

Minnesota Attorney General: Administrative Rules Proceedings

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ATTORNEY GENERAL

November 28, 1988

Jane Nelson
Rules, Dept. of Human Services
444 Lafayette Rd., St. Paul 55155

MARTHA J. CASSERLY
Special Assistant Attorney General
515 DOT Bldg., St. Paul 55155

6-6839

In the Matter of the Adopted Rule Relating to Maintenance Payments and Difficulty of Care Payments for Children in Foster Care

The above-referenced rule has been approved as to its legality by the Attorney General on November 28, 1988.

Enclosed is your 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, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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.

MJC:bbl
Enclosures

cc: William Brown
Maryanne Hruby

MJC
Cass 401

File No. 1533

DATE RECEIVED 11/15/88

REVIEW DATE 11/28/88

DUE DATE 11/29/88

APPROVED 11-28-88 mjc

DISAPPROVED ✓

WITHDRAWN

Docket No. 05.0009.0880

ADOPTED W/O HEARING ✓

EMERGENCY RULE

REVISOR APPROVED ✓

REVISOR DISAPPROVED

FILED W/SEC. OF STATE 11-28-88

RETURNED TO AGENCY 11-28-88

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)

12/21/87 Date published in State Register

~~Comments~~

~~Petition for Adoption of a Rule (if applicable)~~

~~Board's Authorizing Resolution~~

~~Date adopted~~

✓ Proposed Rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

256.82 Statutory Authority

no Small Business Statement

yes Expenditure of public money statement

yes Signature

✓ Statement of Need and Reasonableness (if applicable)

NO Small Business Statement

NO Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

9/21/88 Date 30/25 days before adoption

✓ Notice attached

~~Copy of rule or summary attached~~

✓ Publication in State Register

9/26/88 Date 30/25 days before adoption

180-day deadline from:

10/21/88 end of comment period (§ 14.26) (rules without hearing)

~~effective date of statutory authority (§ 14.29) (emergency rules)~~

~~Resolution Adopting~~

~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting

11/14/88 Date

✓ Written requests, submissions or comments (2)

✓ Declaration of attorney

Julie Harris Name of SAAG representing agency

✓ Certificate ~~Notice of Submission to Atty. Gen. (if applicable)~~

~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

A.G. Copy

Department of Human Services

Adopted Permanent Rules Relating to Maintenance Payments and Difficulty of Care Payments for Children in Foster Care

Rules as Adopted

9560.0650 MAINTENANCE STANDARDS.

Subpart 1. [Unchanged.]

Subp. 2. [See Repealer.]

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. 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.

Subp. 4. and 5. [Unchanged.]

Subp. 6. **Reassessment.** The agency shall reassess a child:

A. at the end of 12 months;

B. at the request of a foster parent;

C. when a child is placed in a different facility; or

D. if a child's level of need changes.

9560.0651 DIFFICULTY OF CARE ASSESSMENTS AND PAYMENTS.

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

9560.0652 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9560.0653 to 9560.0656 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,

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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 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.

9560.0654 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:

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

(1) dependency, passivity, or lack of responsiveness and ability to relate to others;

(2) abnormal seeking of affection or attention;

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

(4) psychosomatic complaints;

(5) night terrors;

(6) stress reactions, such as minor

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destructiveness;

(7) chemical abuse;

(8) immaturity or poor social skills;

(9) problems with authority figures;

(10) chronic disorders with some physical incapacity;

(11) a physical handicap, although the child is self sufficient;

(12) presence of long-term infections;

(13) delayed development;

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

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

(16) need for weekly therapy for medical, physical, or emotional problems, truancy or behavior problems, in which the foster parent participates with the child;

(17) need for home tutoring provided by the foster parent if the child is learning disabled or requires remedial education;

(18) need for supervision of family visits;

(19) other conditions or behaviors that are equivalent to the requirement for additional supervision appropriate to subitems (1) to (18); and

B. within level A, shall be assigned no fewer than one 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:

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

(1) need for a structured behavioral program;

(2) difficulty with peers;

(3) lack of verbal responsiveness;

(4) fear of or hostility to adults or authority

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figures;

(5) infrequent running away overnight;

(6) lying or stealing;

(7) chemical abuse;

(8) expression of suicidal thoughts or gestures;

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

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

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

(12) presence of infections, which present a risk to the family;

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

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

(15) truancy, school performance, or behavior problems requiring increased contact by the foster parents with the school, court, or other agencies;

(16) sexual acting out;

(17) need to assist the child in relating to the natural parents;

(18) need to supervise family visits in the foster home;

(19) attention deficit disorder;

(20) other conditions or behaviors that are equivalent to the requirement for additional supervision appropriate to subitems (1) to (19); and

B. within level B, shall be assigned no fewer than 36 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:

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

(1) unsocialized or withdrawn behavior;

(2) self destructive or self-defeating behavior with suicidal expressions and gestures;

(3) attention deficit disorder;

(4) frequent running away;

(5) sexual or physical abuse inflicted upon the child;

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

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

(8) chemical abuse;

(9) problems with authority figures;

(10) chronic medical disorders or severe developmental delay including mental retardation, with incapacity which may require frequent hospitalizations;

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

(12) feeding problems, including swallowing or vomiting after meals;

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

(14) need for help in hygiene, eating, toileting, dressing, and diapering, beyond that normally required for the child's age;

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

(16) truancy, behavior, or school performance problems requiring extensive contact by the foster parents with the school, court, or other agencies;

(17) need for parenting education for the natural

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parents by the foster parents during visitations;

(18) need to protect child from threatening natural parents;

(19) other conditions or behaviors that are equivalent to the requirement for additional supervision appropriate to subitems (1) to (18); and

B. within level C, shall be assigned no fewer than 71 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:

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

(1) phobic or compulsive behaviors;

(2) inappropriate sexual aggressiveness, self-mutilation, or extreme vulnerability;

(3) self-destructive or self-defeating behavior with suicidal expressions and gestures;

(4) assaultive behavior;

(5) antisocial personality disorder;

(6) chemical abuse;

(7) a recent suicidal attempt;

(8) a severe disability with multiple handicaps;

(9) developmental delay including mental retardation;

(10) attention deficit disorder with hyperactivity;

(11) need for frequent supervision of an appliance, such as a shunt or ilial conduit;

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

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

(14) uncontrollable seizures;

(15) a tracheotomy with need for suctioning;

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(16) a gastrostomy;

(17) heavy weight, needing lifting;

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

(19) need for therapeutic visits for physical, mental, or emotional problems, attended by a foster parent more often than twice weekly;

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

(21) other conditions or behaviors that are equivalent to the requirement for additional supervision appropriate to subitems (1) and (20); and

B. within level D, shall be assigned no fewer than 106 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:

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

(1) 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;

(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; or

(11) other conditions or behaviors that are

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consistent with the requirement for additional supervision appropriate to subitems (1) to (10); and

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

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

A. shall be assessed at level F if the child 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 and no more than 225 difficulty of care points.

9560.0655 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.

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 changes or the placement terminates.

Subp. 3. **Annual revision of payment rate.** By November 1 of each year following the effective date of parts 9560.0650 to 9560.0656, the commissioner shall review and revise the difficulty of care payment rate in subpart 1 based on USDA Estimates of the Cost of Raising a Child, published by the United States Department of Agriculture, Agricultural Resources Service, Publication 1411. The revision shall be the average percentage by which costs increase for the age ranges represented in the USDA Estimates of the Cost of Raising a Child. The USDA Estimates of the Cost of Raising a Child is subject to annual revision.

9560.0656 DOCUMENTATION.

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Subpart 1. **Assessment instrument.** The local social services agency shall document the assessment of the difficulty of care under parts 9560.0653 and 9560.0654 using a written assessment instrument consistent with parts 9560.0653 and 9560.0654. 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.

EFFECTIVE DATE. Parts 9560.0651 to 9560.0656 and the amendments to part 9560.0650, are effective ~~December 25, 1988~~ January 1, 1989.

REPEALER. Minnesota Rules, part 9560.0650, subpart 2, is repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 3 0 1988
Secretary of State

Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

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Joan Anderson Growe
Secretary of State

2:50 pm

APPROVED AS TO FORM AND LEGALITY
November 28 1988
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassidy
SPECIAL ASSISTANT ATTORNEY GENERAL

These rules are intended to establish requirements and standards related to employment and training programs which provide AFDC applicants and recipients with the training and job search skills necessary to locate and secure employment.

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

Written statements of information and comment should be addressed to:

Dan Lipschultz
Rules Division
Minnesota Department of Human Services
444 Lafayette Road, 2nd floor
St. Paul, Minnesota 55155-3816

Department of Human Services

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Permanent 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 adoption of a permanent 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 directs the agency to promulgate a permanent rule establishing a uniform statewide system of difficulty of care payments to child foster care providers. As also directed by the statute, an emergency rule has been promulgated, effective as of January 1, 1987. The Department will consider changes in the emergency rule based on the experience of the counties and foster care providers, and will consider the inclusion of a cost of living index to periodically adjust the payment rates.

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, 444 Lafayette Road, St. Paul, MN 55155. 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 shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing 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 Jobs and Training

State Job Training Office

Proposed Redesignation of Benton and Stearns Counties by the Governor Under the Job Training Partnership Act

In accordance with my responsibilities under Section 101 of the Job Training Partnership Act (JTPA), and after having considered the recommendaiton of the Governor's Job Training Council, I am proposing Benton and Stearns County form a joint Service Delivery Area under the JTPA for Program Years 1988 and 1989.

Rudy Perpich
Governor

Dated: 15 December 1987

Written comments and statements concerning this proposal should be sent to:

Don Mohawk, Director
State Job Training Office
Minnesota Department of Jobs and Training
690 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Written comments and statements will be accepted through 4:30 p.m., January 15, 1988.

Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to Maintenance Payments and Difficulty of Care Payments for Children in Foster Care

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9560

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

Kathleen M. Traxler
Assistant Revisor

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Maintenance Payments and Difficulty of Care Payments for Children in Foster Care

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9560

The attached rules are approved for publication in the State Register

Kathleen M. Traxler
Assistant Revisor

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Rules
of the Department of Human Services
Governing Child Foster Care
Difficulty of Care Payments
9560.0650 to 9560.0656.

STATEMENT OF NEED
AND REASONABLENESS

Introduction and Background.

Proposed parts 9560.0650 to 9560.0656 establish standards for assessing the level of difficulty of care for a child placed in a foster family home. Authority for the proposed rules is contained in Minnesota Statutes, section 256.82, subdivisions 3 and 4.

Proposed parts 9560.0650 to 9560.0656 would replace adopted parts 9560.0650 to 9560.0656 (Emergency) which were initially adopted by the department in January 1988.

The rule addresses the concerns of providers of family foster care, of public and private agencies responsible for placing children in substitute care facilities, and foster parent associations.

Minnesota has taken a lead role in developing standards to measure difficulty of care. The criteria in these rule parts have been developed by local social services agencies over a period of twelve years and reflect experiences of practitioners in child placement agencies, foster parents working with children, and therapeutic professionals who serve agencies and foster parents. Research in the area of difficulty of care assessment is limited and the criteria of psychiatry, medicine and developmental disabilities give general direction in some but not all cases. Programs for treatment of chemical abuse, addictions, and caring for victims of physical and sexual abuse are established in Minnesota but are relatively new. As these program professionals consult with child placement agencies to recommend appropriate response to the needs of children in substitute care, the characteristics of children with these problems are more clearly defined. References to standards of practice in this statement of need and reasonableness are specific to Minnesota agencies.

The department established and used an advisory committee throughout the rule development process to gain input from persons with expertise and experience in the area of child needs assessment and placement. Names of members are in attachment 1.

The proposed amended rules, designated as Minnesota Rules, Parts 9560.9650 to 9560.0656 are hereby affirmatively presented by the Department in accordance with the Administrative Procedures Act, Minnesota Statutes, chapter 14, and part 1400.0500 of the rules of the Office of Administrative Hearings.

9560.0650 MAINTENANCE STANDARDS.

Parts 9560.0650 to 9560.0656 apply to county agencies that evaluate children for difficulty of care and authorize payments to foster family homes.

Subpart 3. Agency contract care. This part is needed to specify that a provider licensed under the cited parts shall receive maintenance payments and difficulty of care payments determined under the rate schedule in subpart 1. This specification is necessary because Minnesota Statutes, section 256.82, subdivision 3, requires uniform statewide payments. The rule is reasonable because it assures that responsible agencies will have a single standard for assigning a maintenance payment and a difficulty of care rate.

It is also necessary to separate administrative and social service costs paid to a contractor from the maintenance and difficulty of care payments paid to a foster care provider because these are different categories of expenditure and the payments are made to different parties. The funds must be separated because the foster parent is not performing administrative services or social services. The agency that provides these services must be paid directly.

It is reasonable to make this distinction because the contracts between the Department of Human Services and the local social services agency make this distinction and the state accounting procedures require the distinction.

Subpart 6. Reassessment required. This subpart is necessary because the needs of children change for several reasons, medical improvement or deterioration, behavioral change related to foster care placement, therapy, success or failure of treatment programs, and growth and maturation. The commissioner is required to care for the needs of children and reassessment is one method to assure that needs are recognized.

It is reasonable to have a 12 month requirement for reassessment because agencies are required to have an administrative review of each child in foster care at the end of every six months. Requiring a difficulty of care assessment at every administrative review is costly and burdensome because most conditions considered in difficulty of care assessment do not resolve quickly. Children with truancy problems or needs for tutoring may need an entire school year to determine if a change has taken place. A reassessment at 12 months includes the span of two administrative reviews and provides time for the information available from case workers and other professionals to be evaluated as part of the difficulty of care assessment. It is reasonable to respond to the request of a foster parent for a reassessment because the foster parent has daily contact with the child and is best equipped to know that a change has occurred before a scheduled reassessment.

Part 9560.0651 Difficulty of care assessments and payments. This part is needed to identify these rule parts as the standard for assessing difficulty of care and the payment rate. It is reasonable to cite these rule parts as the source because this is consistent with the requirement of Minnesota Statutes, section 256.82, subdivision 3, that there be such criteria in this rule.

Part 9560.0652 DEFINITIONS.

Subpart 1. Scope. This provision is necessary to clarify that the definitions apply to the entire sequence of parts 9560.0650 to 9560.0656.

Subpart 2. Activities of daily living. A definition is necessary because this term has a specific meaning within the social service profession that differs from the broader understanding in common use. The definition is consistent with that of the federal programs that define services to the population that is in need of assistance with activities of daily living.

This definition is reasonable because it is in common use by those who assess children and dependent adults for for difficulty of care needs and assures a consistent application of the criterion. Including eating, dressing, grooming, hygiene and toileting as self-care activities is reasonable because these activities are direct care of the person, are essential to maintaining health and must be performed every day.

Subpart 3. Mental retardation. A definition is necessary because the term has more than one meaning. This definition is consistent with the definition of the cited rule.

It is reasonable to cite rule part 9525.0015, subpart 20, because this is the standard for all department services related to mental retardation or related conditions.

Subpart 4. Mental illness. It is necessary to define mental illness as having the meaning of the cited statute to set a standard and to assure that this rule is understood to be consistent with other department rules related to serving persons with the same diagnosis. It is reasonable to cite the statute that defines mental illness because this is the source for all definitions of this clientele in Minnesota rules.

Part 9560.0653 Difficulty of care payments. This part is necessary to set a standard requiring agencies to make payments in addition to basic maintenance. It is necessary to place this responsibility on the local social services agency because this agency is responsible according to Minnesota Statutes, section 256.01, subdivision 2, paragraph (2) for supervising child welfare activities. It is necessary to define the population to receive payments and the conditions for which payment is to be received in order to set a standard that assures appropriate care for children with mental, physical or emotional handicaps.

Behavior management, activities of daily living, management of medical problems and interaction with natural parents and the community are specific areas in which a child must be supported in order to meet the requirements of the case plan and to live in the community when foster care ends.

The requirement that the local social service agency assess each child under this part is necessary to assure that the needs of a child in care are identified so appropriate response can begin as soon as possible. It is reasonable that the local social service agency perform the assessment because this agency is responsible for determining the needs of the child and authorizing the payments.

Part 9560.0654 DIFFICULTY OF CARE ASSESSMENTS.

Subpart 1. General. It is necessary to require that a single point value be assigned on the basis of the assessment because the point value is required to establish the payment rate. The highest appropriate level must be chosen because the criteria are within specific levels and the appearance of a behavior within a level places the child's rating in that level. The point values within a level vary significantly, but entry into a level is fixed by the threshold behavior.

Subpart 2. Level A. It is necessary to separate the behaviors that make a child eligible for difficulty of care payments at this level and to specify those behaviors in order to set a uniform standard for assessments.

Item A. The limitation to a moderate amount of additional supervision or assistance is necessary in order to set a standard of quantity that can be used to evaluate the additional supervision and assistance needed by a child. The assistance and supervision must be required by specific behaviors that are documented by a social services professional.

It is the common experience of child placement professionals that this behavior places upon the foster parent an additional demand for time and physical exertion.

Subitem (1) an unusual degree of dependency, passivity, or lack of responsiveness and ability to relate to others; This subitem is necessary to state specifically certain behaviors that are symptoms of developmental delay, a child's reaction to separation from the natural family, and some mental illnesses. An unusual degree of dependency or passivity requires the person caring for the child to spend more time than would be required with a child who is normally responsive.

It is reasonable to include this in the A level because supportive response to this demand requires additional time of the foster parent and may disrupt normal household relationships. It may require additional training for the foster parent in behavior management skills.

Subitem (2) abnormal seeking of affection or attention; This subitem is necessary to state specifically certain behaviors that are identified in some children as they are separated from the natural parents. A child with this behavior may cling to the foster parent, cry when the foster parent is absent, or demand continual attention by behaving in ways that require the foster parent to check on the child.

It is reasonable to include this in the A level because supportive response to this demand requires additional time of the foster parent and may disrupt normal household relationships. It may require additional training for the foster parent in behavior management skills.

Subitem (3) problems with separation from the natural parents or attachment to the foster parent; This subitem is necessary to state certain behaviors related to fear of separation from major attachment figures in the child's life. Examples include refusal to go to school in order to stay at home with the foster parent, fear that he or she will be lost or kidnaped, and panic upon separating from a natural family member or the foster parent.

It is reasonable to include this in the A level because in the experience of social work professionals problems with separation require a moderate additional amount of time.

Subitem (4) psychosomatic complaints; This subitem is necessary to state specifically certain behaviors of children in the stress of separation from their natural parents that present as psychosomatic complaints. Examples include vomiting each morning in order to not go to school or becoming ill as the foster parent leaves for work. The pain the child feels may not be relieved by medical treatment. The foster parent must exercise judgment about the symptoms and may need to contact the child's physician.

It is reasonable to include this in the A level because comforting a child with a psychosomatic complaint takes a moderate additional amount of time.

It is the common experience of child placement professionals that this behavior placed upon the foster parent an additional demand for time and physical exertion.

Subitem (5) night terrors; This subitem is necessary to state specifically a behavior that can disrupt the normal family environment and take additional time of the care provider. A child with night terrors awakes in a panic needing immediate contact with the foster parent. Episodes of wakefulness are not predictable but when they occur, the foster parent and the entire household may be awakened several times during a single night.

It is reasonable to include this in the A level because night terrors are moderately difficult to manage and require the foster parent to be awake with the frightened child.

Subitem (6) stress reactions, such as minor destructiveness; This subitem is necessary to state specifically certain behaviors that are encountered with some children during separation from the natural parents or a previous placement. A child who reacts to stress by minor destructiveness or irresponsibility such as breaking small items or losing clothing or personal items, requires moderate additional effort from the foster parent. It is the common experience of child placement professionals that this behavior places upon the foster parent an additional demand for time and physical exertion.

It is reasonable to include this in the A level because the behavior can be managed with a moderate additional amount of time and the child may become more responsible after adjusting to placement in foster care.

Subitem (7) chemical abuse; This subitem is necessary to state specifically a behavior that is moderately difficult to manage at the A level, when the child abuses but is not addicted to a chemical. Modeling appropriate use of alcohol or medicine, keeping alcohol and medicines inaccessible to the child and monitoring the child's behavior are necessary at this level.

It is reasonable to include this in the A level because the behavior can be managed with a moderate additional amount of time in supervision.

Subitem (8) immaturity or poor social skills: This subitem is necessary to state specifically conditions that are difficult to manage in a social setting and in the foster home. Examples include not using eating utensils, having no experience or skill in interacting with peers, behaving in ways not appropriate for the environment and that inhibit social acceptance of the child, or behaviors that are inappropriate to the child's age.

It is reasonable to include this in the A level because the behavior can be managed with a moderate additional amount of time in supervision and one on one contact with the child.

Subitem (9) problems with authority figures: This subitem is necessary to state specifically behaviors that can be managed with a moderate additional amount of time. A problem with authority figures appears in various ways, refusal to accept directions, tantrums, disobedience of household rules. Appropriate response to this behavior takes a moderate amount of additional supervision and direct intervention with the child. The child needs help in accepting the separation from the natural family and additional effort is needed to help the child feel secure in the foster family home.

It is reasonable to include this in the A level because the behavior can be managed with a moderate additional time in training and supervision.

Subitem (10) chronic disorders with some physical incapacity: This subitem is necessary to state specifically certain chronic conditions that do not result in a handicap in most activities of daily living. Examples include allergies, arthritis, diabetes, and conditions managed by monitoring the child's medical treatment plan, such as assuring that medicine is taken at prescribed times.

It is reasonable to include this in the A level because the physical incapacity can be managed with a moderate additional amount of time. It is the common experience of child placement professionals that this behavior places upon the foster parent a moderate additional demand for time.

Subitem (11) a physical handicap, although the child is self-sufficient: This subitem is necessary to state specifically certain conditions considered to be moderately difficult to manage. Some physical handicaps may result in a need to spend more time to manage activities of daily living, even though the child performs them without direct assistance. Supervision of a child requires moderate additional effort from the caregiver if the child walks with braces and crutches but needs help to enter a bathtub, or must be accompanied to a school bus in slippery conditions.

It is reasonable to include this in the A level because self-sufficiency of the child reduces to a moderate level the amount of time that a foster parent must spend to manage the physical handicap.

Subitem (12) presence of long term infections: This subitem is necessary to state specifically certain conditions that are managed over a long period of time with a moderate added amount of care. Fungal infections, hepatitis B, kidney infections, osteomyelitis and tuberculosis are examples of long term infections which may need months to resolve with treatment.

It is reasonable to include this in the A level because the care required, such as hygienic precautions with towels, bedding and cooking utensils or administration of medicines and additional training to recognize problems related to the disease, requires a moderate additional effort.

Subitem (13) delayed development: This subitem is necessary to state specifically a condition that presents a moderate degree of difficulty. The developmental delay may be related to another condition in level A such as a need for a special diet.

It is reasonable to include this in the A level because it is the common experience of child placement professionals that this behavior places upon the foster parent a moderate additional demand for time and physical exertion to provide the required care.

Subitem (14) need for help with hygiene, eating, toileting or dressing beyond that normally required at the child's age level: This subitem is necessary to state specifically certain needs for assistance in activities of daily living above that usually required for the child's age level. Helping a child maintain urinary and bowel continence is important for maintaining the child's health and ensuring social acceptance. If a child lacks fine motor skills and cannot button clothes, tie shoelaces, or bathe unassisted, the foster parent must spend a moderate additional amount of time with these tasks.

It is reasonable to include this in the A level because it is the common experience of child placement professionals that the need represents a moderate additional amount of time.

Subitem (15) need for a special diet prescribed by a physician: This subitem is necessary to state specifically certain conditions that require a special prescribed diet. Juvenile-onset diabetes, hypoglycemia, food allergies, weight problems and conditions resulting from diet deficiencies, are examples of conditions with special diet needs.

It is reasonable to include this in the A level because the required response takes a moderate additional amount of time for food purchase or preparation. Some additional supervision may be necessary to assure that the child avoids foods which may cause harm.

Subitem (16) need for weekly therapy for medical, physical, emotional, truancy or behavior problems, in which the foster parent participates with the child: This subitem is necessary to state specifically certain tasks that a foster parent would perform for a child with problems requiring weekly therapy visits. The requirement to attend with the child places a moderate additional burden on the foster parent.

It is reasonable to include this in the A level because the required response is moderately disruptive to a normal family schedule and takes a moderate additional amount of time.

Subitem (17) need for home tutoring provided by the foster parent if the child is learning disabled or requires remedial education: This subitem is necessary to state specifically a need that requires a structured response from the foster parent. A learning disability may require daily home tutoring in order to give the child the resources needed to cope with the

effect of the specific condition on his or her ability to learn. Examples include visual reinforcement, frequent repetition of directions in short sentences or rewording of assigned questions so yes/no responses are possible. Contact with teachers or specialists in the school systems may be required. Some children require the structure of a regular time for homework each day and supervision of this period requires additional time of the foster parent. It is the common experience of child placement professionals reflected in standards of practice over time that this behavior places upon the foster parent an additional demand for time and physical exertion.

It is reasonable to include this in the A level because required response is moderately disruptive to a normal family schedule and takes a moderate additional amount of time.

Subitem (18) need for supervision of family visits; This subitem is needed to state specifically certain requirements that disrupt the normal activities of the foster family home, scheduling, setting aside a private space for the family visit, and dealing with concerns of the child when the appointment is not kept, or a natural family member behaves inappropriately. Family members may fail to come to a scheduled visit, or may come late, intoxicated, and behave with hostility toward the foster parents or the child. After a visit, the child may be more difficult to manage and the foster parent must respond to the stress of a child's feelings of conflicting loyalties or the feelings of inadequacy expressed by the natural parents.

It is reasonable to include this in the A level because dealing effectively with this need requires a moderate additional amount of time, training and supervision according to the experience of child placement professionals.

Subitem (19) other conditions or behaviors which are consistent with the demand for additional supervision appropriate to subitems 1 to 18; This subitem is needed to provide agencies an opportunity to identify needs of children that require additional supervision of a foster parent which are not directly listed in the categories in subitems 1 - 18 but which are appropriate to level A. The rule is not intended to be exhaustive and it is impractical to list every condition that may appear in the population of children placed in foster care.

It is reasonable to require that the agency describe the behavior in terms of the demand placed on the foster parent to provide additional supervision because additional effort required is the measure of the difficulty of care.

Item B. This item is necessary to assure that the agency assessing the child keeps the rating within the possible range for level A and moves a score higher than the indicated maximum into level B.
Subpart 3. Level B.

Item A. The limitation to a significant amount of additional supervision or assistance is necessary in order to set a standard of quantity that can be used to evaluate the additional supervision and assistance necessary for a child. The assistance and supervision must be required by specific behaviors that are documented by a social services professional.

Subitem (1) need for a structured behavioral program: This subitem is necessary to state specifically a requirement places on a foster parent to administer portions of a structured behavioral program that is developed for the child by a therapist or by the agency. Training, additional supervision and daily reinforcement are elements of such programs.

It is reasonable to include this in the B level because a structured behavior program requires significant additional time in training and oversight.

Subitem (2) difficulty with peers: This subitem is necessary to state specifically certain behavior that has more serious consequences for the child. Difficulty with peers includes isolation, withdrawal, fighting, and dependence upon the foster parent for social stimulation. Children with this behavior adjust with difficulty to new school settings and are not as readily accepted by peers. The foster parent must spend a significant additional amount of time with the child and may have to structure time with peers so the child can learn skills in relating to peers.

It is reasonable to include this in the B level because dealing with this requires significant additional time to interact with the child, to deal with the behaviors that result in the difficulty with peers, or to teach the child new behaviors for relating to peers.

Subitem (3) lack of verbal responsiveness: This subitem is necessary to state specifically certain behaviors that have a more serious consequence for the child's socialization. These children are withdrawn without accompanying significant depression or anxious mood. An unsocialized or withdrawn child has difficulty in developing peer relationships or friendships.

It is reasonable to include this in the B level because dealing effectively with this behavior requires extensive additional supervision and a variety of skills and a significant additional amount of time in training to develop skills to handle the problem.

Subitem (4) infrequent running away overnight: This subitem is necessary to state specifically a behavior that requires contact with social services agencies, police, court services and others. Agency staff, police, and other officials must be alerted. Searches may be necessary and major disruption to the household routine is the consequence of each run-away episode.

It is reasonable to include this in the B level because dealing effectively with this requires a significant additional amount of time in managing the consequences of a run-away episode.

Subitem (5) lying or stealing: This subitem is necessary to state certain conduct disorders in which the basic rights of others or age-appropriate norms are violated. Lying in the home or in school, stealing objects without confronting the victim, and chronically breaking rules of the household or school are examples of behavior of this type. These are nonaggressive acts and the foster parent is expected to set limits, establish appropriate rules and communicate the rules so the child understands consequences.

It is reasonable to include this in the B level because this behavior places additional stress on the family and dealing effectively with this requires a significant additional amount of time in training and supervision.

Subitem (6) fear of or hostility to adults or authority figures; This subitem is necessary to state specifically certain behaviors that require a significant additional amount of effort to manage such as withdrawal, difficulty in speaking to adults, refusal to accept directions, tantrums, disobedience of home and school rules. Appropriate response to this behavior takes a significant amount of additional intervention with the child. A child at this level of difficulty is not necessarily a victim of abuse, but may have had experiences that engender fear of adults such as seeing harm done to a sibling. The child needs help in accepting the separation from the natural family or previous placement and additional effort is needed to help the child feel secure in the foster family home.

It is reasonable to include this in the B level because dealing effectively with this requires significant additional time in training and supervision.

Subitem (7) chemical abuse; This subitem is necessary to state specifically a child's abuse of chemicals that does not meet the criteria of chemical dependency of 9530.6620, subpart 2. D. A child's chemical use at the B level requires the foster parent to remove or secure alcohol and medicines, transport the child to social activities, and routinely check with parents of the child's friends to assure that the child is supervised while visiting a friend's house. A child in this category may had treatment for chemical abuse.

It is reasonable to include this in the B level because dealing effectively with this requires a significant additional effort in supervision and may require treatment related activities on the part of the foster parent.

Subitem (8) expression of suicidal thoughts or gestures; This subitem is necessary to state specifically certain behaviors that indicate significant distress which social work professionals generally agree may result in a suicide attempt, particularly if there is a history of suicide in the natural family. The child may also be in a therapy program which the foster parent must attend. If suicidal thoughts have been expressed, the foster parent is required to be more observant and ready to intervene.

It is reasonable to include this in the B level because dealing effectively with this behavior requires a significant additional amount of time to observe and interact with the child.

Subitem (9) chronic medical disorders or developmental delay, including mental retardation, with significant incapacity and need for motivation or skill development; This subitem is necessary to state specifically certain needs inherent with chronic medical disorders and developmental delay in a child. The foster parent is asked to support the child's growth and to take a number of actions to encourage the development of as many skills as possible. This requires frequent interaction with the child, urging the child to talk, crawl, or feed himself. Structured activities include placing toys near the child to stimulate movement and interest.

It is reasonable to include this in the B level because dealing effectively with this requires a significant additional amount of time. Standards of practice in developmental disabilities treatment require stimulation of such children in order to promote development.

Subitem (10) a program of physical therapy prescribed by a professional for up to one hour per day to be provided by a foster parent; This subitem is necessary to state specifically needs that require the foster parent to spend additional time with a child using a skill acquired by additional training.

It is reasonable to include this in the B level because providing a physical therapy activity requires a significant additional time each day.

Subitem (11) speech and hearing problems that require a communication board or sign language; This subitem is necessary to state specifically certain speech and hearing problems of a child that the foster parent must develop special skills to meet. Sign language skills must be learned from a certified teacher and such training takes a significant amount of time. Use of a communication board with a severely disabled child significantly increases the time that must be spent to communicate with the child.

It is reasonable to include this in the B level because dealing effectively with this requires a significant additional amount time in training.

Subitem (12) presence of infections which present a risk to the family; This subitem is necessary to state specifically certain conditions that are able to be managed with a significant added amount of care. Hepatitis B, AIDS, and venereal diseases are examples of infections which present a risk to family members and require significant changes in normal household routines such as separate laundering of clothing and bedding.

It is reasonable to include this in the B level because the care required such as hygienic precautions with clothing, separating waste containing bodily fluids, administering medicines and additional training to recognize changes in the disease process is a significant additional effort.

Subitem (13) need for help with eating, toileting, hygiene and dressing significantly beyond that normally required of the child's age level; This subitem is necessary to state specifically certain needs of particular concern for social acceptance of a child with developmental delay or physical handicaps that affect these activities of daily living. Maintaining urinary and bowel continence is important to maintaining the child's health and for social acceptance of a child of school age because peers of school age have bowel and bladder control. When the child has bowel and bladder accidents, the foster parent has additional responsibilities in enforcing toilet training, dressing and maintaining cleanliness.

It is reasonable to include this in the B level because dealing effectively with this requires a significant additional amount of time.

Subitem (14) need for help with braces, prosthetics, or casts; This subitem is necessary to state specifically certain needs in activities of daily living which the foster parent must take significant additional

amounts of time to meet. Children with cerebral palsy, muscular dystrophy or spina bifida may require braces or casts to prevent limb distortion. Because of the disability the child cannot put on the prostheses without assistance.

It is reasonable to include this in the B level because putting on braces or prostheses requires a significant additional amount of time.

Subitem (15) truancy, school performance or behavior problems requiring increased contact by foster parents with school, court or other agencies: This subitem is necessary to state specifically certain behaviors that result in multiple contacts with school, court and other agency staff that may be consulted by the school or court systems. The behaviors identified in this subitem require the foster parent to attend meetings to develop an individual education plan and may require the foster parent to take a role in meeting the plan goals. Court officials may require that foster parents participate in additional conferences to respond to a behavior problem. A variety of other agencies may be called in to respond to problems and the foster parent will be in contact with all parties.

It is reasonable to include this in the B level because managing multiple appointments, keeping records of the requirements of the various agencies and dealing effectively with this requires a significant additional amount of time in training and supervision.

Subitem (16) sexual acting out; This subitem is necessary to state specifically behaviors that occur among children who may have been removed from an abusive environment, even if they were not abused themselves. Sexually inappropriate acts toward others of the opposite or same sex by a foster child, dress that is inappropriate for the child's age, and use of language with sexual intent are examples of such maladaptive behaviors.

It is reasonable to include this in the B level because dealing with sexual acting out by a child requires a significant additional amount of time in training and supervision. Standards of practice among social work professionals indicate that foster parents should spend time to explain the child's actions to the persons who are objects of the inappropriate behavior and to teach the child different ways to relate to others.

Subitem (17) need to assist the child in relating to the natural parents; This subitem is necessary to state specifically a need of a child to understand and accept maladaptive behavior of the natural parents or efforts of the natural parents to change their behavior. In families with chemically dependent parents, the child may have an inappropriate role reversal which must change when the natural parents have completed treatment and are ready to assume a normal parental relationship.

It is reasonable to include this in the B level because dealing effectively with this requires a significant additional amount of time in supervision.

Subitem (18) need to supervise family visits in the foster home; This subitem is necessary to state specifically certain requirements that are disrupt normal activities of the foster family home, scheduling, setting aside private space for a family visit, and dealing with concerns of a child when the appointments are not kept, or if a natural family member

behaves inappropriately. Natural family members may fail to come to a scheduled visit, or may come late, intoxicated, or behave with hostility toward the foster parents. After a visit, the child may be more difficult to manage.

It is reasonable to include this in the B level because supervising family visits requires a significant additional amount of time and the foster parent may need additional training.

Subitem (19) attention deficit disorder; This subitem is necessary to state specifically certain conditions that appear before age seven as signs of developmentally inappropriate inattention and impulsivity. A child with the following characteristics, moving about excessively, even during sleep, having difficulty concentrating on any task that requires sustained attention and shifting excessively from one activity to another is considered to have attention deficit disorder. At this level the child's behavior may be controlled by medicine.

It is reasonable to include this in the B level because dealing effectively with attention deficit disorders requires significant additional time to plan and supervise activities, or administer medicines and such a child disrupts normal household routine.

Subitem (20) other conditions or behaviors that are equivalent to the demand for additional supervision appropriate to subitems 1 to 19; This subitem is needed to provide agencies an opportunity to identify needs of children that require additional supervision of a foster parent which are not directly listed in the categories in subitems 1 - 19 but which are appropriate to level B. The rule is not intended to be exhaustive and it is impractical to list every condition that may appear in the population of children placed in foster care.

It is reasonable to require that the agency describe the behavior in terms of the demand placed on the foster parent to provide additional supervision because additional effort required is the measure of the difficulty of care.

Item B. This is necessary to assure that the agency assessing the child keeps the rating within the possible range for level A and moves a score higher than the indicated maximum into level B.

Subpart 4. Level C.

Item A. The limitation to an extensive amount of additional supervision or assistance is necessary in order to set a standard of quantity that can be used to evaluate the additional supervision and assistance necessary by a child. The assistance and supervision must be required by specific behaviors that are documented by a social services professional.

Subitem (1) unsocialized or withdrawn behavior; This subitem is necessary to state specifically a behavior of withdrawal without significant depression or anxious mood which tends to be accompanied by aggressive and violent acts. An unsocialized child lacks feelings of responsibility toward others, may have difficulty in developing peer relationships or sustaining friendships and may behave violently.

It is reasonable to include this in the C level because dealing effectively with this behavior requires extensive additional supervision and training to develop a variety of skills needed to manage this behavior.

Subitem (2) self destructive or self defeating behavior with suicidal expressions and gestures; This subitem is necessary to state specifically certain behaviors that present a high risk to a child's well-being. Expression of suicidal thoughts with self destructive and self defeating behavior in a child requires high levels of vigilance from a foster parent in order to prevent a suicide attempt. The foster parent must provide emotional support to develop or maintain desired behavior and improve the self concept of the child. Examples include anorexia nervosa, high risk behaviors, aggressive felonies and risk-taking with chemical abuse.

It is reasonable to include this in the C level because dealing effectively with this requires extensive additional time in training and direct contact with the child.

Subitem (3) attention deficit disorder; This subitem is necessary to state specifically certain behaviors that appear before age seven as signs of developmentally inappropriate inattention, impulsivity, and hyperactivity. A child with the following characteristics, moving about excessively, even during sleep, having difficulty concentrating on any task that requires sustained attention and shifting excessively from one activity to another is considered to have attention deficit disorder.

It is reasonable to include this in the C level because dealing effectively with attention deficit disorders at this level requires extensive additional time in supervision of the child, and training for administering medicines. Such a child also disrupts normal household routine.

Subitem (4) frequent running away; This subitem is necessary to state specifically a behavior which is more common among children in foster care and which requires an extensive effort as it occurs. The foster parent must contact and inform agency staff, police, and other officials. Coordinated searches may be necessary and major disruption to the household routine is the consequence of each occurrence.

It is reasonable to include this in the C level because dealing effectively with a child who frequently runs away requires extensive additional time in supervision and in dealing with the several involved parties.

Subitem (5) sexual or physical abuse inflicted upon the child; This subitem is necessary to state specifically a condition that is known to result in low self esteem and in a variety of maladaptive coping behaviors by the victim. A child who has been abused may present inappropriate aggressiveness, or may act out in inappropriate sexual ways with peers or adults. Response to an abuse victim requires training, working as a therapeutic team member and implementing a treatment plan. Monitoring and supporting an abuse victim is also stressful for the care provider.

It is reasonable to include this in the C level because dealing effectively with a child who is a victim of sexual or physical abuse requires an extensive additional amount of time in training, contact with therapy providers, and unusual care on the part of all household members in reacting to the abused child.

Subitem (6) destructive acting out, either physically or sexually: This subitem is necessary to state specifically certain behaviors that are associated with children who may be victims of physical or sexual abuse. Examples include children who become sexually active as prostitutes, who physically attack younger or weaker individuals, children who become sexually involved with adults or children who sexually abuse vulnerable younger children. Contact with treatment professionals and the court system is likely to be required for a child with this behavior.

It is reasonable to include this in the C level because dealing effectively with this requires an extensive additional amount of time in training, the development of strong appropriate personal boundaries in order to deal with the inappropriate behavior and additional skills in recognizing and intervening when the child acts out.

Subitem (7) repeated violations of law concerning persons or property: This subitem is necessary to state specifically certain behaviors that present unusual needs for supervision. Violence against persons by a child must have an appropriate response from the foster family which balances the protection of household members with the requirement that protection be achieved without corporal punishment or undue physical restraint.

It is reasonable to include this in the C level because dealing effectively with repeated violations of law requires extensive additional time in supervision of the child, contact with the criminal justice system, probation officers, and other treatment professionals.

Subitem (8) chemical abuse: This subitem is necessary to state specifically a behavior that is difficult to manage, particularly if the child is dependent on a chemical as defined in 9530.4100 subpart 6, and has a history of chemical abuse within the natural family. Taking the child to treatment programs, participating as indicated and carrying out the treatment plan with the child are expectations of the agency. In addition, the care giver must chaperon social activities and school functions, transport the child to social activities to assure that the child arrives at a planned activity and stay at the activity to assure that the child does not leave without supervision. Taking the child to support or self help group meetings and attending support group meetings for persons responsible for chemical abusers takes additional time. If after-care plans require structured schedules for the child, the provider's household will be disrupted to meet those needs.

It is reasonable to include this in the C level because dealing effectively with chemical abuse at the C level includes an extensive amount of time in attending and participating in treatment activities. Providing clear rules and consequences which are consistently applied requires an extensive amount of time, disruption of normal home life and a high degree of focus on the child.

Subitem (9) problems with authority figures: This subitem is necessary to state specifically certain behaviors that require an extensive amount of time and involve extensive disruption of normal home life and place a high degree of focus on the child. In the experience of child care professionals, problems with authority figures appear as refusal to accept directions, rages, violations of household rules, hostility toward foster

parents and teachers, assaulting peers and similar types of oppositional behavior. The caregiver's response to this behavior takes an extensive amount of additional time and direct intervention with the child, conferences with school staff and other agencies.

It is reasonable to include this in the C level because dealing effectively with this requires an extensive additional time in training, supervision and dealing with other agencies.

Subitem (10) chronic medical disorders or severe physical handicap or developmental delay including mental retardation, with incapacity which may require frequent hospitalization; This subitem is necessary to state specifically conditions that require a high level of expertise from the care provider. The foster parent may be required to participate in managing the case of the hospitalized child. Incapacity of a child requires time, physical exertion, management of medical equipment in the home and frequent trips for medical care. When hospitalization is frequent, the household is disrupted, and other family members have difficulty coping with the absence of the foster parent.

It is reasonable to include this in the C level because dealing effectively with incapacitated children requires extensive additional time in training and physical effort. Frequent hospitalization also is a major disruption of a household with daily visits to the hospitalized child and participation in managing the care of the child in the hospital.

Subitem (11) a severe physical handicap, and the child is not ambulatory or is oppositional; This subitem is necessary to state certain behaviors that require a significant additional effort from the foster parent. If a child must have a wheelchair or must be carried and opposes or resists moving, the task of moving the child without doing harm is significantly more difficult.

It is reasonable to include this in the C level because dealing effectively with a severe physical handicap requires an extensive additional amount of time in training and extensive physical effort if the child cannot walk. If the child resists the foster parent in the efforts required to respond to the needs of the severe handicap, the extensive physical effort increases, the amount of time needed to accomplish the task also increases.

Subitem (12) feeding problems, including aid in swallowing or vomiting after meals; This subitem is necessary to state specifically certain needs and behaviors that require the foster parent to exert unusual efforts to help the child in an activity of daily living. With difficulty in swallowing, the child may require procedures to stimulate the esophagus during each meal. Assuring that a child has received a nutritionally essential diet if post-meal vomiting occurs may require added feedings.

It is reasonable to include this in the C level because dealing effectively with feeding problems requires an extensive additional amount of time in training and cleaning up after meals when vomiting occurs at every meal. There are also related risks of choking during feedings and additional stress related to this problem.

Subitem (13) a program of physical therapy prescribed by a professional for between one and two hours per day to be provided by a foster parent;

This subitem is necessary to state specifically certain needs that require the foster parent to spend additional time with a child. Foster care is a full time responsibility; when the physical therapy requirement is added, the foster parent is spending extensive additional time to care for the child.

It is reasonable to include this in the C level because dealing effectively with this requires an extensive additional amount of time in training and supervision.

Subitem (15) need for help in hygiene, eating, toileting, dressing and diapering, beyond that normally required for the child's age; This subitem is necessary to state specifically certain behaviors that require the foster parent to spend additional time with a child performing tasks that exceed the normal duties for a child of the same age but without significant deficits in activities of daily living.

It is reasonable to include this in the C level because dealing effectively with this requires an extensive additional time and physical effort.

Subitem (15) need for help in dressing and hygiene, if the child is over 12 years of age; This subitem is necessary to state specifically certain deficits in activities of daily living that require the foster parent to spend additional time with a child performing tasks that exceed the normal duties for a child of the same age without these needs.

It is reasonable to include this in the C level because dealing effectively with this requires an extensive additional amount of time in training and supervision.

Subitem (16) need for therapy for medical, physical, or emotional problems, which the foster parent attends with the child at least twice weekly; This subitem is necessary to state specifically certain needs that require additional effort of the foster parent. Participating in therapy sessions with the child takes additional time. Attending the sessions involves added travel expense and may require day care for other children of the household.

It is reasonable to include this in the C level because attending therapy twice a week requires an extensive additional amount of time.

Subitem (17) truancy, school performance or behavior problems requiring extensive contact by the foster parents with school, court, or other agencies; This subitem is necessary to state specifically behaviors that result in multiple contacts with school, court and other agency staff that may be consulted by the school or court systems. These behaviors require the foster parent to attend conferences with school officials to develop an individual education plan and may require the foster parent to take a role in meeting the plan goals. Court officials may require participation in additional conferences to respond to a behavior problem. A variety of agencies may be called in by the school system or court to respond to problems of a child and the foster parent must have contact with all parties.

It is reasonable to include this in the C level because managing multiple appointments, keeping records of the requirements of the various agencies

and carrying out the plans that are developed requires extensive additional time.

Subitem (18) need for parenting education for the natural parents by the foster parents during visitations: This subitem is necessary to state specifically certain needs of the natural family that the foster parent must help meet as part of the reunification plan. Some natural parents may have few parenting skills. Examples include teaching the parent how to discipline a child without being physically abusive, teaching skills of interacting with an infant so developmental needs of a child are met, or in a child with medical problems, teaching prescribed procedures to the natural parent.

It is reasonable to include this in the C level because dealing effectively with this requires extensive additional time in teaching the natural parents, in monitoring their interaction with the child, and in supporting positive behaviors of the natural parents.

Subitem (19) need to protect the child from threatening natural parents: This subitem is necessary to state specifically an unusual need of a few children which a foster home is to meet. Kidnaping, physical threats against the child, unauthorized removal, and other actions taken against the interest of the child have occurred and some foster parents may be asked to protect a child from such dangers.

It is reasonable to include this in the C level because dealing effectively with threatening natural parents requires extensive vigilance, and may place the foster parent in personal risk.

Subitem (20) other conditions or behaviors that are equivalent to the demand for additional supervision appropriate to subitems 1 to 19: This subitem is needed to provide agencies an opportunity to identify needs of children that require additional supervision of a foster parent which are not directly listed in the categories in subitems 1 - 19 but which are appropriate to level C. The rule is not intended to be exhaustive and it is impractical to list every condition that may appear in the population of children placed in foster care.

It is reasonable to require that the agency describe the behavior in terms of the demand placed on the foster parent to provide additional supervision because additional effort required is the measure of the difficulty of care.

Item B. This is necessary to assure that the agency assessing the child keeps the rating within the possible range for level B and moves a score higher than the indicated maximum into level C.

Subpart 5. Level D.

Item A. The limitation to an exceptional amount of additional supervision or assistance is necessary in order to set a standard of quantity that can be used to evaluate the additional supervision and assistance necessary by a child. The assistance and supervision must be required by specific behaviors that can be documented either by a medical professional, by a social services professional, or an educational professional.

Subitem (1) phobic or compulsive behaviors: This subitem is necessary to state specifically a class of behaviors that are highly disruptive to a household and require intense effort for effective management. Phobic reactions to daily events such as going to school, require a controlled response that must be learned and practiced by the foster parent.

It is reasonable to include this subitem in level D because management of a severe emotional disturbance requires high levels of skill, training and additional time. Children with these conditions may require an ongoing treatment plan.

Subitem (2) inappropriate sexual aggressiveness, self-mutilation, or extreme vulnerability; This subitem is necessary to state specifically certain behaviors that put a child at high risk of exploitation and abuse. Some children have learned behaviors that are very high risk such as inflicting pain and humiliation on victims, or on themselves. Children with these behaviors put others and themselves at risk and must be taught new coping behaviors but are resistant to positive change. Some children have developed dependent relationships with abusive and exploitive adults and may run away from foster care to continue these relationships. Some children may harm themselves directly by burning or cutting themselves in emotional distress.

It is reasonable to include this subitem in level D because care for a child with these behaviors requires extensive training, monitoring and additional time. It may also require contact with a variety of individuals who have casual contact with the child and need to be appraised of the behavior of the child in order to avoid harm to themselves or to the child.

Subitem (3) self destructive or self defeating behavior with suicidal expressions and gestures; This subitem is necessary to state specifically certain behaviors that present a high risk to a child's well being. Expression of suicidal thoughts with self destructive and self defeating behavior requires high levels of vigilance from a foster parent in order to prevent a suicide attempt. The foster parent must provide emotional support to develop or maintain desired behavior and improve the self concept of the child. Examples include anorexia nervosa, high risk behaviors, aggressive felonies and risk-taking with chemical abuse.

It is reasonable to include this in the D level because dealing effectively with this requires an extensive additional amount of time in training and supervision and direct contact with the child.

Subitem (4) assaultive behavior; This subitem is necessary to state specifically behavior that presents an ongoing risk to the members of the household. Some children may commit assaults on other household members or on acquaintances, school peers, and strangers. Management of a child with a history of this behavior requires extensive specific training, a high degree of supervision and may involve contacts with law enforcement personnel.

It is reasonable to include this subitem in level D because of the risk posed to the foster family and other foster children, the potential liability if the child harms another person and the need for a high level of vigilance.

Subitem (5) antisocial personality disorder; This subitem is necessary to state specifically behaviors with a psychiatric diagnosis that may include the following criteria: expulsion from school for misbehavior, persistent lying, repeated sexual intercourse in a casual relationship, vandalism, theft, repeated drunkenness or substance abuse and similar behaviors with an onset before age 15.

It is reasonable to include this subitem in level D because of the extensive additional effort needed to oversee a child with this behavior, and responding to the frequent contacts with school, law enforcement, and other agencies that result from this behavior.

Subitem (6) chemical abuse; This subitem is necessary to state specifically a behavior that involves a pattern of pathological use such as an inability to abstain from use, binge use, or daily use of the chemical. The child may have used addictive illegal substances in addition to alcohol and may have been involved with the courts as a result of chemical use or of selling illegal substances to support the use. Participating in a prescribed treatment program after care plan and supervising the treatment plan, maintaining contact with the counselors of the treatment program and providing a highly structured environment are relevant expectations of the agency placing the child. The care giver must take the child to social activities or part time jobs to assure that the child arrives at a planned activity. Taking the child to support or self-help group meetings and attending support group meetings for persons responsible for chemical abusers requires additional time and supervision.

It is reasonable to include this subitem in level D because caring for a child with this level of chemical abuse history requires extensive additional time, skill, and training. An after-care plan can require adhering to strict schedules and two or more hours per week of attending support group meetings.

Subitem (7) a recent suicide attempt; This subitem is necessary to state specifically certain behaviors that indicate a need for close supervision. The experience of social work professionals is that there is a significant risk of a subsequent suicide attempt. Because the child tends to withdraw, may run away or violate curfew, the foster parent is under pressure to monitor the child. Subsequent attempts may occur without warning and foster parents report finding a child comatose from a drug overdose or bleeding from self-inflicted cuts. Such a child requires close supervision, communication and emotional support.

It is reasonable to include this subitem in level D because the foster parent must spend extensive additional time with the child and the stress of living with the risk is similar to that of living with a terminally ill child.

Subitem (8) a severe disability with multiple handicaps; This subitem is necessary to state specifically certain needs that accompany several severe disabilities. Muscular dystrophy, central nervous system damage from trauma, or disease, may cause multiple handicaps for a child. Mobility limitations, limited ability to communicate, lack of bowel or bladder control and other handicaps may be present as a result of a severe disability.

It is reasonable to include this subitem in level D because the foster parent has an extensive additional demand for spending time with the child and may need training to develop skills for coping with the handicapping conditions.

Subitem (9) developmental delay including mental retardation; This subitem is necessary to state specifically certain needs that result from delayed development. In itself, developmental delay results in behaviors that require extensive additional time. A child with mental retardation has more need for assistance with activities of daily living. Lifting, dressing, toilet training and self-care all require more time.

It is reasonable to include this subitem in level D because the foster parent has an extensive additional demand for working time with the child and may need training to develop skills for coping with the handicapping conditions.

Subitem (10) attention deficit disorder with hyperactivity; This subitem is necessary to state specifically behaviors that affect the child in school as well as at home. Attention deficit disorder with hyperactivity may require medicine, behavior modification programs and therapy for success in school. A child with the following characteristics, moving about excessively even during sleep, having difficulty concentrating on a task and shifting excessively from one activity to another is considered to have attention deficit disorder.

It is reasonable to include this in the D level because caring for a child with attention deficit disorder who also has hyperactivity requires extensive additional time of the foster parent and the household routine is disrupted.

Subitem (11) need for frequent supervision of an appliance such as a shunt, colostomy, or ilial conduit; This subitem is necessary to state specifically certain tasks required of the foster parent because of the child's needs that specific training is required to manage safely. In such care, infection management is critical to maintain the health and safety of the child and the provider must maintain sterile technique to assure that items used do not admit organisms into the site of the appliance. This is time-consuming, difficult care to provide for a child who cannot understand the need for infection control.

It is reasonable to include this subitem in level D because the condition requires an extensive amount of time and effort in order to protect the child from infection.

Subitem (12) lack of bowel or bladder control, if child is over 12 years of age; This subitem is necessary to state specifically certain needs that require an extensive additional amount of time and labor over that required for a child with normal bowel and bladder control.

It is reasonable to include this subitem in level D because of the extensive additional effort required to keep the child clean and socially acceptable.

Subitem (13) a program of physical therapy prescribed by a professional for between two and three hours per day to be provided by a foster parent; This subitem is necessary to state specifically certain conditions that require an extensive additional amount of time. Children needing such therapy may have trauma-related central nervous system damage, or developmental delay that may respond to therapy. Standards of practice in care of such conditions require training of the foster parent in the specific procedures, documentation of daily progress in the physical therapy program and consultation with the physician or physical therapist.

It is reasonable to include this subitem in level D because caring for the child with a need for such a program of physical therapy requires an extensive additional amount of physically demanding effort each day.

Subitem (14) uncontrolled seizures; This subitem is necessary to state specifically a condition that requires continual monitoring and immediate response. The child with this condition is at risk in several activities of daily living and the foster parent must be trained to respond appropriately.

It is reasonable to include this subitem in level D because the child needs a high level of a specific type of care for which extensive training is required.

Subitem (15) a tracheotomy with need for suctioning; This subitem is needed to state a condition that requires continual monitoring and immediate response. The child with this condition is dependent on the process in order to breathe and the foster parent must be capable of appropriate response in order to keep the child from suffocating. The use of a suctioning device requires intensive training to avoid doing harm to the tissues of the trachea and causing infection.

It is reasonable to include this subitem in level D because of the extensive risk to the child and the vigilance necessary to assure the child's safety.

Subitem (16) a gastrostomy; This subitem is necessary to state specifically a condition that requires a foster parent to have nursing care skills. This condition requires the child to be fed through a surgical opening in the abdominal wall to the stomach or intestine.

It is reasonable to include this subitem in level D because equipment must be maintained in sterile condition, the child must be fed through the stoma and the tissues must be kept clean to avoid life threatening infection. These requirements place an extensive additional demand for time and skilled care from the foster parent.

Subitem (17) heavy weight needing lifting; This subitem is necessary to state specifically certain conditions that accompany disorders such as muscular dystrophy in which uncontrolled weight gain contributes to the disability or loss of muscle tone. A child with this symptom must be lifted into or out of a wheel chair or bed, often by means of a mechanical lifting device.

It is reasonable to include this subitem in level D because the child needs a level of care of a specific type for which extensive training is required.

Subitem (18) disabilities requiring feeding and diapering or dressing and hygiene performed by a foster parent; This subitem is necessary to state specifically certain needs of very dependent children. Such children need extensive daily assistance in activities of daily living.

It is reasonable to include this subitem in level D because the child needs specific care for which extensive additional time and effort is required.

Subitem (19) need for therapeutic visits for physical, mental, or emotional problems attended by a foster parent more than twice weekly; This subitem is necessary to state specifically tasks that a foster parent must perform for a child requiring therapeutic visits twice a week. The requirement to attend with the child places an extraordinary burden on the parent. Traveling to the sessions involves added expense and may require paid substitute care for the foster parent's own children.

It is reasonable to include this subitem in level D because of the amount of time required and the additional costs involved.

Subitem (20) need for relief of the foster parent by another adult; This subitem is necessary to state that some children have needs which are so intense that another qualified adult provider is needed for periods of relief. Payments for this provider are a direct cost to the foster parent.

It is reasonable to include this subitem in level D because the child needs a level of care of a specific type for which extensive training of the caregiver and substitute caregiver is required.

Subitem (21) other conditions or behaviors that are equivalent to the demand for additional supervision appropriate to subitems 1 to 20; This subitem is needed to provide agencies an opportunity to identify needs of children that require additional supervision of a foster parent which are not directly listed in the categories in subitems 1 - 19 but which are appropriate to level D. The rule is not intended to be exhaustive and it is impractical to list every condition that may appear in the population of children placed in foster care.

It is reasonable to require that the agency describe the behavior in terms of the demand placed on the foster parent to provide additional supervision because additional effort required is the measure of the difficulty of care.

Subitem B. This is necessary to assure that the agency assessing the child keeps the rating within the possible range for level C and moves a score higher than the indicated maximum into level D.

Subpart 6. Level E.

Item A. The limitation to an extraordinary amount of supervision or assistance is necessary in order to set a quantitative standard to evaluate the supervision and assistance needed by a child. The assistance and

supervision must be required by specific behaviors that can be documented either by a social services professional or a medical professional.

Subitem (1) frequent and recent suicide attempts; This subitem is necessary to state specifically certain behaviors that require an extraordinary amount of vigilance, supervision and skill. The foster parent must be alert at all times to a potential suicide attempt and must be prepared to intervene with a range of techniques.

It is reasonable to include this subitem in level E because of extraordinary risk to the child and the vigilance to assure that the child's attempts at suicide do not succeed. The experience of the child care profession is that repeated attempts at suicide are difficult to predict or to deter.

Subitem (2) frequent and recent arsonist behavior; This subitem is necessary to state specifically certain behaviors of some children that are highly dangerous to the child and to the foster family. An arsonist puts the entire household at risk and the foster parent must be extraordinarily vigilant.

It is reasonable to include this subitem in level E because of the extraordinary risk to household members and the vigilance needed to assure the child's safety.

Subitem (3) high risk of danger to the child or others by the child; This subitem is necessary to state specifically certain behaviors that pose a high risk to the child such as autism or similar conditions in which the child lacks basic life-safety skills appropriate to the child's age. Some children pose a high danger to others because of inappropriate aggression. Examples include unprovoked attacks on peers or younger children, unpredictable rushing into a dangerous environment such as crossing a freeway or jumping from a high place for "thrills" and encouraging other children to do the same dangerous activity.

It is reasonable to include this subitem in level E because of the extraordinary risk to the child or to others and the vigilance necessary to assure the health and safety of the child. The supervision required approaches that of a facility with trained staff.

Subitem (4) life threatening illness with a guarded prognosis or expectation of death, which may require frequent hospitalization; A child in this condition needs extraordinary contact, support and may require the foster parent to stay at the hospital on a nearly full time basis until the process runs its course. This is a profound emotional burden for an adult who has cared for the child and the stresses are very high.

It is reasonable to include this subitem in level E because the condition of the child requires coordinating hospital visits with the natural family, dealing with schedules of medical professionals, staying at the hospital to support the child, maintaining other family members at home, and frequent contacts with agency staff.

Subitem (5) need for a heart monitor; This subitem is necessary to state specifically certain needs that require medical equipment to be installed in the home, skills at interpreting the signals of the equipment and additional skills in responding to meet the needs of the child. This category does not include the monitors that are sent home with premature children or routine monitoring, but is for the child with a

life-threatening cardio-pulmonary condition that requires the monitoring and response by the foster parent. The child with this need is at risk of death or severe disability if the care giver fails to take appropriate measures when the monitor indicates an emergency.

It is reasonable to include this subitem in level E because of the extraordinary risk to the child and the vigilance necessary to assure the child's safety.

Subitem (6) need for trachetomy suctioning: This subitem is necessary to state specifically certain conditions that place extraordinary demands on the foster parent. The child with this condition is medically fragile and the foster parent must be capable of appropriate response in order to keep the child from suffocating. The use of a suctioning device requires intensive training to avoid damaging the tissues of the trachea and causing infection.

It is reasonable to include this subitem in level E because of the extraordinary risk to the child and care necessary to assure the child's safety.

Subitem (7) need for gavage feeding: This subitem is necessary to state specifically certain needs of a child which require the foster parent to have a high level of skill. The child with this need has several types of risk to health and development. The foster parent must spend time to prepare and sterilize equipment, prepare food for tube administration and keep records of feedings for the physician.

It is reasonable to include this subitem in level E because of the extraordinary additional time, training and care required.

Subitem (8) need for intravenous feeding: This subitem is necessary to state specifically certain needs that require the foster parent to acquire high level skills such as those available in a skilled nursing facility. Intravenous feeding must be done by a person trained in medical procedures in order to assure the health and safety of the child. The child is at a high risk of infection which might be life-threatening in combination with the condition that requires the intravenous feeding. Care of the veins, the equipment, maintaining sterile conditions and managing the documentation require training, extraordinary effort and skill.

It is reasonable to include this subitem in level E because of the extraordinary effort required from the foster parent to maintain the health of a child who needs intravenous feeding.

Subitem (9) need for extensive burn care: This subitem is necessary to state specifically certain needs that are extraordinary in the home setting. The child with extensive burns needs daily wound management, such as applying pressure garments to control scarring, infection prevention measures, and procedures that are painful to administer such as debridement. Standards of practice for this condition place upon the foster parent an extraordinary additional demand for time and skill.

It is reasonable to include this subitem in level E because caring for the child with extensive burns is an exacting, time-consuming and difficult task with serious consequences for errors in procedure.

Subitem (10) need for a program of physical therapy prescribed by a professional for between three and four hours per day to be provided by a foster parent; This subitem is necessary to state specifically needs of a child that require an extraordinary amount of time each day for therapies prescribed by a professional. Children with such programs of therapy may have extensive trauma-related central nervous system deficits, or developmental delay that may respond to therapy. Standards of practice in care of such conditions require training of the foster parent in the specific procedures, documentation of daily progress in the physical therapy program and frequent consultation with the physician or physical therapist.

It is reasonable to include this subitem in level E because caring for a child with a need for such a program of physical therapy requires an extraordinary additional amount of effort and time to acquire the skills for the program.

Subitem (11) other conditions or behaviors that are equivalent to the demand for additional supervision appropriate to subitems 1 to 10; This subitem is needed to provide agencies an opportunity to identify needs of children that require additional supervision of a foster parent which are not directly listed in the categories in subitems 1 - 19 but which are appropriate to level E. The rule is not intended to be exhaustive and it is impractical to list every condition that may appear in the population of children placed in foster care.

It is reasonable to require that the agency describe the behavior in terms of the demand placed on the foster parent to provide additional supervision because additional effort required is the measure of the difficulty of care.

Item B. This is necessary to assure that the agency assessing the child keeps the rating within the possible range for level E and moves a score higher than the indicated maximum into level F.

Subpart 7. Level F.

This part is necessary to describe the needs of a limited number of children who enter foster care rather than institutional care if a foster parent with the specific skills can be found. A child in this level may require 24-hour-a-day nursing care which the parent provides for one third of a day and private duty nurses provide for the balance of the day. Programs for the home care of disabled children such as the medical assistance program for community alternative care may result in placing a child at level F in a foster home where medical services are delivered. In these circumstances, care required will exceed that of the level E child and the foster parent will experience extraordinary disruption because of the other care providers.

ITEM A. The limitation to an amount of supervision or assistance in excess of that of Level E under subpart 6 is needed to set a standard that can be used to evaluate the child's needs. The assistance and supervision must be documented by a social services professional on the basis of review of medical provider reports.

Item B. This item is necessary to assure that the agency assessing the child keeps the rating within the possible range for level D and moves a score higher than the indicated maximum into level E.

9560.0655 DIFFICULTY OF CARE PAYMENT RATE

Subpart 1 Payment rate. This subpart is necessary to set a standard statewide rate as the statute requires. The rate of $3.70 per point was established by a survey of rates paid by counties. Input from foster care providers, local agencies and social service professionals was considered in establishing the rate.

The rate is reasonable because it represents established standards of practice within social service agencies throughout Minnesota. The amount of increase or decrease did not have significant impact on local costs and county boards have accepted the rate and standards.

Subpart 2 Existing placements. This subpart is necessary to conform to Minnesota Statutes 256.82, subdivision 4. This ensures that rates established before January 1, 1988 would not be adversely affected by the emergency rule parts published on that day. It is reasonable to conform to the statute. It is also reasonable because the number of children affected is very small, (25 of the 11,000 children in foster care in the period) and is declining as they leave foster care.

Subpart 3 Annual adjustment of payment rates. This subpart is necessary to conform with the statute requirement which requires an annual adjustment of payment rates. It is reasonable because it conforms to the statute.

9560.0656 DOCUMENTATION

Subpart 1 Assessment instrument. This subpart is necessary to set a standard for the written instrument that the local social services agency uses in documenting assessments under parts 9560.0653 to 9560.0654. The requirement that the written assessment instrument be consistent with parts 9560.0653 to 9560.0654 is necessary to assure statewide application of the standards. It is reasonable to require uniform statewide application of the standard because of the requirements of Minnesota Statutes, section 256.82. The requirement that the case record include a description of each condition on which the assessment is based is necessary because the regulations of the title IV - E program require the documentation for federal funding participation. It is reasonable to conform to the requirements that assure funding by the federal program that serves this group of children.

Subpart 2 Approval of assessment instrument. It is necessary to require approval of the assessment instrument used by county agencies in order to assure that the agencies are in compliance with parts 9560.0650 to 9560.0656 and with the federal regulations. It is reasonable to approve an assessment instrument because it gives county agencies the option to develop materials consistent with their casework manuals or record systems while at the same time assuring conformity.

ATTACHMENT 1

MEMBERS OF THE DIFFICULTY OF CARE TASK FORCE

Marian Eisner, Chair of Task Force
Department of Human Services
Children's Services
444 Lafeyette Road
St. Paul, MN 55155

Mary Arth
Ramsey County Community Human Services
160 East Kellogg Boulevard
St. Paul, MN 55102

Ray Critchley
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Rules and Bulletins
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Lad Sledz
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Marge Whereley
Hennepin County Bureau of Social Services
A-1005 Government Center
300 South Sixth Street
Minneapolis, MN 55487

Jill Weikum
Mower County Social Services
Courthouse
Austin, MN 55912

Department of Human Services

In the Matter of the Proposed
Adoption of the Rule of
the State Department of
Human Services Governing
Maintenance Payments and
Difficulty of Care Payments
for Children in Foster Care
Rule Parts 9560 0650 to 9560.0656

NOTICE OF INTENT
TO ADOPT A RULE WITHOUT
PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256.82, subdivisions 3 and 4.

All persons have 30 days or until 4:30 p.m. on October 27, 1988 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Marian Eisner
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3832.

The proposed 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 rule as noticed.

The proposed permanent rule amends Minnesota Rules, parts 9560.0650 to 9560.0656 [Emergency] which established a uniform statewide system of difficulty of care payments to child foster care providers. The difficulty of care payment is an additional payment, over the basic foster care maintenance rate, to a foster parent for the care of a child who requires additional care, supervision, or attention because of the child's physical, mental or behavioral characteristics.

The proposed permanent rule maintains the system established in the emergency rule and includes an index which is the basis for annual adjustment of the payment rates. The rule modifies the criteria for assessing difficulty of care levels for children on the basis of county social service agency input and reflects current practice in services to children. The proposed rules, if adopted, will repeal the present Minnesota Rules, parts 9560 0650 to 9560.0656 [Emergency] and are necessary in order to comply with Minnesota Statutes, 256.82, subdivision 4. The proposed rule affects children placed in foster care, foster care providers and county governments.

A free copy of the rule is available upon request from Marian Eisner, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3832. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from:

Marian Eisner
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3832.

Adoption of these rules will increase aggregate local public body spending by over $100,000 in either of the first two years 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 two years immediately following adoption of the rule.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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: David Nelson, Minnesota Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN, 55155-3816.

Date: 9/8/1988

SANDRA S. GARDEBRING
Commissioner

FISCAL NOTE
Proposed Minnesota Rule, Parts 9560.0650 to 9560.0656
CHILD FOSTER CARE DIFFICULTY OF CARE PAYMENTS

Projected Increased Costs	1989	1990
Projected Local Agency Increases under the Rule	$298,881	298,881
Projected Local Agency Savings under the Rule	81,708	81,708
Net Increase	$217,173	217,173

This fiscal note projects the increases (and decreases) in local agency costs as compared to the permanent child foster difficult of care payments rule that was in effect prior to January 1, 1988.

This proposed rule will replace an emergency rule that has been in effect since January 1, 1988. There is no direct state participation in difficulty of care payments, although CSSA block grants may be used.

Background

The proposed rule does not impose new terms, conditions or costs above those in the emergency rule. In gathering data for this fiscal note, the Department updated the written information received from 57 counties on projected costs of the 1988 emergency rule, with a telephone survey of counties to determine their actual costs after two quarters of experience with the emergency rule.

Counties reported that the most significant factor in determining costs is the number of children in foster care and their difficulty of care (DOC) ratings based on individual assessments.

Telephone Survey Responses

On the basis of two quarters of experience with the emergency rule, the sample counties reported the following:

1. Nineteen counties projected no increased costs because of the proposed rule (includes Hennepin and Ramsey).

2. Twenty-nine counties projected annual increased costs totaling $298,881 under the proposed rule.
   ($ 50 - 100 monthly increase per child) 5 counties
   ($101 - 300 " " " ") 13 "
   ($301 - 500 " " " ") 7 "
   ($501 - 600 " " " ") 4 "

3. Nine counties projected annual savings totaling $81,708 under the proposed rule.
   ($301 - 500 monthly decrease per child) 3 counties
   ($501 - 600 " " " ") 6 "

Calculations

Increase

Based on the telephone sample, the projected annual net increase in local agency costs is $217,173, calculated as follows:

	1989	1990
Gross Increase in Costs	$355,476	$355,476
Less Title IV-E reimbursement: 30% of substitute care population x 53.07% federal reimbursement (FY89 rate)	56,595	56,595
Total Projected Increase	$298,881	$298,881

Savings

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

	1989	1990
Gross Decrease (estimate assumes constant number of children in care for 1989)	$97,180	$97,180
Less Title IV-E (53.07% for 1989)	15,472	15,472
Projected Decrease	$81,708	$81,708
Net Projected Increase	$217,173	$217,173

Totals

	1989	1990
Total Projected Increase	$298,881	$198,881
Projected Decrease	81,798	81,708
Net Projected Increase	$217,173	$217,173

The effect of the annual rate adjustment will not be known until the United States Department of Agriculture releases its "USDA Estimates of the Cost of Raising a Child" for the current year.

Date: 9/8/1988

Sandra Gardebring

SANDRA S. GARDEBRING
Commissioner

Department of Human Services

Proposed Permanent Rules Relating to Maintenance Payments and Difficulty of Care Payments for Children in Foster Care

Rules as Proposed

9560.0650 MAINTENANCE STANDARDS.

Subpart 1. [Unchanged.]

Subp. 2. [See Repealer.]

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. 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.

Subp. 4. and 5. [Unchanged.]

Subp. 6. **Reassessment.** The agency shall reassess a child:

A. at the end of 12 months;

B. at the request of a foster parent;

C. when a child is placed in a different facility; or

D. if a child's level of need changes.

Rules as Proposed (all new material)

9560.0651 DIFFICULTY OF CARE ASSESSMENTS AND PAYMENTS.

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

9560.0652 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9560.0653 to

Approved by Revisor KMT

9560.0656 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 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.

9560.0654 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:

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

(1) dependency, passivity, or lack of responsiveness and ability to relate to others;

(2) abnormal seeking of affection or attention;

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

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(4) psychosomatic complaints;

(5) night terrors;

(6) stress reactions, such as minor destructiveness;

(7) chemical abuse;

(8) immaturity or poor social skills;

(9) problems with authority figures;

(10) chronic disorders with some physical incapacity;

(11) a physical handicap, although the child is self sufficient;

(12) presence of long-term infections;

(13) delayed development;

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

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

(16) need for weekly therapy for medical, physical, or emotional problems, truancy or behavior problems, in which the foster parent participates with the child;

(17) need for home tutoring provided by the foster parent if the child is learning disabled or requires remedial education;

(18) need for supervision of family visits;

(19) other conditions or behaviors that are equivalent to the requirement for additional supervision appropriate to subitems (1) to (18); and

B. within level A, shall be assigned no fewer than one 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:

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

(1) need for a structured behavioral program;

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(2) difficulty with peers;

(3) lack of verbal responsiveness;

(4) fear of or hostility to adults or authority figures;

(5) infrequent running away overnight;

(6) lying or stealing;

(7) chemical abuse;

(8) expression of suicidal thoughts or gestures;

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

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

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

(12) presence of infections, which present a risk to the family;

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

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

(15) truancy, school performance, or behavior problems requiring increased contact by the foster parents with the school, court, or other agencies;

(16) sexual acting out;

(17) need to assist the child in relating to the natural parents;

(18) need to supervise family visits in the foster home;

(19) attention deficit disorder;

(20) other conditions or behaviors that are equivalent to the requirement for additional supervision appropriate to subitems (1) to (19); and

B. within level B, shall be assigned no fewer than 36

Approved by Revisor _____

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:

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

(1) unsocialized or withdrawn behavior;

(2) self destructive or self-defeating behavior with suicidal expressions and gestures;

(3) attention deficit disorder;

(4) frequent running away;

(5) sexual or physical abuse inflicted upon the child;

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

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

(8) chemical abuse;

(9) problems with authority figures;

(10) chronic medical disorders or severe developmental delay including mental retardation, with incapacity which may require frequent hospitalizations;

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

(12) feeding problems, including swallowing or vomiting after meals;

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

(14) need for help in hygiene, eating, toileting, dressing, and diapering, beyond that normally required for the child's age;

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

(16) truancy, behavior, or school performance

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problems requiring extensive contact by the foster parents with the school, court, or other agencies;

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

(18) need to protect child from threatening natural parents;

(19) other conditions or behaviors that are equivalent to the requirement for additional supervision appropriate to subitems (1) to (18); and

B. within level C, shall be assigned no fewer than 71 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:

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

(1) phobic or compulsive behaviors;

(2) inappropriate sexual aggressiveness, self-mutilation, or extreme vulnerability;

(3) self-destructive or self-defeating behavior with suicidal expressions and gestures;

(4) assaultive behavior;

(5) antisocial personality disorder;

(6) chemical abuse;

(7) a recent suicidal attempt;

(8) a severe disability with multiple handicaps;

(9) developmental delay including mental retardation;

(10) attention deficit disorder with hyperactivity;

(11) need for frequent supervision of an appliance, such as a shunt or ilial conduit;

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

(13) a program of physical therapy prescribed by a professional for between two and three hours per day to be

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provided by a foster parent;

(14) uncontrollable seizures;

(15) a tracheotomy with need for suctioning;

(16) a gastrostomy;

(17) heavy weight, needing lifting;

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

(19) need for therapeutic visits for physical, mental, or emotional problems, attended by a foster parent more often than twice weekly;

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

(21) other conditions or behaviors that are equivalent to the requirement for additional supervision appropriate to subitems (1) and (20); and

B. within level D, shall be assigned no fewer than 106 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:

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

(1) 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;

(10) a program of physical therapy prescribed by

Approved by Revisor _____

a professional for between three and four hours per day to be provided by a foster parent; or

(11) other conditions or behaviors that are consistent with the requirement for additional supervision appropriate to subitems (1) to (10); and

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

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

A. shall be assessed at level F if the child 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 and no more than 225 difficulty of care points.

9560.0655 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.

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 changes or the placement terminates.

Subp. 3. **Annual revision of payment rate.** By November 1 of each year following the effective date of parts 9560.0650 to 9560.0656, the commissioner shall review and revise the difficulty of care payment rate in subpart 1 based on USDA Estimates of the Cost of Raising a Child, published by the United States Department of Agriculture, Agricultural Resources Service, Publication 1411. The revision shall be the average percentage by which costs increase for the age ranges represented in the USDA Estimates of the Cost of Raising a

Approved by Revisor _____

Child. The USDA Estimates of the Cost of Raising a Child is subject to annual revision.

9560.0656 DOCUMENTATION.

Subpart 1. **Assessment instrument.** The local social services agency shall document the assessment of the difficulty of care under parts 9560.0653 and 9560.0654 using a written assessment instrument consistent with parts 9560.0653 and 9560.0654. 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.

EFFECTIVE DATE. Parts 9560.0651 to 9560.0656 and the amendments to part 9560.0650, are effective December 25, 1988.

REPEALER. Minnesota Rules, part 9560.0650, subpart 2, is repealed.

Approved
by Revisor _____

Department of Human Services

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Maintenance Payments and Difficulty of Care Payments for Children in Foster Care Rule Parts 9560 0650 to 9560.0656

NOTICE OF INTENT TO ADOPT A RULE WITHOUT PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256.82, subdivisions 3 and 4.

All persons have 30 days or until 4:30 p.m. on October 27, 1988 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Marian Eisner
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3832.

The proposed 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 rule as noticed.

The proposed permanent rule amends Minnesota Rules, parts 9560.0650 to 9560.0656 [Emergency] which established a uniform statewide system of difficulty of care payments to child foster care providers. The difficulty of care payment is an additional payment, over the basic foster care maintenance rate, to a foster parent for the care of a child who requires additional care, supervision, or attention because of the child's physical, mental or behavioral characteristics.

The proposed permanent rule maintains the system established in the emergency rule and includes an index which is the basis for annual adjustment of the payment rates. The rule modifies the criteria for assessing difficulty of care levels for children on the basis of county social service agency input and reflects current practice in services to children. The proposed rules, if adopted, will repeal the present Minnesota Rules, parts 9560 0650 to 9560.0656 [Emergency] and are necessary in order to comply with Minnesota Statutes, 256.82, subdivision 4. The proposed rule affects children placed in foster care, foster care providers and county governments.

A free copy of the rule is available upon request from Marian Eisner, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3832. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from:

Marian Eisner
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3832.

Adoption of these rules will increase aggregate local public body spending by over $100,000 in either of the first two years 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 two years immediately following adoption of the rule.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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: David Nelson, Minnesota Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN, 55155-3816.

Date: 9/8/1988

SANDRA S. GARDEBRING
Commissioner

FISCAL NOTE
Proposed Minnesota Rule, Parts 9560.0650 to 9560.0656
CHILD FOSTER CARE DIFFICULTY OF CARE PAYMENTS

Projected Increased Costs	1989	1990
Projected Local Agency Increases under the Rule	$298,881	298,881
Projected Local Agency Savings under the Rule	81,708	81,708
Net Increase	$217,173	217,173

This fiscal note projects the increases (and decreases) in local agency costs as compared to the permanent child foster difficult of care payments rule that was in effect prior to January 1, 1988.

This proposed rule will replace an emergency rule that has been in effect since January 1, 1988. There is no direct state participation in difficulty of care payments, although CSSA block grants may be used.

Background

The proposed rule does not impose new terms, conditions or costs above those in the emergency rule. In gathering data for this fiscal note, the Department updated the written information received from 57 counties on projected costs of the 1988 emergency rule, with a telephone survey of counties to determine their actual costs after two quarters of experience with the emergency rule.

Counties reported that the most significant factor in determining costs is the number of children in foster care and their difficulty of care (DOC) ratings based on individual assessments.

Telephone Survey Responses

On the basis of two quarters of experience with the emergency rule, the sample counties reported the following:

1. Nineteen counties projected no increased costs because of the proposed rule (includes Hennepin and Ramsey).

2. Twenty-nine counties projected annual increased costs totaling $298,881 under the proposed rule.
   ($ 50 - 100 monthly increase per child) 5 counties
   ($101 - 300 " " " ") 13 "
   ($301 - 500 " " " ") 7 "
   ($501 - 600 " " " ") 4 "

3. Nine counties projected annual savings totaling $81,708 under the proposed rule.
   ($301 - 500 monthly decrease per child) 3 counties
   ($501 - 600 " " " ") 6 "

Calculations

Increase

Based on the telephone sample, the projected annual net increase in local agency costs is $217,173, calculated as follows:

	1989	1990
Gross Increase in Costs	$355,476	$355,476
Less Title IV-E reimbursement: 30% of substitute care population x 53.07% federal reimbursement (FY89 rate)	56,595	56,595
Total Projected Increase	$298,881	$298,881

Savings

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

	1989	1990
Gross Decrease (estimate assumes constant number of children in care for 1989)	$97,180	$97,180
Less Title IV-E (53.07% for 1989)	15,472	15,472
Projected Decrease	$81,708	$81,708
Net Projected Increase	$217,173	$217,173

Totals

	1989	1990
Total Projected Increase	$298,881	$198,881
Projected Decrease	81,798	81,708
Net Projected Increase	$217,173	$217,173

The effect of the annual rate adjustment will not be known until the United States Department of Agriculture releases its "USDA Estimates of the Cost of Raising a Child" for the current year.

Date: 9/8/1988

Sandra Gardebring

SANDRA S. GARDEBRING
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF THE RULE OF THE STATE DEPARTMENT OF HUMAN SERVICES GOVERNING MAINTENANCE PAYMENTS AND DIFFICULTY OF CARE PAYMENTS FOR CHILDREN IN FOSTER CARE

AFFIDAVIT OF MAILING

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

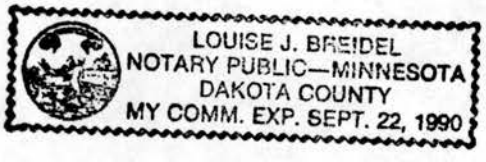
That on the 21st day of September, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, to all persons 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 L. Storelee

Subscribed and sworn to before me

this 21 day of September, 1988

Louise J. Breidel



STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF THE RULES GOVERNING MAINTENANCE PAYMENTS AND DIFFICULTY OF CARE PAYMENTS FOR CHILDREN IN FOSTER CARE

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 21st day of September, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following parties:

.The 87 Minnesota County Human Services Agencies
.Members of the Difficulty of Care Task Force

Nancy L. Storelee

Subscribed and sworn to before me

this 21 day of September, 1988

Louise J. Breidel

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

Department of Human Services

In the Matter of the Proposed
Adoption of the Rule of
the State Department of
Human Services Governing
Maintenance Payments and
Difficulty of Care Payments
for Children in Foster Care
Rule Parts 9560 0650 to 9560.0656

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TO ADOPT A RULE WITHOUT
PUBLIC HEARING

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Date: 9/8/1988

SANDRA S. GARDEBRING
Commissioner

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Date: 9/8/1988

Sandra Gardebring

SANDRA S. GARDEBRING
Commissioner

ATTACHMENT 1

MEMBERS OF THE DIFFICULTY OF CARE TASK FORCE

Marian Eisner, Chair of Task Force
Department of Human Services
Children's Services
444 Lafeyette Road
St. Paul, MN 55155

Mary Arth
Ramsey County Community Human Services
160 East Kellogg Boulevard
St. Paul, MN 55102

Ray Critchley
St. Louis County Social Services Department
Government Services Center
320 West 2nd Street
Duluth, MN 55802

Richard Embacher,
Brown County Family Service Center
114 North State Street
New Ulm, Mn 56073

Ted Hecht
Ramsey County Community Human Services
160 East Kellogg Boulevard
St. Paul, MN 55102

Jerry Huber
Dakota County Human Services
33 East Wentworth, Suite 345
West St. Paul, MN 55118

Dianna Huettl
Ramsey County Community Human Services
160 East Kellogg Boulevard
St. Paul, MN 55102

Dave Jennings
Rich County Social Services
128 Northwest Third Street
Faribault, MN 55021

John Malmberg
Ramsey County Community Human Services
160 East Kellogg Boulevard
St. Paul, MN 55102

Minnesota Foster Parents Association
Richard Gieschen, President
1990 Ridgewood Avenue
White Bear Lake, MN 55110

David Nelson
Department of Human Services
Rules and Bulletins
444 Lafayette Road
St. Paul, MN 55155

Sheldon Olkon, Supervisor
Anoka County Community Social Services
Anoka County Courthouse
325 West Main Street
Anoka, MN 55303

Brian Purrington
Olmsted County Department of Social Services
515 Second Avenue Southwest
Rochester, MN 55901

Lad Sledz
Hennepin County Bueau of Social Services
A-1005 Government Center
300 South Sixth Street
Minneapolis, MN 55487

Jill Weikum
Mower County Social Services
Courthouse
Austin, MN 55912

Marge Whereley
Hennepin County Bureau of Social Services
A-1005 Government Center
300 South Sixth Street
Minneapolis, MN 55487

State of Minnesota

STATE REGISTER

Department of Administration—Documents Division



Published every Monday

26 September 1988

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Subp. 2. **Carbon dioxide.** Carbon dioxide and bottled gas cylinders must be secured by chains or other types of restraints.

Subp. 3. **Fire extinguishers.** A fire extinguisher with a minimum 2A 10 B-C rating must be present if required by the fire marshal.

REPEALER. Parts 4625.2400, 4625.2500, 4625.2600, 4625.2700, 4625.2800, 4625.2900, 4625.3000, 4625.3100, 4625.3200, 4625.3300, 4625.3400, 4625.3500, 4625.3600, 4625.3700, 4625.3800, 4625.3900, 4625.4000, 4625.4100, 4625.4200, 4625.4300, 4625.4400, 4625.4500, 4625.4600, 4625.4700, 4625.4800, and 4625.4900, are repealed.

Department of Human Services

Proposed Permanent Rules Relating to Maintenance Payments and Difficulty of Care Payments for Children in Foster Care

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without as public hearing in *Minnesota Statutes,* sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes,* section 256.82, subdivisions 3 and 4.

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St. Paul, MN 55155-3832.

The proposed 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 rule as noticed.

The proposed permanent rule amends *Minnesota Rules,* parts 9560.0650 to 9560.0656 [Emergency] which established a uniform statewide system of difficulty of care payments to child foster care providers. The difficulty of care payment is an additional payment, over the basic foster care maintenance rate, to a foster parent for the care of a child who requires additional care, supervision, or attention because of the child's physical, mental or behavioral characteristics.

The proposed permanent rule maintains the system established in the emergency rule and includes an index which is the basis for annual adjustment of the payment rates. The rule modifies the criteria for assessing difficulty of care levels for children on the basis of county social service agency input and reflect current practice in services to children. The proposed rules, if adopted, will repeal the present *Minnesota Rules,* parts 9560.0650 to 9560.0656 [Emergency] and are necessary in order to comply with *Minnesota Statutes,* 256.82, subdivision 4. The proposed rule affects children placed in foster care, foster care providers and county governments.

A free copy of the rule is available upon request from Marian Eisner, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3832. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from:

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.

Marian Eisner
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3832.

Adoption of these rules will increase aggregate local public body spending by over $100,000 in either of the first two years 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 two years immediately following adoption of the rule.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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: David Nelson, Minnesota Department of Human Services, Rules Division, 444 Lafayette Road, St. Paul, MN, 55155-3816.

Sandra S. Gardebring
Commissioner

Fiscal Note Proposed *Minnesota Rule*, Parts 9560.0650 to 9560.0656 Child Foster Care Difficulty of Care Payments

Projected Increased Costs	1989	1990
Projected Local Agency Increases under the Rule	$298,881	$298,881
Projected Local Agency Savings under the Rule	81,708	81,708
Net Increase	$217,173	$217,173

This fiscal note projects the increases (and decreases) in local agency costs as compared to the permanent child foster difficulty of care payments rule that was in effect prior to January 1, 1988.

This proposed rule will replace an emergency rule that has been in effect since January 1, 1988. There is no direct state participation in difficulty of care payments, although CSSA block grants may be used.

Background

The proposed rule does not impose new terms, conditions or costs above those in the emergency rule. In gathering data for this fiscal note, the Department updated the written information received from 57 counties on projected costs of the 1988 emergency rule, with a telephone survey of counties to determine their actual costs after two quarters of experience with the emergency rule.

Counties reported that the most significant factor in determining costs is the number of children in foster care and their difficulty of care (DOC) ratings based on individual assessments.

Telephone Survey Responses

On the basis of two quarters of experience with the emergency rule, the sample counties reported the following:

1. Nineteen counties projected no increased costs because of the proposed rule (includes Hennepin and Ramsey).
2. Twenty-nine counties projected annual increased costs totaling $298,881 under the proposed rule.
   ($ 50-100 monthly increase per child) 5 counties
   ($101-300 monthly increase per child) 13 counties
   ($301-500 monthly increase per child) 7 counties
   ($501-600 monthly increase per child) 4 counties
3. Nine counties projected annual savings totaling $81,708 under the proposed rule.
   ($301-500 monthly decrease per child) 3 counties
   ($501-600 monthly decrease per child) 6 counties

Calculations

Increase

Based on the telephone sample, the projected annual net increase in local agency costs is $217,173, calculated as follows:

	1989	1990
Gross Increase in Costs	$355,476	$355,476
Less Title IV-E reimbursement:	56,595	56,595

30% of substitute care population x 53.07% federal reimbursement (FY89 rate)		
Total Projected Increase	$298,881	$298,881

Savings

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

	1989	1990
Gross Decrease (estimate assumes constant number of children in care for 1989)	$ 97,180	$ 97,180
Less Title IV-E (53.07% for 1989)	15,472	15,472
Projected Decrease	$ 81,708	$ 81,708
Net Projected Increase	$217,173	$217,173

Totals

	1989	1990
Total Projected Increase	$298,881	$298,881
Projected Decrease	81,708	81,708
Net Projected Increase	$217,173	$217,173

The effect of the annual rate adjustment will not be known until the United States Department of Agriculture releases its "USDA Estimates of the Cost of Raising a Child" for the current year.

Dated: 8 September 1988

Sandra S. Gardebring
Commissioner

Rules as Proposed

9560.0650 MAINTENANCE STANDARDS.

Subpart 1. [Unchanged.]

Subp. 2. [See Repealer.]

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. 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.

Subp. 4. and 5. [Unchanged.]

Subp. 6. **Reassessment.** The agency shall reassess a child:

A. at the end of 12 months;

B. at the request of a foster parent;

C. when a child is placed in a different facility; or

D. if a child's level of need changes.

Rules as Proposed (all new material)

9560.0651 DIFFICULTY OF CARE ASSESSMENTS AND PAYMENTS.

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

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9560.0652 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9560.0653 to 9560.0656 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 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.

9560.0654 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:

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

(1) dependency, passivity, or lack of responsiveness and ability to relate to others;

(2) abnormal seeking of affection or attention;

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

(4) psychosomatic complaints;

(5) night terrors;

(6) stress reactions, such as minor destructiveness;

(7) chemical abuse;

(8) immaturity or poor social skills;

(9) problems with authority figures;

(10) chronic disorders with some physical incapacity;

(11) a physical handicap, although the child is self sufficient;

(12) presence of long-term infections;

(13) delayed development;

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

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

(16) need for weekly therapy for medical, physical, or emotional problems, truancy or behavior problems, in which the foster parent participates with the child;

(17) need for home tutoring provided by the foster parent if the child is learning disabled or requires remedial education;

(18) need for supervision of family visits;

(19) other conditions or behaviors that are equivalent to the requirement for additional supervision appropriate to subitems (1) to (18); and

B. within level A, shall be assigned no fewer than one 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:

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

(1) need for a structured behavioral program;

(2) difficulty with peers;

(3) lack of verbal responsiveness;

(4) fear of or hostility to adults or authority figures;

(5) infrequent running away overnight;

(6) lying or stealing;

(7) chemical abuse;

(8) expression of suicidal thoughts or gestures;

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

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

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

(12) presence of infections, which present a risk to the family;

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

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

(15) truancy, school performance, or behavior problems requiring increased contact by the foster parents with the school, court, or other agencies;

(16) sexual acting out;

(17) need to assist the child in relating to the natural parents;

(18) need to supervise family visits in the foster home;

(19) attention deficit disorder;

(20) other conditions or behaviors that are equivalent to the requirement for additional supervision appropriate to subitems (1) to (19); and

B. within level B, shall be assigned no fewer than 36 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:

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

(1) unsocialized or withdrawn behavior;

(2) self destructive or self-defeating behavior with suicidal expressions and gestures;

(3) attention deficit disorder;

(4) frequent running away;

(5) sexual or physical abuse inflicted upon the child;

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

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

(8) chemical abuse;

(9) problems with authority figures;

(10) chronic medical disorders or severe developmental delay including mental retardation, with incapacity which may require frequent hospitalizations;

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

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(12) feeding problems, including swallowing or vomiting after meals;

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

(14) need for help in hygiene, eating, toileting, dressing, and diapering, beyond that normally required for the child's age;

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

(16) truancy, behavior, or school performance problems requiring extensive contact by the foster parents with the school, court, or other agencies;

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

(18) need to protect child from threatening natural parents;

(19) other conditions or behaviors that are equivalent to the requirement for additional supervision appropriate to subitems (1) to (18); and

B. within level C, shall be assigned no fewer than 71 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:

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

(1) phobic or compulsive behaviors;

(2) inappropriate sexual aggressiveness, self-mutilation, or extreme vulnerability;

(3) self-destructive or self-defeating behavior with suicidal expressions and gestures;

(4) assaultive behavior;

(5) antisocial personality disorder;

(6) chemical abuse;

(7) a recent suicidal attempt;

(8) a severe disability with multiple handicaps;

(9) developmental delay including mental retardation;

(10) attention deficit disorder with hyperactivity;

(11) need for frequent supervision of an appliance, such as a shunt or ilial conduit;

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

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

(14) uncontrollable seizures;

(15) a tracheotomy with need for suctioning;

(16) a gastrostomy;

(17) heavy weight, needing lifting;

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

(19) need for therapeutic visits for physical, mental, or emotional problems, attended by a foster parent more often than twice weekly;

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

(21) other conditions or behaviors that are equivalent to the requirement for additional supervision appropriate to subitems (1) and (20); and

B. within level D, shall be assigned no fewer than 106 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:

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

(1) 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;

(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; or

(11) other conditions or behaviors that are consistent with the requirement for additional supervision appropriate to subitems (1) to (10); and

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

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

A. shall be assessed at level F if the child 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 and no more than 225 difficulty of care points.

9560.0655 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.

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 changes or the placement terminates.

Subp. 3. **Annual revision of payment rate.** By November 1 of each year following the effective date of parts 9560.0650 to 9560.0656, the commissioner shall review and revise the difficulty of care payment rate in subpart 1 based on USDA Estimates of the Cost of Raising a Child, published by the United States Department of Agriculture, Agricultural Resources Service, Publication 1411. The revision shall be the average percentage by which costs increase for the age ranges represented in the USDA Estimates of the Cost of Raising a Child. The USDA Estimates of the Cost of Raising a Child is subject to annual revision.

9560.0656 DOCUMENTATION.

Subpart 1. **Assessment instrument.** The local social services agency shall document the assessment of the difficulty of care under parts 9560.0653 and 9560.0654 using a written assessment instrument consistent with parts 9560.0653 and 9560.0654. 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.

EFFECTIVE DATE. Parts 9560.0651 to 9560.0656 and the amendments to part 9560.0650, are effective December 25, 1988.

REPEALER. Minnesota Rules, part 9560.0650, subpart 2, is repealed.

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STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

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

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on September 26, 1988 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22, on March 30, 1988. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received within the time period stated in the notice published in the State Register. Therefore, the agency did not receive requests for a public hearing from 25 or more persons which were not withdrawn. No requests for notice of submission to the attorney general were received by the agency. Two comments were received by the agency within the time period stated.

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

1. Kevin Kenney, Associate Administrator, Hennepin County, suggested that:

> "On page 5, line 12, there is example number five, "sexual or physical abuse inflicted upon the child," that entitles a child to Difficulty of Care payments. This seems to be inconsistent with the other examples in the proposed Rule in that example number five states something that was done to the child or a piece of the child's past that does not necessarily always require extra care or efforts on the part of the foster parent. By contrast, the other examples in the Rule are of behaviors the child presents that do require extra attention and efforts from the foster parent. Perhaps a change in wording to "child acts out sexually," "child is assaultive," fit in terms of a child's behavior. Usually, DOC payments are made for extra problems the child presents or extra tasks the foster parent must perform and are not based on things that happened to the child in the past."

The Department declines to make this suggested change because under the proposed rule language "sexual or physical abuse inflicted upon the child" is only relevant to the assessment at level C "if the child requires an extensive amount of additional supervision or assistance" (page 5, lines 4 and 5) because of the "sexual or physical abuse inflicted upon the child." Therefore, the proposed rule already meets the concern raised by Mr. Kenney.

2. Mr. Kenney also commented that:

> "Upon implementation of the finalized Rule, each county will receive a manual which will explain in detail each example under each difficulty of care level. Included under each level will be a category labeled "other", which will allow each county to list specific examples, behaviors, or conditions not already specified under that level. This may well result in a situation wherein each county is constantly listing new behaviors or, more likely, fine tuning lists of behaviors. This would lead to inconsistencies among counties in DOC ratings and extra work (i.e. describing the behaviors on the DOC assessment form and in the DOC manual). It may be simpler and more in keeping with the desire for uniformity throughout the State to regard the description of each level as the guiding factor and to look at examples listed under each level as suggestions of behaviors or conditions that would fit the level but not as an all-inclusive checklist. Thus, factors that led to the rating of a child under a particular level would be spelled out in a section at the end of the DOC rating form, and it would not be necessary to repeat this enumeration in a manual."

The Department declines to make a change based upon this comment because the proposed rule at each level already contains an "other" category. The conditions or behaviors of the "other" category must be equivalent to the requirement for additional supervision appropriate to the subitems already listed for that level. For example, (part 9560.0654, subpart 4) "a child shall be assessed at level C if the child requires an extensive amount of additional supervision or assistance . . . equivalent to the requirement for additional supervision appropriate to the behavior or conditions in subitems (1) to (18)."

If a manual is developed, any additional examples in a manual must meet the requirements of this rule. County ratings must be documented to match rule requirements.

3. Mr. Kenney also commented that:

> "It would be helpful to include when and how a DOC rate would be reduced or discontinued on a particular child. My understanding is that various counties have differing policies in this regard. Some discontinue or reduce rates as soon as the behavior or condition is gone, others never discontinue or reduce rates once they are set, and still others have policies somewhere in between. Again, with the desire for uniformity throughout the State in regards to DOC rate setting policies, you may want to address this issue in the Rule."

The Department declines to make this suggested change because the proposed rule on page 1, lines 23-27 (part 9560.0650, subpart 6) outlines conditions when a change in the child's DOC rate should be reassessed. Adherence to part 9560.0650, subpart 6 should yield uniform treatment by different counties.

4. Karen Grykiewicz, Association for Retarded Citizens, raised a concern:

> "That a possible conflict of interest exists with local social service agencies assessing the child's difficulty of care level. We assume that the regular Department of Human Services administrative appeal process could be used to review or appeal any determination made by the local social service agency concerning a child's difficulty of care level. However, we recommend that any review/appeal procedure available should be explicitly stated in the rule."

The Department declines to make this change because a foster parent is not a client or recipient of services and, therefore, has no right of appeal. The foster parent is free to choose whether or not to accept the difficulty of care payment offered.

The client (foster child or parent or guardian) may appeal a reduction, denial, suspension or termination or services under Minnesota Statutes, section 256.045 and Minnesota Rules, part 9550.0092.

5. Ms. Grykiewicz also raised a concern:

> "That foster parents who have children with more significant special needs receive a point amount that will enable them to provide quality services. Although we cannot comment on the potential effectiveness of the $3.70 point value, we recommend that the Department be open to readjusting the point value amount if a significant number of families do not come forward to provide for the needs of these children."

No suggested rule change was made with this comment. The Department would consider adjusting the point value at a future time if the perception is that a shortage of foster families is based upon this factor.

6. The Department proposed the following change for the adopted rule.

> "The effective date of this rule shall be January 1, 1989."

This change is necessary because DOC rates are set on a monthly basis. The change avoids the necessity of prorating a monthly payment. The change is not substantial.

CONCLUSIONS

I hereby conclude that:

1. All modifications made to the proposed rule are not substantial changes.

2. The rules, as modified, are necessary and reasonable.

3. Any duplication in these rules of language contained in Minnesota Statutes is crucial to the ability of persons affected by the rules to comprehend their meaning and effect.

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

5. If any finding or part of a finding, above, is properly characterized as a conclusion, it is adopted as a conclusion.

NOW, THEREFORE, IT IS ORDERED, that the rule identified as Governing Child Foster Care, Difficulty of Care Payments, is adopted this 14 day of November, 1988 pursuant to authority vested in me by Minnesota Statutes, section 256B.04, subdivision 2.

SANDRA S. GARDEBRING
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

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

DECLARATION OF COUNSEL

I, Julie 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: 11-10-88

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED ADOPTION OF THE RULES OF THE STATE DEPARTMENT OF HUMAN SERVICES GOVERNING MAINTENANCE PAYMENTS AND DIFFICULTY OF CARE PAYMENTS FOR CHILDREN IN FOSTER CARE

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 21st day of September, 1988.

Nancy Steele

Proposed Rule

Missing Certificate - Called.

Authority

256.82 &

Rule

If the agency timely publishes the rule, the effective date won't be a problem.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-38___

TO: Rita Desmond
515 Transportation Building
St. Paul, MN 55155

FROM: Jane Nelson 297-1217
Department of Human Services
Rules

SUBJECT: Review of a Rule Adopted Without a Public Hearing; Proposed Rules of the Department of Human Services Governing Child Foster Care Difficulty of Care Payments, parts 9560.0650 to 9560.0656.

Enclosed are the documents required to be submitted under Minnesota Rules, part 2010.0300 for your review of a rule adopted without a public hearing 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 a rule without a public hearing as mailed.

4. The statement of need and reasonableness in support of the proposed rule complying with part 2010.0700.

5. The affidavit of mailing the notice of intent to adopt a rule without a public hearing. The affidavits state that the mailing list maintained by the agency pursuant to Minnesota Statutes, sections 14.22 and 14.14, subdivision 1a is accurate, complete, and current and that the notice of intent to adopt the rule without a public hearing was mailed to all persons and groups whose names appear on the list.

6. A copy or photocopy of the notice of intent to adopt the rule without a public hearing as published in the State Register.

7. Four copies of the 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.

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

9. All written requests, submissions, or comments on the rule received by the agency except requests solely for copies of the rule or of the statement of need and reasonableness.

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

No requests for notice of submission of the rule to the attorney general were received.

If you have any questions on this submitted material, please call me at 297-1217.

Office of the Revisor of Statutes
Administrative Rules

Kathleen M. Traxler
Assistant Revisor
296-0956

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

November 21, 1988

Rita Desmond
Office of the Attorney General
515 Transportation Building

RE: AR1354

Dear Ms. Desmond:

Jane Nelson asked me to send you a copy of our certificate of approval of AR1354. Since I was not sure whether you needed our certificate of approval for publication or our certificate of approval for filing with the secretary of state, I am sending a copy of both.

Sincerely,

Kathleen M. Traxler
Assistant Revisor

KMT/mm
Enclosures