

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : April 11, 1990

TO : RONALD S. LATZ
Special Assistant
Attorney General

FROM :
CHARLENE HATCHER CH
Special Assistant Attorney General
525 Park Street, Suite 404 (55103)

PHONE :
296-9422

SUBJECT :
In the Matter of the Adopted Permanent Rule
Relating to Drop-In Child Care

The above-referenced Permanent rule has been approved as to its legality by the Attorney General on April 4, 1990.

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.

CH:bbl
Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Alice Weck (memo only)

Revisor #AR1642 CH

RULE REVIEW CHECKLIST
(Human Services)

File No. 1688 Docket No. 05-0009-0884

DATE RECEIVED 3-28-90 ADOPTED W/O HEARING X

REVIEW DATE 4-6-90 EMERGENCY RULE _____

DUE DATE 4-11-90 To Revisor: 3-29-90

REVISOR APPROVED _____

APPROVED 4-4-90 REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE 4-11-90

WITHDRAWN _____ RETURNED TO AGENCY 4-12-90

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
- ✓ Date published in State Register
- _____ Comments

✓ Petition for Adoption of a Rule (if applicable)

_____ Board's Authorizing Resolution
- _____ Date adopted

✓ Proposed Rule
- ✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule Chapter 282, Article 2, Section 211
- ✓ Statutory Authority
- NA Small Business Statement
- ✓ Expenditure of public money statement no fiscal impact on local public bodies.
- 1-26-90 Signature

✓ Statement of Need and Reasonableness (if applicable)
- NA Small Business Statement
- NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- Feb 8, 1990 Date 30/25 days before adoption
- ✓ Notice attached
- _____ Copy of rule or summary attached

_____ Publication in State Register
- Feb 12, 1990 Date 30/25 days before adoption

✓ 180-day deadline from:
- ✓ Effective date of law requiring rule (14.12) (both rules) not new mat. amendments
- ✓ end of comment period (§ 14.26) (rules without hearing) doesn't apply
- _____ effective date of statutory authority (§ 14.29) (emergency rules)

_____ Resolution Adopting
- _____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
- March 23, 1989 Date

_____ Written requests, submissions or comments

✓ Declaration of attorney
- Ronald Satz Name of SAAG representing agency

_____ Notice of Submission to Atty. Gen. (if applicable)

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

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-38___

TO: Patricia Nolte, Legal Assistant
Public Finance Division
525 Park Street, Suite 500

FROM: Alice Weck, DHS Rules Division

RE: Review of Rule Amendments Adopted Without a Public Hearing; Minnesota Rules, parts 9503.0015, 9503.0075, and 9503.0170 relating to Drop-In Child Care

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 affidavit states 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.

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7. Four copies of the rule as adopted. No modifications were made to the rule as proposed.

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.

11. No requests to be notified of submittal of the rule to the Attorney General were received.

If you have any questions on this submitted material, please call me at 296-0626.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-38___

In the Matter of the Adoption
of the Proposed Amendments to
Department of Human Services Rules
Relating to Drop-In Child Care
(Minnesota Rules, parts 9503.0015,
9503.0075, and 9503.0170)

DECLARATION OF
COUNSEL

I, Ronald S. Latz, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule amendments, 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 0884.

Special Assistant
Attorney General

Dated: 3/27/90

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Department of Human Services

Adopted Permanent Rules Relating to Drop-In Child Care

Rules as Adopted

9503.0015 OPTIONS FOR CHILD CARE PROGRAMS.

A license holder must provide at least one of the following child care programs:

[For text of item A, see M.R.]

B. A "drop-in child care program" means a child care program that operates for more than 30 days in any 12-month period and is not excluded by Minnesota Statutes, section 245A.03, subdivision 2. The program is not a day program and does not provide care to any child for more than five hours in any one day and 40 hours in any one calendar month. The center where the program operates is licensed exclusively to provide a drop-in child care program and does not have a regularly scheduled, ongoing child care program with a stable enrollment.

[For text of items C and D, see M.R.]

9503.0075 DROP-IN CHILD CARE PROGRAM.

Subpart 1. **Exemptions for drop-in child care programs.** A license holder operating a drop-in child care program as defined in part 9503.0015 must comply with parts 9503.0005 to 9503.0170 with the following exceptions:

A. The staff ratios and group size restrictions in part 9503.0040 do not apply and are replaced by the requirements in subparts 2 to 6.

B. Part 9503.0045, subpart 1, items F and G, of the child care program plan do not apply.

C. The requirement in part 9503.0050, subpart 6, that separate bedding be provided for each child in care applies only to those children in care who are less than 30 months old. The provisions in part 9503.0050, subpart 6, requiring washing and cleaning of bedding and blankets remain in effect and apply to all bedding or blankets used by the drop-in child care program.

D. Half the furnishings, equipment, materials, or supplies specified by the following subparts of part 9503.0060 are required:

(1) subpart 4, item A, subitems (2), (5), and (8);

(2) subpart 5, item A, subitems (2), (3), and (7); and

(3) subpart 6, item A, subitems (3) and (6).

E. Part 9503.0070, regarding night care programs, does not apply.

F. Part 9503.0090, subpart 2, regarding parent conferences and daily reports, does not apply.

Subp. 2. **Supervision.** A drop-in child care program must:

A. be operated under the supervision of a person who qualifies both as a director under part 9503.0031 and as a teacher under part 9503.0032; and

B. have at least two staff persons present at the center whenever the program is operating even when the ages and numbers of children present are such that the staff-to-child ratio requirements established in subpart 3 could be met by having only one staff person.

Subp. 3. **Staff ratios.** The minimum ratio of staff persons to children that a license holder may maintain is:

A. for infants ages six weeks through 16 months, one staff person for every four infants;

B. for children ages 17 months through 29 months, one staff person for every seven children; and

C. for children ages 30 months through 12 years, one staff person for every ten children.

Subp. 4. **Exception to staff ratio for ages 30 months through 12 years.** The number of children per staff person specified in subpart 3 may be increased only with children ages 30 months through 12 years, only by a maximum of four children, and only for a time period, not to exceed 20 minutes, required for additional staff to arrive at the center. A center that exceeds the ratio in subpart 3, item C, must be able to document

having staff persons who, as a condition of their employment, are on call to come to the center as needed and arrive at the center within 20 minutes after receiving notification to report.

Subp. 5. **Age category grouping.** Whenever the total number of children present to be cared for at a center is more than 20, children younger than 30 months must be cared for in an area that is physically separated from older children. All children 30 months old and older may be cared for in the same group in the same area.

Subp. 6. **Staff distribution.** Staff distributions for drop-in child care programs must meet the requirements in items A and B.

A. If a drop-in child care program serves both infants and older children, the following minimum staff distribution pattern applies for the supervision of infants ages six weeks through 16 months and children ages 17 months through 29 months:

(1) The first staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an assistant teacher as specified in part 9503.0033.

(2) The second staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

(3) The third staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an assistant teacher as specified in part 9503.0033.

(4) The fourth staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

(5) The fifth staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an assistant teacher as

specified in part 9503.0033.

(6) The sixth staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

B. The following minimum staff distribution pattern applies for the supervision of children 30 months and older.

(1) The first staff person needed to meet the required staff-to-child ratio specified in subpart 3, item C, must meet the qualifications for teachers specified in part 9503.0032.

(2) The second, third, and fourth staff persons needed to meet the required staff-to-child ratio specified in subpart 3, item C, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

(3) The fifth staff person needed to meet the staff-to-child ratio required in subpart 3, item C, must have at least the qualifications of an assistant teacher as specified in part 9503.0033.

(4) The sixth, seventh, and eighth staff persons needed to meet the staff-to-child ratio required in subpart 3, item C, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

(5) For any additional staff persons needed after the eighth staff person to meet ratio requirements, the pattern of required staff qualifications established in subitems (3) and (4) applies.

9503.0170 LICENSING PROCESS.

[For text of subps 1 to 5, see M.R.]

Subp. 6. **Variances.** An applicant or license holder may request a variance to parts 9503.0005 to 9503.0170 with the exception of those specified in item D if the request follows the procedures and standards specified in items A, B, and C.

[For text of items A to C, see M.R.]

D. A variance will not be granted from:

(1) any law or rule prohibiting the maltreatment of children including but not limited to illegal or unauthorized use of physical, mechanical, or chemical restraint; the illegal or unauthorized use of aversive or deprivation procedures; and corporal punishment;

(2) part 9503.0005, subpart 25 (supervision);

(3) part 9503.0030, subpart 3 (disqualification factors);

(4) part 9503.0040 (staff ratios and group size), subparts 1; 2, items A to C; and 3, items A and B, subitems (2) to (4);

(5) part 9503.0050, subpart 3 (confinement limitation);

(6) part 9503.0055 (prohibited actions);

(7) part 9503.0070, subpart 6 (staffing);

(8) part 9503.0080 (exclusion of sick children);

(9) part 9503.0085 (sick care program);

(10) part 9503.0130, subparts 1 and 2 (reporting);

(11) part 9503.0140, subpart 17 (hazardous objects);

(12) part 9503.0145, subpart 3 (sanitation);

(13) part 9503.0150 (transportation), items A to D, and F; and

(14) part 9503.0155, subparts 1 (occupancy designation), 2 (fire inspection), and 3 (reinspection for cause).

[For text of subp 7, see M.R.]

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

APR 11 1990

Joan Anderson Growe

Secretary of State

10:10 AM

APPROVED AS TO LEGALITY

April 4 1990

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Charlene M. Hatcher
SPECIAL ASSISTANT ATTORNEY GENERAL

Stat Auth.

Chapter 282, Article 2 Section 211

By April 1, 1990, the commissioner of human services must adopt permanent rules to amend MN Rules, part 9503.0075, to bring that rule part into conformity with the requirements of section 245.14 subdivision 6

no date so law effective Aug 1, 1989

Chapter
245A
Licensing Stat.

Notice of Intent
end of comment period stated in Notice of Intent - March 14, 1990 - (30+ day
mailed on Feb 8, published Feb 12)

Authors states must adopt by April 1, 1990
Human Services adopted rules on March 23, 1990

Assistance benefits of General Assistance recipients who are drug dependent. The adoption of the rule is authorized by *Minnesota Statutes*, section 256D.09, subdivision 2a, which permits the agency to provide for the assignment of a representative payee to drug dependent general assistance recipients to manage their general assistance benefits.

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: Dan Lipschultz, Rules & Regulations Division, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816. Oral statements will be received during regular business hours over the telephone at (612) 297-4302 and in person by Dan Lipschultz 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 *State Register*. Any writtten 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 Human Services

Health Care Support Division

Notice of Solicitation of Outside Information or Opinions Regarding Amendments to Rules Governing Procedures of Surveillance and Utilization Review in the Medical Assistance and General Assistance Medical Care Programs

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 amendments to the rules governing procedures of surveillance and utilization review in the medical assistance and general assistance medical care programs, *Minnesota Rules*, parts 9505.1750 to 9505.2150.

The adoption of the amendments to the rules is authorized by *Minnesota Statutes*, section 256B.04, subdivision 10, which requires the Department to establish general criteria and procedures for the identification and prompt investigation of suspected medical assistance fraud, theft, abuse, presentment of false or duplicate claims, presentment of claims for services that are not medically necessary, or false statement or representation of material facts by a vendor of medical care, and for the imposition of sanctions against a vendor of medical care. The adoption of the amendments to the rule also is authorized by *Minnesota Statutes*, section 256D.04, clause (2) in regard to the general assistance medical care program.

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:

Eleanor Weber
Rules Division
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Oral statements will be received during regular business hours over the telephone at (612) 297-4301 by Eleanor Weber and in person at the above address.

All statements of information and opinions shall be accepted until further notice. 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.

Eleanor E. Weber
Assistant Director, Rules Division

Department of Human Services

Licensing Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendments to *Minnesota Rules*, Chapter 9503, Licensing Requirements for Child Care Centers

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 permanent rules to amend *Minnesota Rules*, parts 9503.0005 to 9503.0170. *Laws of Minnesota 1989*, chapter 282, article 2, section 211 requires the commissioner to adopt permanent rules to bring part 9503.0075 into conformity with statutory requirements related to drop-in child care programs. *Laws of Minnesota 1989*, Chapter 282, article 2, section 212 authorizes the commissioner to amend part 9503.0170 relating to variances.

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: Alice Weck, DHS Rules Division, 444 Lafayette Road, St. Paul, MN 55155-3816. Oral statements will be received during regular business hours over the telephone at (612) 296-0626 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 *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.

Dated: 28 August 1989

Alice S. Weck, Rules Division

Department of Jobs and Training

State Job Training Office

Service Delivery Area Re-designation under the Job Training Partnership Act for Program Years 1990-1991

Every two years, the Governor may re-designate Service Delivery Areas (SDAs) under the Job Training Partnership Act (JTPA) in accordance with the Act's Section 101. JTPA (PL 97-300) is a federally funded employment and training program with the primary goal of training youth and unskilled adults to enter the labor force. Unit(s) of government wishing to apply for SDA re-designation shall submit a LETTER OF INTENT to the State Job Training Office (SJTO) POSTMARKED NO LATER THAN SEPTEMBER 27, 1989. This letter shall follow the format given in the re-designation petition package. DEADLINE for receipt by the SJTO of COMPLETED PETITIONS for SDA re-designation for Program Years 1990-1991 (July 1, 1990-June 30, 1992), signed by the appropriate Local Elected Officials, is 4:30 p.m., FRIDAY, OCTOBER 13, 1989.

Re-designation Petition Packages are available from:

Larry Eisenstadt
Employment and Training Planner
State Job Training Office
Minnesota Department of Jobs and Training
690 American Center Building
150 East Kellogg Blvd.
St. Paul, Minnesota 55101
612/296-6073

Questions are to be addressed to Larry Eisenstadt.

minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440
(612) 623-5000

September 26, 1989

Alice S. Weck
Rules Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155-3816

Dear Ms. Weck:

I am writing this on behalf of the Minnesota Department of Health, in response to your notice of solicitation of opinions regarding proposed amendments to MN rules, Chapter 9503, Licensing Requirements for Child Care Centers. We understand these changes bring the rule into conformity with statutory requirements related to drop-in programs and variances.

Our concern is the exemption of drop-in centers from 9503.0050, subpart 6, specifically, the cleaning of bedding. We encourage the Department of Human Services to RETAIN the portion of the Rule requiring centers to CLEAN bedding between children and when the bedding is soiled or wet.

Although it is our understanding that the intent of the 1989 legislation was to reduce the burden of drop-in centers, who do not have an ongoing program with a stable enrollment, the exemption from this portion of the rule requirements is disturbing.

The very nature of the drop-in center, where different children attend and little follow up contact occurs, adds factors which increase the risk of disease spread. With many new children attending every day there is a much larger germ pool introduced. Those who operate centers are not in regular or frequent contact with the children who have visited their centers, so they seldom learn that children have picked up an illness there. Without this knowledge they are unaware if and when they need to take further steps to curtail the spread of disease. A problem could persist for an extended period until someone finally identifies a pattern of illness.

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Group child care is a highly volatile area for contagious diseases and stronger safeguards are needed in a drop-in setting than in a center with a more stable enrollment.

Thank you for the opportunity to provide our opinion on these proposed changes. If you have questions or would like further clarification, please call me at 623-5291.

Sincerely,

Mary Brosnan

Mary Brosnan
Child Care Consultant
Maternal and Child Health Division

MB:cad

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

I N T E R O F F I C E M E M O R A N D U M
February 5, 1990

TO: Mary Brosnan, Child Care Consultant
Minnesota Department of Health

FROM: Alice Weck, Rules Division (Phone 296-0626)

RE: Comments on Proposed Amendments to Rule 3

Thank you for your response to the Department's Notice of Solicitation of Outside Opinion regarding amendments to Minnesota Rules, chapter 9503, Licensing Requirements for Child Care Centers.

You were particularly concerned with how the rule amendments would handle the exemption of drop-in centers from 9503.0050, subpart 6 and urged the Department to "retain the portion of the rule requiring centers to clean bedding between children and when the bedding is soiled or wet."

See the attached proposed amendments, page 2, line 7 for our effort in this direction. See also the statement of need and reasonableness, page 3, **subpart 1, Exemptions for drop-in child care program**, paragraphs two and three. Thank you for the argument you provided.

I hope the proposed language satisfactorily addresses your concerns.

Department of Human Services

Proposed Permanent Rules Relating to Drop-In Child Care

Rules as Proposed

9503.0015 OPTIONS FOR CHILD CARE PROGRAMS.

A license holder must provide at least one ~~or more~~ of the following child care programs:

[For text of item A, see M.R.]

B. A "~~drop-in~~ drop-in child care program" means a child care program that operates for more than 30 days in any ~~12 month~~ 12-month period and is not excluded by Minnesota Statutes, section 245A.03, subdivision 2. The program is not a day program and does not provide care to any child for more than ~~a cumulative total of 45~~ five hours in any one day and 40 hours in any one calendar month. The center where the program operates is licensed exclusively to provide a drop-in child care program and does not have a regularly scheduled, ongoing child care program with a stable enrollment.

[For text of items C and D, see M.R.]

9503.0075 ~~DROP-IN~~ DROP-IN CHILD CARE PROGRAM.

Subpart 1. **Exemptions for drop-in child care programs.** A license holder operating a ~~drop-in~~ drop-in child care program as defined in part 9503.0015 must comply with parts 9503.0005 to 9503.0170 with the following exceptions:

A. ~~Drop-in programs do not have to provide parent conferences as specified in part 9503.0090, subpart 2, item B~~ The staff ratios and group size restrictions in part 9503.0040 do not apply and are replaced by the requirements in subparts 2 to 6.

B. ~~An immunization record as specified in part 9503.0140, subpart 5, must be obtained by the license holder by the first visit to the program. However, the health information specified in part 9503.0140, subpart 3, need not be provided until the child's second visit to the program~~ Part 9503.0045,

Approved by Revisor

subpart 1, items F and G, of the child care program plan do not apply.

C. ~~The outdoor activity area, outdoor activities, and outdoor equipment required in part 9503.0060 need not be provided. Indoor space for vigorous large muscle activity must be accessible to children on a daily basis.~~ The requirement in part 9503.0050, subpart 6, that separate bedding be provided for each child in care applies only to those children in care who are less than 30 months old. The provisions in part 9503.0050, subpart 6, requiring washing and cleaning of bedding and blankets remain in effect and apply to all bedding or blankets used by the drop-in child care program.

D. ~~The intellectual, physical, social, and emotional progress of each child as specified in part 9503.0045, item H, need not be provided.~~ Half the furnishings, equipment, materials, or supplies specified by the following subparts of part 9503.0060 are required:

(1) subpart 4, item A, subitems (2), (5), and (8);

(2) subpart 5, item A, subitems (2), (3), and (7); and

(3) subpart 6, item A, subitems (3) and (6).

E. ~~Fifty percent of the cots and mats specified in part 9503.0060, subpart 4, item A, subitem (5) for toddlers and subpart 5, item A, subitem (3) for preschoolers are required.~~ Part 9503.0070, regarding night care programs, does not apply.

F. Part 9503.0090, subpart 2, regarding parent conferences and daily reports, does not apply.

Subp. 2. **Supervision.** A drop-in child care program must:

A. be operated under the supervision of a person who qualifies both as a director under part 9503.0031 and as a teacher under part 9503.0032; and

B. have at least two staff persons present at the center whenever the program is operating even when the ages and numbers of children present are such that the staff-to-child ratio requirements established in subpart 3 could be met by having only one staff person.

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Subp. 3. **Staff ratios.** The minimum ratio of staff persons to children that a license holder may maintain is:

A. for infants ages six weeks through 16 months, one staff person for every four infants;

B. for children ages 17 months through 29 months, one staff person for every seven children; and

C. for children ages 30 months through 12 years, one staff person for every ten children.

Subp. 4. **Exception to staff ratio for ages 30 months through 12 years.** The number of children per staff person specified in subpart 3 may be increased only with children ages 30 months through 12 years, only by a maximum of four children, and only for a time period, not to exceed 20 minutes, required for additional staff to arrive at the center. A center that exceeds the ratio in subpart 3, item C, must be able to document having staff persons who, as a condition of their employment, are on call to come to the center as needed and arrive at the center within 20 minutes after receiving notification to report.

Subp. 5. **Age category grouping.** Whenever the total number of children present to be cared for at a center is more than 20, children younger than 30 months must be cared for in an area that is physically separated from older children. All children 30 months old and older may be cared for in the same group in the same area.

Subp. 6. **Staff distribution.** Staff distributions for drop-in child care programs must meet the requirements in items A and B.

A. If a drop-in child care program serves both infants and older children, the following minimum staff distribution pattern applies for the supervision of infants ages six weeks through 16 months and children ages 17 months through 29 months:

(1) The first staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an assistant teacher as specified in part 9503.0033.

Approved
by Revisor _____

(2) The second staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

(3) The third staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an assistant teacher as specified in part 9503.0033.

(4) The fourth staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

(5) The fifth staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an assistant teacher as specified in part 9503.0033.

(6) The sixth staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

B. The following minimum staff distribution pattern applies for the supervision of children 30 months and older.

(1) The first staff person needed to meet the required staff-to-child ratio specified in subpart 3, item C, must meet the qualifications for teachers specified in part 9503.0032.

(2) The second, third, and fourth staff persons needed to meet the required staff-to-child ratio specified in subpart 3, item C, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

(3) The fifth staff person needed to meet the staff-to-child ratio required in subpart 3, item C, must have at least the qualifications of an assistant teacher as specified in part 9503.0033.

(4) The sixth, seventh, and eighth staff persons needed to meet the staff-to-child ratio required in subpart 3,

Approved by Revisor _____

item C, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

(5) For any additional staff persons needed after the eighth staff person to meet ratio requirements, the pattern of required staff qualifications established in subitems (3) and (4) applies.

9503.0170 LICENSING PROCESS.

[For text of subps 1 to 5, see M.R.]

Subp. 6. **Variances.** An applicant or license holder may request a variance to parts 9503.0005 to 9503.0170 with the exception of those specified in item D if the request follows the procedures and standards specified in items A, B, and C.

[For text of items A to C, see M.R.]

D. A variance will not be granted from:

(1) any law or rule prohibiting the maltreatment of children including but not limited to illegal or unauthorized use of physical, mechanical, or chemical restraint; the illegal or unauthorized use of aversive or deprivation procedures; and corporal punishment; ~~and~~

(2) ~~parts~~ part 9503.0005, subpart 25 (supervision);

(3) part 9503.0030, subpart 3 (disqualification factors);

(4) part 9503.0040 (staff ratios and group size), subparts 1; 2, items A to C; and 3, items A and B, subitems (2) to (4);

(5) part 9503.0050, subpart 3 (confinement limitation);

(6) part 9503.0055 (prohibited actions);

(7) part 9503.0070, subpart 6 (staffing);

(8) part 9503.0080 (exclusion of sick children);

(9) part 9503.0085 (sick care program);

(10) part 9503.0130, subparts 1 and 2 (reporting);

(11) part 9503.0140, subpart 17 (hazardous

Approved by Revisor _____

objects);

(12) part 9503.0145, subpart 3 (sanitation);

(13) part 9503.0150 (transportation), items A to D, and F; and

(14) part 9503.0155, subparts 1 (occupancy designation), 2 (fire inspection), and 3 (reinspection for cause).

[For text of subp 7, see M.R.]

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Drop-in Child Care

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9503

The attached rules are approved for publication in the State Register

Kathleen T. Harrington
Assistant Revisor

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed
Amendments to Department of
Human Services Rules Governing
Licensure of Child Care Centers
(Minnesota Rules,parts 9503.0015,
9503.0075, and 9503.0170)

FISCAL NOTE

Adopting the proposed amendments is estimated to have no fiscal impact on local public bodies or state government.

Date: 1/26/90

ANN WYNIA
COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendments to Department of Human Services Rules Governing Licensure of Child Care Centers (Minnesota Rules, parts 9503.0015, 9503.0075, and 9503.0170)

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Nancy Bishop, being sworn says:

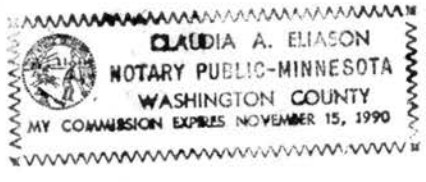
I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Department of Human Services rulemaking mailing list which is accurate, complete, and current as of this 8th day of February, 1990.

That on the 8th day of February, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Nancy L. Bishop

Subscribed and sworn to before me
this 9 day of February, 1990.

Claudia G. Eliason



STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed
Amendments to Department of
Human Services Rules Governing
Licensure of Child Care Centers
(Minnesota Rules, parts 9503.0015,
9503.0075, and 9503.0170)

NOTICE OF INTENT
TO ADOPT A RULE WITHOUT
A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rules 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 parts is Minnesota Laws 1989, chapter 282, article 2, section 211 and Minnesota Statutes, chapter 245A, the human services licensing act.

All persons have 30 days or until 4:30 p.m. on March 14, 1990 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 Alice Weck, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-0626.

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 three rule parts referenced above are part of a series (Minnesota Rules, parts 9503.0005 to 9503.0170) known informally as Rule 3. Rule 3 sets the standards that child care centers must meet to become and remain licensed. The proposed amendment to part 9503.0075 changes how drop-in child care is defined and regulated under present Rule 3. The changes affect providers that currently provide drop-in programs, the parents of children who attend these drop-in programs, and the children.

The changes are needed to bring part 9503.0075 into conformity with the requirements governing drop-in child care in Minnesota Statutes, 1989 Supplement, sections 245A.02, subdivision 6a and 245A.14, subdivision 6. The proposed amendments are essentially a restatement of the statutory requirements.

Those requirements specify that drop-in child care programs may not care for a child for more than five hours in a given day up to a maximum per child of 40 hours per month. Present Rule 3 has no per day limit and a maximum per child per month limit of 45 hours. The new statutory requirements also change present practice by specifying that drop-in child care programs may operate only in a center that is licensed exclusively to provide drop-in child care and that does not have a regularly scheduled, ongoing child care program with a stable enrollment.

The proposed amendment to part 9503.0015 makes a minor technical change needed to make part 9503.0015 consistent with part 9503.0075. The proposed amendment to part 9503.0170 opens to the variance process three provisions in Rule 3 that are not eligibile for variances under the rule as written.

A free copy of the rule is available upon request from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-7454.

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 amendments and identifies the data and information relied upon to support the proposed amendment has been prepared and is available from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 296-7454 upon request.

Adoption of these rules will result in no additional spending by local public bodies or by state government for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

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 Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

Date: 1/26/90

ANN WYNIA
COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendments to Department of Human Services Rules Governing Licensure of Child Care Centers (Minnesota Rules, parts 9503.0015, 9503.0075, and 9503.0170)

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 8th day of February, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following parties:

- The 87 Minnesota County Human Services Agencies
- Licensed Drop-In Care Providers
- Francis Giberson, attorney for Kids Time Out

Nancy L. Bishop

Subscribed and sworn to before me
this 9 day of February 1990
Claudia A. Eliason

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 15, 1990

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed
Amendments to Department of
Human Services Rules Governing
Licensure of Child Care Centers
(Minnesota Rules, parts 9503.0015,
9503.0075, and 9503.0170)

NOTICE OF INTENT
TO ADOPT A RULE WITHOUT
A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rules 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 parts is Minnesota Laws 1989, chapter 282, article 2, section 211 and Minnesota Statutes, chapter 245A, the human services licensing act.

All persons have 30 days or until 4:30 p.m. on March 14, 1990 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 Alice Weck, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-0626.

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 three rule parts referenced above are part of a series (Minnesota Rules, parts 9503.0005 to 9503.0170) known informally as Rule 3. Rule 3 sets the standards that child care centers must meet to become and remain licensed. The proposed amendment to part 9503.0075 changes how drop-in child care is defined and regulated under present Rule 3. The changes affect providers that currently provide drop-in programs, the parents of children who attend these drop-in programs, and the children.

The changes are needed to bring part 9503.0075 into conformity with the requirements governing drop-in child care in Minnesota Statutes, 1989 Supplement, sections 245A.02, subdivision 6a and 245A.14, subdivision 6. The proposed amendments are essentially a restatement of the statutory requirements.

Those requirements specify that drop-in child care programs may not care for a child for more than five hours in a given day up to a maximum per child of 40 hours per month. Present Rule 3 has no per day limit and a maximum per child per month limit of 45 hours. The new statutory requirements also change present practice by specifying that drop-in child care programs may operate only in a center that is licensed exclusively to provide drop-in child care and that does not have a regularly scheduled, ongoing child care program with a stable enrollment.

The proposed amendment to part 9503.0015 makes a minor technical change needed to make part 9503.0015 consistent with part 9503.0075. The proposed amendment to part 9503.0170 opens to the variance process three provisions in Rule 3 that are not eligibile for variances under the rule as written.

A free copy of the rule is available upon request from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-7454.

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 amendments and identifies the data and information relied upon to support the proposed amendment has been prepared and is available from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 296-7454 upon request.

Adoption of these rules will result in no additional spending by local public bodies or by state government for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

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 Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

Date: 1/26/90

ANN WYNIA
COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Adoption
of the Proposed Amendments to
Department of Human Services Rules
Relating to Drop-In Child Care
(Minnesota Rules, parts 9503.0015,
9503.0075, and 9503.0170)

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

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on February 12, 1990 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 February 8, 1990. (2) 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.

(4) All persons were given the opportunity to submit comment on the amendments for 30 days after notice of proposed rulemaking. (3) No requests for a public hearing on the rule amendments were received by the agency.

(7) No submissions or comments on the amendments were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

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

No comments were received requesting changes to the amendments as proposed and no changes have been made to the amendments as proposed.

(6) The above-captioned rule amendments are needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the amended rules identified as Minnesota Rules, parts 9503.0015, 9503.0075, and 9503.0170 relating to drop-in child care are adopted this 23rd day of March, 1990 pursuant to authority vested in me by Laws of 1989, Chapter 282, Article 2, Sections 211 and 212.

(5)

ANN WYNIA
COMMISSIONER OF HUMAN SERVICES

[For text of subps 1 to 6, see M.R.]

Subp. 7. **Grain.** "Grain" means any cereal grain, coarse grain, or oilseed in unprocessed form for which a standard has been established by the United States Secretary of Agriculture or the Minnesota Board of Grain Standards, dry edible beans, or ~~any~~ other agricultural ~~crop which~~ crops designated by the commissioner ~~may designate~~ by rule.

1562.0700 BOND.

Subpart 1. **Requirement.** Before a license to buy or store grain is issued, the applicant for the license must file with the commissioner a bond or acceptable security in lieu of a bond in an amount prescribed by this part. The bond or other acceptable security provides coverage at all licensed locations.

Subp. 1a. **Duration of bond.** The bond must be continuous until canceled. To cancel a bond, the surety must provide 90 days written notice of the bond's termination date to the licensee and the commissioner.

Subp. 1b. **Acceptable security in lieu of a bond.** In lieu of the bond required by this part, the license applicant may deposit with the state treasurer cash, or a certified check, cashier's check, money order, assignable bond or note of the United States, certificate of deposit, or an irrevocable bank letter of credit in the same amount as would be required for the bond.

[For text of subps 2 to 5, see M.R.]

Department of Human Services

Proposed Permanent Rules Relating to Drop-In Child Care

Notice of Intent to Adopt a Rule without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Human Services intends to adopt the above-entitled rules 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 parts is *Minnesota Laws 1989*, chapter 282, article 2, section 211 and *Minnesota Statutes*, chapter 245A, the human services licensing act.

All persons have 30 days or until 4:30 p.m. on March 14, 1990 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 Alice Weck, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-0626.

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 three rule parts referenced above are part of a series (*Minnesota Rules*, parts 9503.0005 to 9503.0170) known informally as Rule 3. Rule 3 sets the standards that child care centers must meet to become and remain licensed. The proposed amendment to part 9503.0075 changes how drop-in child care is defined and regulated under present Rule 3. The changes affect providers that currently provide drop-in programs, the parents of children who attend these drop-in programs, and the children.

The changes are needed to bring part 9503.0075 into conformity with the requirements governing drop-in child care in *Minnesota Statutes*, 1989 Supplement, sections 245A.02, subdivision 6a and 245A.14, subdivision 6. The proposed amendments are essentially a restatement of the statutory requirements.

Those requirements specify that drop-in child care programs may not care for a child for more than five hours in a given day up to a maximum per child of 40 hours per month. Present Rule 3 has no per day limit and a maximum per child per month limit of 45

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.

hours. The new statutory requirements also change present practice by specifying that drop-in child care programs may operate only in a center that is licensed exclusively to provide drop-in child care and that does not have a regularly scheduled, ongoing child care program with a stable enrollment.

The proposed amendment to part 9503.0015 makes a minor technical change needed to make part 9503.0015 consistent with part 9503.0075. The proposed amendment to part 9503.0170 opens to the variance process three provisions in Rule 3 that are not eligible for variances under the rule as written.

A free copy of the rule is available upon request from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-7454.

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 amendments and identifies the data and information relied upon to support the proposed amendment has been prepared and is available from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 296-7454 upon request.

Adoption of these rules will result in no additional spending by local public bodies or by state government for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

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 Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

Ann Wynia
Commissioner of Human Services

Rules as Proposed

9503.0015 OPTIONS FOR CHILD CARE PROGRAMS.

A license holder must provide at least one ~~or more~~ of the following child care programs:

[For text of item A, see M.R.]

B. A "~~drop in~~ drop-in child care program" means a child care program that operates for more than 30 days in any ~~12 month~~ 12-month period and is not excluded by *Minnesota Statutes*, section 245A.03, subdivision 2. The program is not a day program and does not provide care to any child for more than ~~a cumulative total of 45~~ five hours in any one day and 40 hours in any one calendar month. The center where the program operates is licensed exclusively to provide a drop-in child care program and does not have a regularly scheduled, ongoing child care program with a stable enrollment.

[For text of items C and D, see M.R.]

9503.0075 ~~DROP IN~~ DROP-IN CHILD CARE PROGRAM.

Subpart 1. **Exemptions for drop-in child care programs.** A license holder operating a ~~drop in~~ drop-in child care program as defined in part 9503.0015 must comply with parts 9503.0005 to 9503.0170 with the following exceptions:

A. ~~Drop in programs do not have to provide parent conferences as specified in part 9503.0090, subpart 2, item B~~ The staff ratios and group size restrictions in part 9503.0040 do not apply and are replaced by the requirements in subparts 2 to 6.

B. ~~An immunization record as specified in part 9503.0140, subpart 5, must be obtained by the license holder by the first visit to the program. However, the health information specified in part 9503.0140, subpart 3, need not be provided until the child's second visit to the program~~ Part 9503.0045, subpart 1, items F and G, of the child care program plan do not apply.

C. ~~The outdoor activity area, outdoor activities, and outdoor equipment required in part 9503.0060 need not be provided. Indoor space for vigorous large muscle activity must be accessible to children on a daily basis.~~ The requirement in part 9503.0050, subpart 6, that separate bedding be provided for each child in care applies only to those children in care who are less than 30 months old. The provisions in part 9503.0050, subpart 6, requiring washing and cleaning of bedding and blankets remain in effect and apply to all bedding or blankets used by the drop-in child care program.

D. ~~The intellectual, physical, social, and emotional progress of each child as specified in part 9503.0045, item H, need not be provided.~~ Half the furnishings, equipment, materials, or supplies specified by the following subparts of part 9503.0060 are required:

(1) subpart 4, item A, subitems (2), (5), and (8);

(2) subpart 5, item A, subitems (2), (3), and (7); and

(3) subpart 6, item A, subitems (3) and (6).

E. ~~Fifty percent of the cots and mats specified in part 9503.0060, subpart 4, item A, subitem (5) for toddlers and subpart 5, item A, subitem (3) for preschoolers are required.~~ Part 9503.0070, regarding night care programs, does not apply.

F. Part 9503.0090, subpart 2, regarding parent conferences and daily reports, does not apply.

Subp. 2. **Supervision.** A drop-in child care program must:

A. be operated under the supervision of a person who qualifies both as a director under part 9503.0031 and as a teacher under part 9503.0032; and

B. have at least two staff persons present at the center whenever the program is operating even when the ages and numbers of children present are such that the staff-to-child ratio requirements established in subpart 3 could be met by having only one staff person.

Subp. 3. **Staff ratios.** The minimum ratio of staff persons to children that a license holder may maintain is:

A. for infants ages six weeks through 16 months, one staff person for every four infants;

B. for children ages 17 months through 29 months, one staff person for every seven children; and

C. for children ages 30 months through 12 years, one staff person for every ten children.

Subp. 4. **Exception to staff ratio for ages 30 months through 12 years.** The number of children per staff person specified in subpart 3 may be increased only with children ages 30 months through 12 years, only by a maximum of four children, and only for a time period, not to exceed 20 minutes, required for additional staff to arrive at the center. A center that exceeds the ratio in subpart 3, item C, must be able to document having staff persons who, as a condition of their employment, are on call to come to the center as needed and arrive at the center within 20 minutes after receiving notification to report.

Subp. 5. **Age category grouping.** Whenever the total number of children present to be cared for at a center is more than 20, children younger than 30 months must be cared for in an area that is physically separated from older children. All children 30 months old and older may be cared for in the same group in the same area.

Subp. 6. **Staff distribution.** Staff distributions for drop-in child care programs must meet the requirements in items A and B.

A. If a drop-in child care program serves both infants and older children, the following minimum staff distribution pattern applies for the supervision of infants ages six weeks through 16 months and children ages 17 months through 29 months:

(1) The first staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an assistant teacher as specified in part 9503.0033.

(2) The second staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

(3) The third staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an assistant teacher as specified in part 9503.0033.

(4) The fourth staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

(5) The fifth staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an assistant teacher as specified in part 9503.0033.

(6) The sixth staff person needed to meet the staff-to-child ratios required in subpart 3, items A and B, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

B. The following minimum staff distribution pattern applies for the supervision of children 30 months and older.

(1) The first staff person needed to meet the required staff-to-child ratio specified in subpart 3, item C, must meet the qualifications for teachers specified in part 9503.0032.

(2) The second, third, and fourth staff persons needed to meet the required staff-to-child ratio specified in subpart 3, item C, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

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

(3) The fifth staff person needed to meet the staff-to-child ratio required in subpart 3, item C, must have at least the qualifications of an assistant teacher as specified in part 9503.0033.

(4) The sixth, seventh, and eighth staff persons needed to meet the staff-to-child ratio required in subpart 3, item C, must have at least the qualifications of an aide as specified in part 9503.0034, subpart 1.

(5) For any additional staff persons needed after the eighth staff person to meet ratio requirements, the pattern of required staff qualifications established in subitems (3) and (4) applies.

9503.0170 LICENSING PROCESS.

[For text of subps 1 to 5, see M.R.]

Subp. 6. **Variances.** An applicant or license holder may request a variance to parts 9503.0005 to 9503.0170 with the exception of those specified in item D if the request follows the procedures and standards specified in items A, B, and C.

[For text of items A to C, see M.R.]

D. A variance will not be granted from:

(1) any law or rule prohibiting the maltreatment of children including but not limited to illegal or unauthorized use of physical, mechanical, or chemical restraint; the illegal or unauthorized use of aversive or deprivation procedures; and corporal punishment; ~~and~~

(2) ~~parts~~ part 9503.0005, subpart 25 (supervision);

(3) part 9503.0030, subpart 3 (disqualification factors);

(4) part 9503.0040 (staff ratios and group size), subparts 1; 2, items A to C; and 3, items A and B, subitems (2) to (4);

(5) part 9503.0050, subpart 3 (confinement limitation);

(6) part 9503.0055 (prohibited actions);

(7) part 9503.0070, subpart 6 (staffing);

(8) part 9503.0080 (exclusion of sick children);

(9) part 9503.0085 (sick care program);

(10) part 9503.0130, subparts 1 and 2 (reporting);

(11) part 9503.0140, subpart 17 (hazardous objects);

(12) part 9503.0145, subpart 3 (sanitation);

(13) part 9503.0150 (transportation), items A to D, and F; and

(14) part 9503.0155, subparts 1 (occupancy designation), 2 (fire inspection), and 3 (reinspection for cause).

[For text of subp 7, see M.R.]

Public Utilities Commission

Proposed Rules Relating to the Resource Planning Process

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules With a Public Hearing if Twenty-Five or More Persons Request a Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Public Utilities Commission (Commission) intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing, *Minnesota Statutes* §§ 14.22 to 14.28. The Commission's authority to adopt these rules is set forth in *Minnesota Statutes* §§ 216B.08, 216B.09, 216B.16, subd. 6, 216B.03, 216C.05, 216B.24, subd. 2, 216B.33 and 216B.13.

All persons have until 4:30 p.m. on March 14, 1990, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. PLEASE USE DOCKET NO. E-999/R-89-201 ON ALL CORRESPONDENCE.

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests 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 rules addressed, the reason for the request, and any change proposed.

Alice Weck

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Amendments to Department of Human Services Rules Governing Licensure of Child Care Centers (Minnesota Rules, parts 9503.0015, 9503.0075, and 9503.0170)

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rules 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 parts is Minnesota Laws 1989, chapter 282, article 2, section 211 and Minnesota Statutes, chapter 245A, the human services licensing act.

(2) All persons have 30 days or until 4:30 p.m. on March 14, 1990 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. (3) 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. (4) 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. (6) 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. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(5) Comments or written requests for a public hearing must be submitted to Alice Weck, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-0626.

(8) 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.

(11) The three rule parts referenced above are part of a series (Minnesota Rules, parts 9503.0005 to 9503.0170) known informally as Rule 3. Rule 3 sets the standards that child care centers must meet to become and remain licensed. The proposed amendment to part 9503.0075 changes how drop-in child care is defined and regulated under present Rule 3. The changes affect providers that currently provide drop-in programs, the parents of children who attend these drop-in programs, and the children.

The changes are needed to bring part 9503.0075 into conformity with the requirements governing drop-in child care in Minnesota Statutes, 1989 Supplement, sections 245A.02, subdivision 6a and 245A.14, subdivision 6. The proposed amendments are essentially a restatement of the statutory requirements.

Those requirements specify that drop-in child care programs may not care for a child for more than five hours in a given day up to a maximum per child of 40 hours per month. Present Rule 3 has no per day limit and a maximum per child per month limit of 45 hours. The new statutory requirements also change present practice by specifying that drop-in child care programs may operate only in a center that is licensed exclusively to provide drop-in child care and that does not have a regularly scheduled, ongoing child care program with a stable enrollment.

The proposed amendment to part 9503.0015 makes a minor technical change needed to make part 9503.0015 consistent with part 9503.0075. The proposed amendment to part 9503.0170 opens to the variance process three provisions in Rule 3 that are not eligibile for variances under the rule as written.

(11) A free copy of the rule is available upon request from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, telephone (612) 296-7454.

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.

(12) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendment has been prepared and is available from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 296-7454 upon request.

(13) Adoption of these rules will result in no additional spending by local public bodies or by state government for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. (15) A fiscal note prepared according to requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

(9) 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 Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

Date: 1/26/90

ANN WYNIA
COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed
Amendments to Department of
Human Services Rules Governing
Licensure of Child Care Centers
(Minnesota Rules, parts 9503.0015,
9503.0075, and 9503.0170)

STATEMENT OF NEED
AND REASONABLENESS

The three rule parts referenced above are part of a series (Minnesota Rules, parts 9503.0005 to 9503.0170) that govern licensure of child care centers. Informally known as Rule 3, parts 9503.0005 to 9503.0170 were adopted in August of 1988 and were effective early in 1989. Parts 9503.0005 to 9503.0170 replaced an earlier version of Rule 3 (parts 9545.0520 to 9545.0680, Group Daycare of Preschool and School-Age Children) that was first adopted in the late 1950s and amended in 1977.

The proposed amendments to parts 9503.0015 and 9503.0075 result from statutory changes in the 1989 legislative session that affect how drop-in child care programs are licensed and regulated under Rule 3. Although the substantive changes to the rule occur mainly in part 9503.0075, the same statutory changes that require the department to amend part 9503.0075 also necessitate technical changes to part 9503.0015.

The amendments to part 9503.0170 are proposed by the department to make Rule 3 more flexible on points related to age category grouping, staff distribution, and transportation. Specifically, the proposed amendments open to the variance process three provisions in Rule 3 that are not eligible for variances under the rule as currently written.

Background on the Proposed Amendments to Part 9503.0075

Rule 3 as adopted in 1988 addresses a variety of child care programs: day programs, night care programs, sick care programs, drop-in programs. The rule as adopted defined a drop-in program as a program that did not provide care to any one child for more than 45 hours in any one calendar month. Because children who attended drop-in programs did not attend those programs regularly, the advisory committee and department staff members who developed the rule exempted drop-in programs from a few programmatic and space requirements that full-time child care programs are required to meet.

The rule did not, however, treat drop-in care differently from full-time care on requirements related to staff ratio, grouping of children by age, and staff qualifications. The rule as adopted reflected the view that the same standards for staff qualifications and staff ratios should apply whether children are at a center on a regular full-time basis or on a short-term, drop-in basis.

In response to legislation adopted during the 1989 regular legislative session to amend the Human Services Licensing Act, that view is no longer reflected in the proposed amendments to Rule 3. The legislation eased the requirements that drop-in programs must meet with respect to staff ratio, staff qualifications, and group size (see Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6).

The legislation also re-defined drop-in care (see Minnesota Statutes, 1989 Supplement, section 245A.02, subdivision 6a). Rule 3 as adopted allowed centers with regularly scheduled, full-time enrollments to operate drop-in care programs at the same time. Drop-in child care programs as they are now defined in statute may be provided only at a center that has no regularly scheduled enrollment and is licensed exclusively for drop-in care. By definition, a drop-in child care program is limited to providing no more than five hours care to any one child in any one day up to a maximum per child of 40 hours per month. Rule 3 as adopted limited the time per child that drop-in care could be provided to 45 hours a month but imposed no per day limit.

Laws of 1989, Chapter 282, Article 2, Section 211 requires the commissioner by April 1, 1990 to adopt permanent rules amending part 9503.0075 to bring it into conformity with the requirements of Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6. The need to meet that mandate provides the rationale for most of the proposed changes to part 9503.0075 and for the one technical change proposed to part 9503.0015.

9503.0015 OPTIONS FOR CHILD CARE PROGRAMS.

A license holder who offers drop-in care cannot be required to provide "one or more" of the programs in items A to D because the statutory definition does not allow drop-in care to co-exist with any other kind of child care program. Changing the language to "at least one" of the options makes the language applicable to all license holders.

Item B is necessarily changed to make the rule language that describes the drop-in option consistent with the definition of drop-in child care program in Minnesota Statutes, 1989 Supplement, section 245A.02, subdivision 6a.

9503.0075 DROP-IN <u>CHILD CARE</u> PROGRAM

Laws 1989, chapter 282, article 2, section 211 requires the commissioner to adopt permanent rules amending part 9503.0075 to bring it into conformity with the requirements of Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6. Adding "child care" to the name of the rule part is a technical change to make rule language consistent with statutory language.

The proposed amendments to part 9503.0075 are essentially a restatement of the requirements in Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6. The requirements as adapted from statute are divided into subparts to make reading the rule easier for providers, licensors, and others who have occasion to consult it.

Subpart 1. Exemptions for drop-in child care program. Stating exemptions is necessary to bring part 9503.0075 into conformity with Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6. Creating a subpart summarizing exemptions is a reasonable way to make the rule easy to consult. In one or two instances, part 9503.0075 as written granted essentially the same exemption as the new statutory language (see, e.g., former item A and new item F in new subpart 1). The proposed amendment replaces the present language in part 9503.0075, items A to E with all new language rather than work around the existing language. The new language is needed to make the rule part consistent with Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6.

Item C requires justification because it interprets rather than reiterates Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6 on bedding and blanket requirements. It is clear in statute that drop-in child care programs are exempt from the requirements in part 9503.0050, subpart 6, "except for children less than two and one-half years old." The construction of part 9503.0050, subpart 6, however, makes it less clear what the statute intends: "Separate bedding must be provided for each child in care. Bedding must be washed weekly and when soiled or wet. Blankets must be washed or dry cleaned weekly and when soiled or wet."

The department concludes that the exemption applies only to the provider's obligation to provide separate bedding for each child and not to the provider's obligation to wash or dry clean bedding and blankets, however they are used and for whatever age group. This interpretation is reasonable because it recognizes that drop-in centers by nature have a high potential for the spread of disease. This is the case because having new children every day has the potential of bringing a larger germ pool into the center than would be present if the same children came every day. Moreover, because drop-in program staff often do not know that a child has picked up a disease because the child does not return, steps are not taken to curtail the spread of the disease. It is necessary to keep the washing and dry cleaning provisions as a safeguard against the spread of disease.

Subp. 2. Supervision. The substance of items A and B can be found in Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6. It is reasonable to establish a subpart summarizing supervision requirements to make the rule easier to work with.

Item A is explicitly required by statute. Item B makes explicit what the department believes is implicit in the following sentence of Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6: "A drop-in child care program must maintain a minimum staff ratio for children age two and one-half or greater of one staff person for each ten children, except that there must be at least two persons on staff whenever the program is operating."

Interpreting the statutory requirement that there be "at least two persons on staff" to mean that "at least two persons on staff should be present" is reasonable on the assumption that the provision means to ensure there is always more than one person present. A minimum of two people is needed in case of emergency or to avoid a situation where a person's supervision of children is undermined because the person has other duties such as answering the phone. The requirement that at least two staff persons always be present is consistent with department rules governing adult day care centers.

It is also reasonable for the rule parts to be explicit about requiring the presence of two staff persons even when the staff-to-child ratio requirements would not otherwise so require. By stating explicitly what is implicit in the requirement, the rule resolves the ambiguity, thereby preempting any dispute that might arise over this issue and ensuring compliance with the requirement.

Subp.3. Staff ratios. Staff ratio requirements for drop-in care established in Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6 are necessarily added to part 9503.0075 to make rule provisions governing drop-in care consistent with statutory provisions governing drop-in care.

Items A, B, and C establish age categories (six weeks through 16 months, 17 months through 29 months, and 30 months through 12 years) that are slightly different from the categories established in Minnesota Statutes, 1989 supplement, section 245A.14, subdivision 6 (up to 16 months, 17 months to 30 months, and two and one-half years or greater). The changes are not substantive and are made only because the statutory language leaves out children who are exactly 16 months old and uses 30 months as the higher limit of one category and the lower of the next.

Subp. 4. Exception to staff ratio for ages 30 months through 12 years. It is necessary to give notice of the exception and the conditions under which the exception applies to make the rule parts governing drop-in child care programs consistent with the statutory provisions governing drop-in child care programs. The substance of the rule part can be found at Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6.

Subp. 5. Age category grouping. Part 9503.0075 necessarily includes provisions on age category grouping to be consistent with Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6. The last sentence of subpart 5 reflects and clarifies the explicit requirements of Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6.

In the first sentence of subpart 5, the commissioner exercises an option given the commissioner in 1989 First Special Session, section 10, subdivision 1. The special session legislation addressed the requirement in Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6 that drop-in programs **must** (emphasis added) provide care for children under 30 months of age in an area separated from older children. The amendment says the commissioner **may** (emphasis added) by rule require the separation that was previously mandated.

The commissioner has chosen to require that younger children be separated only when more than 20 children are present. This approach balances the need to protect the safety of younger children with the reasonableness of allowing license holders some flexibility in how they provide for that safety. Licensing division staff are familiar with one stiuation, for example, where care is provided in a setting that makes physical separation of areas by doors or walls impossible. The safety of youngsters in that setting is never in doubt because the number of children present at one time is low enough and the number of staff present as required by the staff ratios is high enough to ensure adequate supervision.

Using the presence of 21 children as the point where separation of younger children must begin is consistent with part 9503.0040, subpart 1 which sets 20 as the maximum group size for preschoolers. The reasonableness of that number was established by research and other data submitted in the original rulemaking process. It is reasonable to adopt the maximum group size for preschoolers as the standard for when to separate, according to licensing division staff who monitor drop-in care, because preschoolers (ages 30 months to five years) are the age group most heavily represented in drop-in care.

Subp. 6. Staff distribution. Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6 provides that drop-in programs serving both infants and older children may use assistant teachers to supervise children up to 30 months of age as long as other staff members are present in appropriate ratios. It is necessary for the rule provisions to reflect this option in order for the rule to be consistent with statute. Rule 3 as adopted does not offer the option but requires instead that a teacher supervise each group.

Item A expresses the option by specifying that the first staff person needed to meet the 1:4 ratio required for infants and the 1:7 ratio required for children 17 to 29 months have at least the qualifications of an assistant teacher. The staffing configuration is repeated three times rather than summarized in the belief that stating the requirement explicitly facilitates compliance with the requirement.

Alternating assistant teachers and aides one-for-one is reasonable because that pattern 1) allows the assistant teacher option permitted by statute; and 2) compensates some for losing the teacher currently required by the rule by retaining an overall higher level of trained staff than would result if an assistant teacher were required only for every two or three aides.

The requirements in item B for the supervision of children 30 months and older are taken directly from Minnesota Statutes, 1989 Supplement, section 245A.14, subdivision 6. The requirements are both necessary and reasonable because they bring the rule part into conformity with statute.

9503.0170. LICENSING PROCESS.

Subp. 6. Variances. Opening the three referenced provisions to the variance request process is necessary to allow access to remedies for the occasional atypical situation where complying with the provisions would not necessarily achieve the effect intended. These provisions were excluded from the variance request process in the original rulemaking process because the provisions' effect on certain programs and situations was not anticipated.

It is reasonable to consider requests for variances from the staff distribution requirements of part 9503.0040, subpart 2, item D and the age category grouping requirements of part 9503.0040, subpart 3, item B, subitem (1). Under certain circumstances, it may be possible to relax the requirements and impose less burden on the provider without sacrificing the ability of the provider to achieve the rule's intended effect, that of adequately providing for supervision.

Similarly, centers situated in rural areas need the flexibility of being able to request a variance to the requirements of part 9503.0150, item E. The referenced item requires an additional adult besides the driver to be present in center vehicles transporting children and establishes one hour as the maximum time allowed per one way trip. Requiring two adults in each of several buses that a center might send into rural areas may be cost prohibitive. Moreover, it may be difficult to find enough personnel to meet the staffing requirement. It is therefore reasonable for the commissioner to consider granting a variance that proposes other alternatives such as having a CB radio or telephone in the vehicle to enable the driver to call for help if necessary.

It is also not always feasible in rural areas, particularly when winter driving conditions make driveways and country roads difficult to navigate, for a bus to complete its total route in an hour's time. If children picked up at the beginning of the route occasionally have to ride longer than the one hour per one way trip required by the rule as adopted, it is reasonable to promote flexibility in the application of the rule parts by allowing the center to request a variance.

Expert Witnesses

If the proposed amendments should go to public hearing, the department does not plan to use outside expert witnesses to testify on its behalf.

Small Business Consideration

The requirements of Minnesota Statutes, section 14.115 do not apply to these rule parts since day care centers are specifically exempt from section 14.115 under subdivision 7(c).

Date: 1/26/90

ANN WYNIA
COMMISSIONER OF HUMAN SERVICES