
## CHILD FOSTER CARE DIFFICULTY OF CARE PAYMENTS

**Statutory Authority**

*Minnesota Laws 1987*, Chapter 235, amended *Minnesota Statutes*, section 256.82, subdivision 3, and added subdivision 3a. This law directs the Commissioner to annually establish "difficulty of care payments for all children in foster care." Since 1984, each county has established its own system of difficulty of care payments (DOC). The new law and rule will create a single unified system statewide.

**Description**

Difficulty of Care is funded by county child welfare funds, and federally reimbursed for Title IV-E eligible children at 53.98% for FFY 88. Currently, approximately 30% of children in substitute care are Title IV-E eligible. There is no direct state participation in Difficulty of Care payments, although CSSA block grants may be used.

**Local Social Services Agency Costs**

To determine the fiscal impact of the proposed rule amendment on local social services agencies, the Department issued Request Bulletin #87-68H on July 30, 1987, requiring each agency to review their Rule 1 foster care cases and submit a report projecting total annual net changes in cost based on the new criteria and rates. Agencies with less than 25 children in Rule 1 foster care were

to review all cases; agencies with 25 or more children in Rule 1 foster care were to use a random sample of 10% of their cases in preparing the report.

Reports were to be submitted by August 21, 1987.

Fifty three responses, representing fifty seven counties were received by August 28, 1987.

Of the responses:

1. Nineteen counties, including Ramsey and Hennepin reported no change in their DOC costs based on the new rates.
2. Twenty five responses representing 29 counties reported the following increases:
   - Six reports (8 counties) indicated an increase of less than $1000 each.
   - Eight counties reported an increase of between $1000 and $3,500 each.
   - Four counties, LeSueur, Olmsted, Stearns and Washington each reported increases of $4000 to $9000.
   - Seven reports representing 9 counties reported increases of over $10,000 per year.

| | |
|---|---|
| Anoka | 129,131 |
| FMW | 11,390 |
| Koochiching | 15,792 |
| Mower | 16,149 |
| Otter Tail | 14,592 |
| St. Louis | 55,000 |
| Sherburne | 18,558 |

3. Nine counties reported a decrease in costs based on the new rates. However, the statute requires that children currently in care be maintained at their current level where possible. Title IV-E reimbursement will be maintained at the current rate for those children in care when the rule is promulgated.

The projected net increase in county costs is $220,905, calculated as follows:

| | |
|---|---|
| Increase in DOC payments (per survey responses) | $ 308,564 |
| Less Title IV-E reimbursement: 30% of substitute care population x 53.98% federal reimbursement | 49,967 |
| | $ 258,597 |

Potential decrease for new children in care in counties reporting a decrease in payment under the new rate:

| | |
|---|---|
| Gross decrease | $ 89,952 |
| x 50% (estimate based on Community Services Information System data of 25% of children in care for 6 months or less) | 44,976 |
| | $ 44,976 |
| Less Title IV-E reimbursement (calculated as above) | 7,284 |
| | $ 37,692 |
| Projected increase | $ 258,597 |
| Projected decrease | 37,692 |
| Net increase | $ 220,905 |

# Emergency Amendments to Rules as Proposed

**9560.0650 MAINTENANCE STANDARDS.**

Subpart 1. [Unchanged.]

~~Subp. 2.~~ **~~Additional~~ maintenance needs.** ~~In addition to the basic maintenance standard, monthly payments for additional maintenance needs shall be made as determined by the local social services agency. The local county board shall establish difficulty of care payments for all children in foster care.~~

Subp. 3. **Agency contract care.** When foster care is provided for a child by a provider licensed under parts 9545.0010 to 9545.0260 through contract with ~~another~~ a public or private agency, foster care maintenance payments and difficulty of care payments shall be determined according to the rate ~~schedule~~ schedules in ~~subparts~~ subpart 1 and ~~2~~ parts 9560.0653 to 9560.0655 [Emergency]. If the local social ~~service~~ services agency is contracting for administrative or social ~~service~~ services costs, the payments to the ~~cooperating~~ contracting agency shall be in ~~an amount which is additional~~ addition to the ~~maintenance rate~~ rates established in ~~subparts~~ subpart 1 and ~~2~~ parts 9560.0653 to 9560.0655 [Emergency].

Subp. 4. and 5. [Unchanged.]

# Emergency Rules as Proposed (all new material)

**9560.0651 [Emergency] DIFFICULTY OF CARE ASSESSMENTS AND PAYMENTS.**

Parts 9560.0652 to 9560.0656 [Emergency] provide criteria for assessing the difficulty of care of a child in foster care and the payment rate.

**9560.0652 [Emergency] DEFINITIONS.**

Subpart 1. **Scope.** The terms used in parts 9560.0653 to 9560.0656 [Emergency] have the meanings given them in this part.

Subp. 2. **Activities of daily living.** "Activities of daily living" means activities of basic self-care, including eating, dressing, grooming, hygiene, and toileting.

Subp. 3. **Mental retardation.** "Mental retardation" means the condition of a person with mental retardation as defined in part 9525.0015, subpart 20.

Subp. 4. **Mental illness.** "Mental illness" has the meaning given in Minnesota Statutes, section 245.462, subdivision 20.

**9560.0653 [Emergency] DIFFICULTY OF CARE PAYMENTS.**

The local social services agency shall make payments in addition to the basic maintenance standards of part 9560.0650, subpart 1, for children with mental, physical, or emotional handicaps who require additional supervision or assistance in behavior management, activities of daily living, management of medical problems, or interaction with the natural parents and the community. The local social services agency shall assess each child under this part and the difficulty of care levels in part 9560.0654 [Emergency].

**9560.0654 [Emergency] DIFFICULTY OF CARE ASSESSMENTS.**

Subpart 1. **General.** Within the highest appropriate level and the respective point range of subparts 2 to 7, a single point value shall be assigned based on the age of the child, the number of conditions requiring special care, and the degree of difficulty of caring for each condition.

Subp. 2. **Level A.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level A if the child requires a moderate amount of additional supervision or assistance, including:

(1) care required by a moderate degree of dependency, passivity, or lack of responsiveness and ability to relate to others;

(2) moderate care for medical disorders;

(3) supervision because of a physical handicap, although the child is self sufficient;

(4) moderate help with activities of daily living beyond that ordinarily required for the child's age; or

(5) moderate assistance to the child in relating to the natural parents; and

B. within level A, shall be assigned no fewer than one difficulty of care point and no more than 35 points.

Subp. 3. **Level B.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level B if the child requires a significant amount of additional supervision or assistance, including:

(1) significant need for structure, guidance, and direction;

(2) significant need for motivational stimulation and skill development;

(3) additional care required by developmental delay, including mental retardation;

(4) significant care for medical disorders;

(5) help with activities of daily living significantly beyond that ordinarily required for the child's age;

(6) attention to school truancy or behavior problems;

(7) significant care for sexual acting out; or

(8) significant assistance to the child in relating to the natural parents; and

B. within level B, shall be assigned no fewer than 36 difficulty of care points and no more than 70 points.

Subp. 4. **Level C.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level C if the child requires an extensive amount of additional supervision or assistance, including:

(1) care required by extreme attention-seeking behavior, aggressive acting out, or unsocialized and withdrawn behavior;

(2) extensive care required by developmental delay, including mental retardation;

(3) extensive care for medical disorders or physical handicaps;

(4) extensive attention to school problems; or

(5) extensive assistance to the child in relating to the natural parents; and

B. within level C, shall be assigned no fewer than 71 difficulty of care points and no more than 105 points.

Subp. 5. **Level D.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level D if the child requires an exceptional amount of additional supervision or assistance, including:

(1) care required because the child is dangerous to himself or herself or others;

(2) exceptional care required by mental illness, developmental delay including mental retardation, or physical handicaps;

(3) exceptional care for medical disorders;

(4) exceptional care for activities of daily living such as lifting, feeding, or diapering;

(5) exceptional care for sexual acting out;

(6) exceptional assistance to the child in relating to the natural parents; or

(7) need for relief of the foster parent by another adult; and

B. within level D, shall be assigned no fewer than 106 difficulty of care points and no more than 140 points.

Subp. 6. **Level E.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level E if the child cannot be maintained in a typical family setting and requires highly skilled foster care, including:

(1) care of extensive medical disorders; or

(2) care of severely disturbed behavior, such as when the child extensively acts out sexually, or is dangerous to himself or herself or others; and

B. within level E, shall be assigned no fewer than 141 difficulty of care points and no more than 175 points.

Subp. 7. **Level F.** A child eligible for difficulty of care payments under part 9560.0653 [Emergency]:

A. shall be assessed at level F if the child has an extraordinary condition that requires supervision or assistance in excess of that of Level E under subpart 6; and

B. within level F, shall be assigned no fewer than 176 difficulty of care points and no more than 225 points.

**9560.0655 [Emergency] DIFFICULTY OF CARE PAYMENT RATE.**

Subpart 1. **Payment rate.** Except as provided by subpart 2, the local social services agency shall make payments to the foster care provider at the rate of $3.70 per month for each point assessed under part 9560.0654 [Emergency].

Subp. 2. **Existing placements.** In a placement for which a difficulty of care payment was established and was being made prior to the effective date of parts 9560.0650 to 9560.0656, and the payment is greater than the payment which would be made under subpart 1, the local social services agency shall continue to pay the greater amount until the child's difficulty of care is reassessed at a different level or the placement terminates.

**9560.0656 [Emergency] DOCUMENTATION.**

Subpart 1. **Assessment instrument.** The local social services agency shall document the assessment of the difficulty of care under parts 9560.0653 [Emergency] and 9560.0654 [Emergency] using a written assessment instrument consistent with parts 9560.0653 [Emergency] and 9560.0654 [Emergency]. The case record shall include a description of each condition on which the assessment is based.

Subp. 2. **Approval of assessment instrument.** The assessment instrument required by subpart 1 must be approved by the commissioner.

**EFFECT OF EMERGENCY AMENDMENTS.** After the emergency amendments to part 9560.0650 expire, the permanent rule as it read prior to those amendments shall again be in effect, except as may be amended by permanent rule.

In the Matter of the Adoption
of the Rule of the State Department
of Human Services Governing
Child Foster Care Difficulty
of Care Payments, parts
9560.0650 to 9560.0656

DECLARATION OF
COUNSEL

I, Julie K. Harris, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is T658.

Julie K. Harris
Special Assistant
Attorney General

Dated: 11/3/87

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

September 14, 1987

The Hon. Gene Merriam
Chairperson
Senate Finance Committee
Room 121
State Capitol Building

Dear Chairperson:

Minnesota Statutes, section 15.065 requires the Department of Human Services to submit to your office a fiscal note on rules that will have a fiscal impact on State and local spending of more than $100,000 in either of the first two years following promulgation of the rules.

The Department of Human Services is now proposing emergency amendments to rules governing child foster care difficulty of care payments, Minnesota Rules, parts 9560.0650 to 9560.0656, that would have a fiscal impact on State and local spending exceeding $100,000 during the year following promulgation of the amendments. Attached is the fiscal note, the proposed rule and the rulemaking notice.

The Department of Human Services will publish in the State Register on September 28, 1987, a Notice of Intent to Adopt an Emergency Rule.

If you have any questions about the fiscal note please contact Marian Eisner at 297-2711.

Sincerely,

SANDRA S. GARDEBRING
Commissioner

AN EQUAL OPPORTUNITY EMPLOYER

No Proposed Rule Rpt'd will be mailed

Declaration of Counsel
Not signed : signed

Authorization

256.82 subd 3

256.82 subd 3a - no such site

256.82 subd 4 gives authority but is not cited in Intent

I. The rule, by its terms, cannot have the force and effect of law.

J. The rule is unconstitutional or, in the case of emergency rules, is unreasonable.

**Statutory Authority:** *MS s 14.06; 14.09*

**History:** *11 SR 618*

**2010.1100 WITHDRAWAL OF RULE FROM REVIEW BY ATTORNEY GENERAL.**

The agency may withdraw a rule from review by the attorney general. To withdraw a rule after it has been submitted to the attorney general, a written order of withdrawal of the rule from review must be submitted to the attorney general. The written order must state the date of withdrawal and be signed by a person authorized to adopt the rule or sign the findings of fact, conclusions, and order adopting the rule.

**Statutory Authority:** *MS s 14.06; 14.09*

**History:** *11 SR 618*

**2010.1200 DISAPPROVAL.**

If a rule is disapproved, the attorney general must state in writing the reasons for disapproval and make recommendations to overcome the deficiencies. The statement of the reasons for disapproval must be sent to the agency, the chief administrative law judge, the legislative commission to review administrative rules, the revisor of statutes, and persons who requested to receive a copy of the decision. Upon disapproval, the review period terminates and the rule must neither be filed in the office of the secretary of state nor published unless the rule is resubmitted and approved upon resubmission.

**Statutory Authority:** *MS s 14.06; 14.09*

**History:** *11 SR 618*

**2010.1300 RESUBMISSION.**

Subpart 1. **Resubmission.** To resubmit a rule which was withdrawn or disapproved by the attorney general, the following documents must be submitted:

A. A supplemental findings of fact, conclusions, and order adopting the rule. The order must be signed by a person authorized to adopt the rule or authorized to sign the findings of fact, conclusion, and order adopting the rule. If any modifications were made to the rule since the rule was withdrawn or disapproved, findings of facts and conclusions must be set forth supporting the reasons for the changes and explain why the changes do not constitute substantial changes.

B. A supplemental certificate of the multimember agency's resolution if:

(1) the agency is a multimember agency as provided in Minnesota Statutes, section 15.0597, subdivision 1a;

(2) modifications were made to the rule since the rule was withdrawn or disapproved; and

(3) the certificate of the agency's resolution submitted in accordance with part 2010.0300, item J, or 2010.0400, item I does not authorize the modification by the person who signed the supplemental findings of fact, conclusions, and order. The supplemental certificate of the agency's resolution must be in accordance with part 2010.0300, item J or 2010.0400, item I.

C. If any modifications were made to the rule as adopted since the rule was withdrawn or disapproved, four copies of the rule as adopted with the modifications reflected and approved as to form by the revisor of statutes.

D. A new notice of submission of the rule to the attorney general mailed to any persons who requested notification pursuant to Minnesota Statutes, sec-

tion 14.26 or 14.32. The notice of submission to the attorney general must comply with part 2010.0300, item N or 2010.0400, item M.

E. The affidavit of mailing for the notice of submission of the rule to the attorney general, if applicable. The affidavit must comply with part 2010.0300, item O or 2010.0400, item N.

F. Any other documents necessary to demonstrate that the procedural or substantive deficiencies have been remedied.

Subp. 2. **Resubmission review time period.** The attorney general review period for resubmission is the same as for the initial submission of the rule with one exception. If the resubmitted rule was adopted without a public hearing and does not raise significant new legal issues, the eight-day minimum review period does not apply. For the general review period, see part 2010.0800.

**Statutory Authority:** *MS s 14.06; 14.09*

**History:** *11 SR 618*

**2010.1400 APPROVAL OF RULE.**

Subpart 1. **Approval.** If the rule is approved, the attorney general shall promptly file two copies of the rule with the secretary of state. A copy of the approval memo must be sent to the agency, the chief administrative law judge, the legislative commission to review administrative rules, and persons who requested to receive a copy of the decision.

Subp. 2. **Return of record.** Upon approval of a rule, the attorney general shall return to the agency one approved copy of the rule, any extra copies of documents and any petitions, requests, submissions, or comments directed to the agency.

**Statutory Authority:** *MS s 14.06; 14.09*

**History:** *11 SR 618*

**2010.9900 RECOMMENDED NOTICE OF SOLICITATION OF OUTSIDE INFORMATION OR OPINIONS.**

Department of _____

_____ Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing _____

Notice is hereby given that the State _____ [name of agency] is seeking information or opinions from sources outside the agency in preparing to propose the [adoption] [amendment] [suspension] [repeal] of the rule governing _____. The adoption of the rule is authorized by Minnesota Statutes, section ____, which [permits] [requires] the agency to _____ _____.

The State _____ requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: [name and address] _____ _____. Oral statements will be received during regular business hours over the telephone at _____ and in person at the above address.

All statements of information and opinions shall be accepted until _____. Any written material received by the State _____ shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

_____ _____

Date [Name]

The above-captioned rule has not been approved by the Attorney General for the following reasons:

1) impermissibly vague
2) unbridled discretion

Vague
not specific criteria. ↓ does not specify what const "most" etc ↓ how to comply
Rule poses risk of unequal application

Inadequate notice to those trying to comply, applying.

More specific criteria or
std, perh determinations

Discretion
"unbridled discretion" → not specific
↓ fails to notify adequate of criteria which will be considered

Vague/Ambiguous

Discretion beyond that permitted by its enabling legislation

rule is legally infirm if it provides the agency unbridled discretion

need specific standards to give applicants notice — notice to interested persons

If unbridled discretion, (excessive agency discretion can't be assured the rule will be applied in a consistent manner.

→ (not an exception because have no reasonably clear policy or standard which controls & guides the administrator so that the rule takes effect by virtue of its terms and not according to the whim & caprice of the administrative agency

If have "specific discernible standards can provide basis for det. whether the administrative agency acted in an arbitrary or capricious manner.

TO: David Siegel
Department of Human Services, Rules Division
444 Lafayette Rd.

ATTN: Julie Harris, Special Assistant Attorney General
520 Lafayette Rd.

From: JAZ, S.A.A.G

Re: Department of Human Services Foster Care Difficulty of Care Payments

The above captioned rule has not been approved by the Attorney General because large portions of the rule are impermissibly vague and grant ~~provide~~ the local social services agencies unbridled discretion.

When a rule is vague there is unequal application exists

or

The provisions listed do not ~~provide~~ contain specific criteria for determining what level of difficulty is appropriate. Instead, "moderate, significant, extreme, exceptional, extensive, & extraordinary" are used. While these descriptive terms may be acceptable when adequately defined or in conjunction with specific examples, this rule entitles them as there to differentiate

to describe levels of difficulty

~~Author~~
Although examples of mod. - etc are given, many are repeated in different sections of the rule with — as the distinguish factor.
For ex. care for medical disorders is mentioned in sub parts 2, 3 4, 5 & 6. The only diff. among levels is whether the care is mod - - .
While the Rule does provide ex., they are rem. among the §§
The agencies thus have a great deal of discretion in different. among vague terms such as ——.

A rule is legally enform if it grants an agency unbridled discretion - Spec. stds are nec to give int. persons notice of stds reqs, criteria. Specific stds are nec. both to guide the admin. of the rule & to provide a basis for det whether the adm. affirmative acted in an arbitr. or capricious manner. In this case, there are no standards or criteria which

if they exist,

There are several options available to overcome these deficiencies in the rule ~~The underscored language~~ could be The terms mod. . ——.
could be defined. However it ~~this~~ may well be impossible to define these words. ——

The terms —
could be deleted and, ~~specific~~ indiv, criteria listed for each level A-F.
If this approach is chosen, the criteria for each level would have to be specific enough to make clear how the categories differ. If not the same probs w/ discret may be. Inc.