

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

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DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: March 4, 1991

TO: JIM SCHMIDT
Department of Human Services

FROM: CHARLENE HATCHER
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-9422

SUBJECT: In the Matter of the Adopted Rule Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functins of County and Private Agencies

The above-referenced rule has been approved as to its legality by the Attorney General on March 1, 1991.

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:sc
Enclosures
cc: Gail Olson
William Brown, Chief Judge
MaryAnn Hruby

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies Minnesota Rules, parts 9543.0010 to 9543.0150

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

(1) Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, sections 245A.09 and 245A.16.

(2) Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and 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, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON OCTOBER 4, 1990 UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between September 27, 1990 and October 3, 1990 at (612) 296-7815.

(5) Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to: Jim Schmidt, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on September 26, 1990.

(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) A free copy of this rule is available upon request for your review from: Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816 or by calling (612) 296-7454.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

(11) The purpose of the proposed rule is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs and to establish minimum standards for performing licensing functions related to those rules. The proposed rule affects county agencies performing family day care, adult foster care, and child foster care licensing functions and private agencies authorized to perform child foster care licensing functions.

The proposed rule identifies the purpose of the rule and its applicability to county and private agencies; defines words and phrases that have meanings specific to the rule; identifies specific licensing functions delegated to county and private agencies; sets forth procedures for handling license applications, including information that must be given to prospective applicants, licensing study requirements, and standards for making licensing recommendations; establishes procedures for variances; establishes additional licensing requirements for foster care programs; establishes requirements for investigating allegations of licensing violations; establishes procedures governing unlicensed programs that are required to be licensed; establishes requirements for issuing correction orders; establishes standards for recommending negative licensing actions; requires agencies to enforce orders of the commissioner; sets forth procedures that county agencies must comply with when representing the commissioner in contested cases; establishes certain administrative requirements; sets forth procedures governing certification of county agencies; and sets forth procedures for authorizing private agencies to perform licensing functions.

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

(13) The adoption of this rule will increase aggregate local public body spending by over $100,000 in each of the first two years

following the rule's adoption. See the fiscal note attached to this notice which contains the Department's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule.

(9) If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered 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 Jim Schmidt, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

DATED: 8-8-90

ANN WYNIA
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Rules of the Department of Human Services Relating to Licensing Functions of County and Private Agencies; Parts 9543.0010 to 0543.0150

FISCAL NOTE

I. SUMMARY OF COSTS

	Local costs	State costs
Year One	$368,799	$0
Year Two	$368,799	$0
Total	$737,598	$0

The Department sent a survey to the 87 county human service agencies to gather fiscal information concerning this rule. See part III for details on the methodology used in estimating costs. There was considerable variation in rule parts identified by the counties as resulting in "new" costs. Except for a current rule requirement under the child foster care rule and a requirement to track license progress (which has since been modified), no single rule requirement was identified as particularly costly. The estimated local costs reflect the sum of many relatively small costs rather than the costs of one or two rule requirements. Major costs identified by rule requirement include:

A. Part 9543.0060, subpart 4, Foster Care Licensing Study, $45,928.
B. Part 9543.0060, subpart 5, Duties of agency, $39,520.
C. Part 9543.0040, subpart 1, Licensure information, $35,068
D. Part 9543.0070, subpart 2, Timelines, $32,640.

The variation in costs identified by the counties indicates a lack of licensing uniformity and serves to reinforce the need for this rule. The costs identified for the second year are estimated to be the same as those identified by the counties for the first year. See Part III for a detailed breakdown of costs.

II. BACKGROUND INFORMATION ON THE RULE AND AVAILABLE FUNDS

1. PURPOSE OF THE RULE

The purpose of parts 9543.0010 to 9543.0150 is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs; to establish minimum standards for performing licensing functions related to those rules; and to certify county agencies and authorize private agencies that are in compliance with this rule.

RULE 13 FISCAL NOTE

2. STATUTORY AUTHORITY FOR THE RULE

Minnesota Statutes, sections 245A.09 and 245A.16.

3. REASONS FOR ADOPTION OF THE RULE

Rule adoption is necessary to implement Minnesota Statutes, sections 245A.16 and 466.131.

Minnesota Statutes, section 245A.16, subdivision 6, of the Human Services Licensing Act requires the commissioner to ensure that licensing rules are uniformly enforced throughout the state by reviewing county and private agencies for compliance with applicable laws and rules. County agencies that comply with section 245A.16, are to be certified by the commissioner.

Minnesota Statutes, section 466.131 states, "After July 1, 1987, a municipality is an employee of the state for purposes of the indemnification provision of section 3.736, subdivision 9, when the municipality is required by the public welfare licensing act and rules adopted under it to inspect or investigate a provider, and the municipality has been duly certified under standards for certification developed by the commissioner of human services."

4. AVAILABILITY OF FUNDS

Family systems (child foster care, adult foster care, and family day care programs) licensing functions are funded through CSSA block grant funds and local revenue sources. The CSSA Block Grant for fiscal year 1990 is $50.4 million. Although CSSA block grant funds may be used to perform licensing functions, social services needs exceed available CSSA funding.

5. PROJECTED STATE AND LOCAL COSTS

A. STATE COSTS

Minnesota Statutes, section 245A.16 requires the commissioner to provide instruction and technical assistance to county and private agencies subject to section 245A.16 and to ensure that rules are uniformly enforced throughout the state by reviewing each county and private agency for compliance with section 245A.16 and other applicable laws and rules at least biennially. The legislature appropriated funds for three FTEs to enable the department to comply with the requirements in section 245A.16. No additional state costs are anticipated with the adoption of this rule.

B. LOCAL COSTS

Additional local costs with the adoption of this rule are estimated to be $368,799 per year.

Family systems licensing functions are performed by county and private agencies (private agencies recommend licensure of child foster care programs only). The purpose of Rule 13 is to ensure licensing functions

are uniformly performed throughout the state. Rule 13 sets forth minimum standards for performing these licensing functions. The licensing functions implement licensure of Family Systems: Family Day Care governed by Minnesota Rules, parts 9502.0315 to 9502.0445; Family Foster Care, Minnesota Rules, parts 9545.0010 to 9545.0260; and Adult Foster Care, Minnesota Rules, parts 9555.5105 to 9555.6265.

C. PRIVATE AGENCY COSTS

Private agencies perform licensing functions for child foster care programs. The 1,062 programs supervised by private agencies are 6 percent of the total Family Systems program licenses. Cost were not identified for private agencies since Minnesota Statutes, section 14.11 only requires a fiscal estimate for public bodies and private agencies are not required to perform licensing functions.

III. METHODOLOGY USED IN DETERMINING COSTS UNDER NEW RULE

The department in REQUEST BULLETIN NO. 89-50C requested county agencies to review a draft of Rule 13 and identify additional agency costs directly attributable to the rule by specific rule part. Attached is a copy of Request Bulletin No. 89-50C.

Use of the request bulletin afforded counties an opportunity to provide fiscal information to the department on the cost of the rule. Identification of additional costs by specific rule part permitted the department to reexamine proposed rule parts to determine if less costly alternatives were available to achieve the objective.

Forty-nine counties responded to the survey. Seven counties plus the foster care program in Dakota County did not identify specific cost areas but indicated compliance with Rule 13 would result in additional costs or additional staffing. Since it is not possible to determine in those instances whether costs are the result of new requirements or the cost of complying with existing requirements in program rules and statutes, the department did not include those costs estimates in the fiscal note. The seven counties and Dakota County's foster care program were treated as non-reporting counties.

Thirty counties identified as an additional cost the requirement to track license progress (part 9543.0040, subpart 6). Due to the number of counties identifying this requirement as an additional cost and the costs identified, this rule part has been modified. The commissioner will issue a form listing the required activities to simplify the agency's tracking process as well as enable the commissioner to monitor compliance with rule requirements. This change will result in lower costs to the counties than those initially identified.

In two rule parts high cost estimates were a result of misinterpretation of the rule requirements. The two rule parts were 9543.0060, subpart 5, item E and 9543.0090, subpart 4. Part 9543.0060, subpart 5, item E requires foster care providers have a means of contacting the agency 24 hours per day. Part 9543.0090, subpart 4 addresses compliance with correction orders. The department has subsequently modified the

proposed rule language to clarify these two rule requirements. Clarification of the two rule parts will result in lower costs to the county than those initially identified.

Some counties identified current statutory or rule requirements as additional costs under Rule 13. Where an identified cost is clearly a statutory or existing rule requirement, that cost has not been included in this fiscal note as a Rule 13 cost.

To adjust total costs to account for counties that did not respond to the survey, the department used the ratio of the number of programs licensed by the reporting counties to the total number of programs licensed by all counties. The 41 reporting counties (excludes the 7 counties that did not provide cost breakdowns plus foster care in Dakota County) license approximately 75 percent of all Family Systems programs. Specifically, these counties license: 9,039 family day care programs; 2,186 child foster care programs; and 697 adult foster care programs.

Reported costs were adjusted to provide an estimate of 100 percent of the costs had all counties responded to the survey, by dividing the total reported cost for each item by 75 percent.

Finally, there was considerable variation in rule parts that counties identified as new cost areas. Unless at least 10 percent of the counties responding (5 or more) identified a requirement as a new cost, the cost was not treated as a new cost. Notwithstanding differences which may exist between counties, if 9 out of 10 counties are currently performing a licensing function and have not identified the requirement as a new cost, it is reasonable to assume the requirement is not a new cost.

TREATMENT OF INDIVIDUAL COST ITEMS.

1. Part 9543.0040 LICENSE APPLICATION PROCEDURES.

    1. Subpart 1. LICENSE APPLICATION PROCEDURES. $35,068

24 counties identified additional costs totalling $26,301. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $35,068.

    2. Subp. 2 LICENSING STUDY. $23,683

17 counties identified additional costs totalling $124,212. Hennepin County's estimate of $50,000 for systems automation was deleted since that cost is not directly related to any Rule 13 requirement. Ramsey County's estimate of $56,450 was deleted since costs identified are statutory requirements (background study - 245A.04, subd. 3; and evaluation of a program - 245A.04, subd. 4). The adjusted cost estimate is $17,762. If the adjusted costs represent 75 percent of the total costs to all counties, 100 percent equals $23,683.

3. Subp. 5 LICENSE RENEWAL. $21,565

8 counties identified additional costs totalling $16,174. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $21,565.

4. Subp. 6. TRACKING LICENSING PROCESS. $8,797

30 counties identified additional costs totalling $87,967. Due to the number of counties identifying this subpart as an additional cost and the estimates reported, the proposed rule was modified. The modification requires the use of a checklist issued by the department to track licensing progress. Presumably, agencies currently track license applications by manually checking the file's content. The use of a checklist will provide a quick and simple means of providing an inventory of what is in a license file. The use of a checklist should have a minimal fiscal impact on county agencies. The cost figure above represents approximately 10 percent of the costs originally reported.

2. Part 9543.0050 VARIANCE REQUESTS.

Subpart 1. Variance information. $0

Less than 10 percent of the responding counties identified subpart 1 as new a cost.

Subp. 2. Variance procedures. $3,812

7 counties identified additional costs totalling $2,859. If the cost estimates represent 75 percent of the total costs of all counties, 100 percent equals $3,812.

Subp. 3. Foster care capacity variance at request of agency. $4,340

8 counties identified additional costs totalling $3,255. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $4,340

3. Part 9543.0060 LICENSING FOSTER CARE PROGRAMS.

1. Subp. 2. Program information. $5,363

10 counties identified additional costs totalling $4,022. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $5,363.

2. Subp. 3. Orientation and preplacement training. $11,776

7 counties identified additional costs totalling $8,832. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $11,776.

3. Subp. 4. Licensing study. $45,928

13 counties identified additional costs totalling $34,446. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $45,928.

4. Subp. 5. General requirements. $39,520

18 counties identified additional costs totalling $397,999. However, estimates for Hennepin, Ramsey, Dakota, and Anoka counties identified costs for conducting 6 licensing or placement visits to the foster home during the first six months after the first placement. This is a current rule requirement (Minnesota Rules, part 9545.0100, item B). Therefore, those cost estimates were excluded since they are not a new cost attributable to Rule 13. The adjusted cost estimate is $29,640. If the adjusted cost represents 75 percent of the total costs to all counties, 100 percent equals $39,520.

4. Part 9543.0070 INVESTIGATION OF LICENSED PROGRAMS.

1. Subp. 2. Timelines. $32,640

10 counties identified additional costs totalling $24,480. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $32,640.

2. Subp. 5. Recording complaints and investigations. $27,591

19 counties identified additional costs totalling $20,693. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $27,591.

5. Part 9543.0080 COUNTY INVESTIGATION OF UNLICENSED PROGRAMS.

1. Subpart 1. Unlicensed family day care and adult foster care. $0

9 counties identified additional costs totalling $43,275. Ramsey County's estimate of $40,050 was 93 percent of the costs reported. The requirement in subpart 1 is consistent with current family day care rule requirements under Minnesota Rules, part 9502.0335, subpart 16 and adult foster care rule requirements under Minnesota Rule, part 9555.5415 subpart 2. No effort has been made to reconcile Ramsey County's unusually high estimate. The identified costs estimates have not been treated as "new" costs under Rule 13.

2. Subp. 2. Unlicensed child foster care. $0

Less than 10 percent of the responding counties identified subpart 2 as a new cost.

6. Part 9543.0090 CORRECTION ORDERS.

1. Subpart 1. Correction orders; training. $26,931

24 counties identified additional costs totalling $20,198. If the estimates represent 75 percent of the total costs to all counties, 100 percent is $26,931.

2. Subp. 4. Compliance with correction order. $28,549

17 counties identified additional costs totalling $114,194. A number of counties identified very high costs because they interpreted the rule to require on-site visits after every correction order issued. The rule has been clarified to require the license holder to provide verification of compliance with a correction order. Currently, license holders return a signed copy of the correction order when the correction has been made. This practice can continue. Requiring the license holder to submit verification of correction will reduce the fiscal impact on the counties. The estimated cost above is 25 percent of the costs originally reported.

7. Part 9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.

1. Subp. 2. Immediate suspension of license. $0

Less than 10 percent of the responding counties identified subpart 2 as a new cost.

2. Subp. 5. License probation. $3,351

5 counties identified additional costs totalling $2,513. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $3,351.

3. Subp. 6. Notice to parents of negative licensing actions. $0

Less than 10 percent of the responding counties identified subpart 6 as a new cost.

8. Part 9543.0110 ENFORCING ORDERS OF THE COMMISSIONER.

1. Subpart 1. Agency enforcement of commissioners orders. $0

Less than 10 percent of the responding counties identified subpart 1 as a new cost.

2. Subp. 2. Sanctioned programs. $3,652

5 counties identified additional costs totalling $2,739. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $3,652.

3. Subp. 3. Programs on probation. $21,024

9 counties identified additional costs totalling $15,768. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $21,024.

9. Part 9543.0120 REPRESENTING THE COMMISSIONER IN CONTESTED CASE PROCEEDINGS.

12 counties identified additional costs for "Representing the commissioner in contested case proceedings" and "Informal dispositions". Minnesota Statutes, section 388.051, subdivision 1 requires the county attorney to appear in all cases in which the county is a party. Part 9543.0120 will not result in new costs for the county beyond requirements already in statute.

10. Part 9543.0130 ADMINISTRATIVE REQUIREMENTS.

1. Subpart 1. Maintaining records. $9,940

5 counties identified additional costs totalling $7,455. If the cost estimates represent 75 percent of the costs to all the counties, 100 percent equals $9,940.

2. Subp. 3. Training requirements. $15,269

17 counties identified additional costs totalling $11,452. If the costs represent 75 percent of the total costs to all counties, 100 percent equals $15,269.

Estimated additional local costs are $368,799 for each of the two years following adoption of this rule.

DATE: 8-8-90

ANN WYNIA
COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies Minnesota Rules, parts 9543.0010 to 9543.0150

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room 500 South, State Office Building, 100 Constitution Avenue, St. Paul, Minnesota on October 4, 1990 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between September 27, 1990 and October 3, 1990 at (612) 296-7815.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon L. Lunde, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7645, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of

the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

The purpose of the proposed rule is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs and to establish minimum standards for performing licensing functions related to those rules. The proposed rule affects county agencies performing family day care, adult foster care, and child foster care licensing functions and private agencies authorized to perform child foster care licensing functions.

The proposed rule identifies the purpose of the rule and its applicability to county and private agencies; defines words and phrases that have meanings specific to the rule; identifies specific licensing functions delegated to county and private agencies; sets forth procedures for handling license applications, including information that must be given to prospective applicants, licensing study requirements, and standards for making licensing recommendations; establishes procedures for variances; establishes additional licensing requirements for foster care programs; establishes requirements for investigating allegations of licensing violations; establishes procedures governing unlicensed programs that are required to be licensed; establishes requirements for issuing correction orders; establishes standards for recommending negative licensing actions; requires agencies to enforce orders of the commissioner; sets forth procedures that county agencies must comply with when representing the commissioner in contested cases; establishes certain administrative requirements; sets forth procedures governing certification of county agencies; and sets forth procedures for authorizing private agencies to perform licensing functions.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, sections 245A.09 and 245A.16. The adoption of this rule will increase aggregate local public body spending by over $100,000 in each of the first two years following the rule's adoption. See the fiscal note attached to this notice which contains the Department's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, or by calling (612) 296-7454. This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Jim Schmidt, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155-3816.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

DATED: 8-8-90

Ann Wynia

ANN WYNIA
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Rules of the Department of Human Services Relating to Licensing Functions of County and Private Agencies; Parts 9543.0010 to 0543.0150

FISCAL NOTE

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B. Part 9543.0060, subpart 5, Duties of agency, $39,520.
C. Part 9543.0040, subpart 1, Licensure information, $35,068
D. Part 9543.0070, subpart 2, Timelines, $32,640.

The variation in costs identified by the counties indicates a lack of licensing uniformity and serves to reinforce the need for this rule. The costs identified for the second year are estimated to be the same as those identified by the counties for the first year. See Part III for a detailed breakdown of costs.

II. BACKGROUND INFORMATION ON THE RULE AND AVAILABLE FUNDS

1. PURPOSE OF THE RULE

The purpose of parts 9543.0010 to 9543.0150 is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs; to establish minimum standards for performing licensing functions related to those rules; and to certify county agencies and authorize private agencies that are in compliance with this rule.

2. STATUTORY AUTHORITY FOR THE RULE

Minnesota Statutes, sections 245A.09 and 245A.16.

3. REASONS FOR ADOPTION OF THE RULE

Rule adoption is necessary to implement Minnesota Statutes, sections 245A.16 and 466.131.

Minnesota Statutes, section 245A.16, subdivision 6, of the Human Services Licensing Act requires the commissioner to ensure that licensing rules are uniformly enforced throughout the state by reviewing county and private agencies for compliance with applicable laws and rules. County agencies that comply with section 245A.16, are to be certified by the commissioner.

Minnesota Statutes, section 466.131 states, "After July 1, 1987, a municipality is an employee of the state for purposes of the indemnification provision of section 3.736, subdivision 9, when the municipality is required by the public welfare licensing act and rules adopted under it to inspect or investigate a provider, and the municipality has been duly certified under standards for certification developed by the commissioner of human services."

4. AVAILABILITY OF FUNDS

Family systems (child foster care, adult foster care, and family day care programs) licensing functions are funded through CSSA block grant funds and local revenue sources. The CSSA Block Grant for fiscal year 1990 is $50.4 million. Although CSSA block grant funds may be used to perform licensing functions, social services needs exceed available CSSA funding.

5. PROJECTED STATE AND LOCAL COSTS

A. STATE COSTS

Minnesota Statutes, section 245A.16 requires the commissioner to provide instruction and technical assistance to county and private agencies subject to section 245A.16 and to ensure that rules are uniformly enforced throughout the state by reviewing each county and private agency for compliance with section 245A.16 and other applicable laws and rules at least biennially. The legislature appropriated funds for three FTEs to enable the department to comply with the requirements in section 245A.16. No additional state costs are anticipated with the adoption of this rule.

B. LOCAL COSTS

Additional local costs with the adoption of this rule are estimated to be $368,799 per year.

Family systems licensing functions are performed by county and private agencies (private agencies recommend licensure of child foster care programs only). The purpose of Rule 13 is to ensure licensing functions

are uniformly performed throughout the state. Rule 13 sets forth minimum standards for performing these licensing functions. The licensing functions implement licensure of Family Systems: Family Day Care governed by Minnesota Rules, parts 9502.0315 to 9502.0445; Family Foster Care, Minnesota Rules, parts 9545.0010 to 9545.0260; and Adult Foster Care, Minnesota Rules, parts 9555.5105 to 9555.6265.

C. PRIVATE AGENCY COSTS

Private agencies perform licensing functions for child foster care programs. The 1,062 programs supervised by private agencies are 6 percent of the total Family Systems program licenses. Cost were not identified for private agencies since Minnesota Statutes, section 14.11 only requires a fiscal estimate for public bodies and private agencies are not required to perform licensing functions.

III. METHODOLOGY USED IN DETERMINING COSTS UNDER NEW RULE

The department in REQUEST BULLETIN NO. 89-50C requested county agencies to review a draft of Rule 13 and identify additional agency costs directly attributable to the rule by specific rule part. Attached is a copy of Request Bulletin No. 89-50C.

Use of the request bulletin afforded counties an opportunity to provide fiscal information to the department on the cost of the rule. Identification of additional costs by specific rule part permitted the department to reexamine proposed rule parts to determine if less costly alternatives were available to achieve the objective.

Forty-nine counties responded to the survey. Seven counties plus the foster care program in Dakota County did not identify specific cost areas but indicated compliance with Rule 13 would result in additional costs or additional staffing. Since it is not possible to determine in those instances whether costs are the result of new requirements or the cost of complying with existing requirements in program rules and statutes, the department did not include those costs estimates in the fiscal note. The seven counties and Dakota County's foster care program were treated as non-reporting counties.

Thirty counties identified as an additional cost the requirement to track license progress (part 9543.0040, subpart 6). Due to the number of counties identifying this requirement as an additional cost and the costs identified, this rule part has been modified. The commissioner will issue a form listing the required activities to simplify the agency's tracking process as well as enable the commissioner to monitor compliance with rule requirements. This change will result in lower costs to the counties than those initially identified.

In two rule parts high cost estimates were a result of misinterpretation of the rule requirements. The two rule parts were 9543.0060, subpart 5, item E and 9543.0090, subpart 4. Part 9543.0060, subpart 5, item E requires foster care providers have a means of contacting the agency 24 hours per day. Part 9543.0090, subpart 4 addresses compliance with correction orders. The department has subsequently modified the

proposed rule language to clarify these two rule requirements. Clarification of the two rule parts will result in lower costs to the county than those initially identified.

Some counties identified current statutory or rule requirements as additional costs under Rule 13. Where an identified cost is clearly a statutory or existing rule requirement, that cost has not been included in this fiscal note as a Rule 13 cost.

To adjust total costs to account for counties that did not respond to the survey, the department used the ratio of the number of programs licensed by the reporting counties to the total number of programs licensed by all counties. The 41 reporting counties (excludes the 7 counties that did not provide cost breakdowns plus foster care in Dakota County) license approximately 75 percent of all Family Systems programs. Specifically, these counties license: 9,039 family day care programs; 2,186 child foster care programs; and 697 adult foster care programs.

Reported costs were adjusted to provide an estimate of 100 percent of the costs had all counties responded to the survey, by dividing the total reported cost for each item by 75 percent.

Finally, there was considerable variation in rule parts that counties identified as new cost areas. Unless at least 10 percent of the counties responding (5 or more) identified a requirement as a new cost, the cost was not treated as a new cost. Notwithstanding differences which may exist between counties, if 9 out of 10 counties are currently performing a licensing function and have not identified the requirement as a new cost, it is reasonable to assume the requirement is not a new cost.

TREATMENT OF INDIVIDUAL COST ITEMS.

1. Part 9543.0040 LICENSE APPLICATION PROCEDURES.

    1. Subpart 1. LICENSE APPLICATION PROCEDURES. $35,068

24 counties identified additional costs totalling $26,301. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $35,068.

    2. Subp. 2 LICENSING STUDY. $23,683

17 counties identified additional costs totalling $124,212. Hennepin County's estimate of $50,000 for systems automation was deleted since that cost is not directly related to any Rule 13 requirement. Ramsey County's estimate of $56,450 was deleted since costs identified are statutory requirements (background study - 245A.04, subd. 3; and evaluation of a program - 245A.04, subd. 4). The adjusted cost estimate is $17,762. If the adjusted costs represent 75 percent of the total costs to all counties, 100 percent equals $23,683.

3. Subp. 5 LICENSE RENEWAL. $21,565

8 counties identified additional costs totalling $16,174. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $21,565.

4. Subp. 6. TRACKING LICENSING PROCESS. $8,797

30 counties identified additional costs totalling $87,967. Due to the number of counties identifying this subpart as an additional cost and the estimates reported, the proposed rule was modified. The modification requires the use of a checklist issued by the department to track licensing progress. Presumably, agencies currently track license applications by manually checking the file's content. The use of a checklist will provide a quick and simple means of providing an inventory of what is in a license file. The use of a checklist should have a minimal fiscal impact on county agencies. The cost figure above represents approximately 10 percent of the costs originally reported.

2. Part 9543.0050 VARIANCE REQUESTS.

Subpart 1. Variance information. $0

Less than 10 percent of the responding counties identified subpart 1 as new a cost.

Subp. 2. Variance procedures. $3,812

7 counties identified additional costs totalling $2,859. If the cost estimates represent 75 percent of the total costs of all counties, 100 percent equals $3,812.

Subp. 3. Foster care capacity variance at request of agency. $4,340

8 counties identified additional costs totalling $3,255. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $4,340

3. Part 9543.0060 LICENSING FOSTER CARE PROGRAMS.

1. Subp. 2. Program information. $5,363

10 counties identified additional costs totalling $4,022. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $5,363.

2. Subp. 3. Orientation and preplacement training. $11,776

7 counties identified additional costs totalling $8,832. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $11,776.

3. Subp. 4. Licensing study. $45,928

13 counties identified additional costs totalling $34,446. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $45,928.

4. Subp. 5. General requirements. $39,520

18 counties identified additional costs totalling $397,999. However, estimates for Hennepin, Ramsey, Dakota, and Anoka counties identified costs for conducting 6 licensing or placement visits to the foster home during the first six months after the first placement. This is a current rule requirement (Minnesota Rules, part 9545.0100, item B). Therefore, those cost estimates were excluded since they are not a new cost attributable to Rule 13. The adjusted cost estimate is $29,640. If the adjusted cost represents 75 percent of the total costs to all counties, 100 percent equals $39,520.

4. Part 9543.0070 INVESTIGATION OF LICENSED PROGRAMS.

1. Subp. 2. Timelines. $32,640

10 counties identified additional costs totalling $24,480. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $32,640.

2. Subp. 5. Recording complaints and investigations. $27,591

19 counties identified additional costs totalling $20,693. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $27,591.

5. Part 9543.0080 COUNTY INVESTIGATION OF UNLICENSED PROGRAMS.

1. Subpart 1. Unlicensed family day care and adult foster care. $0

9 counties identified additional costs totalling $43,275. Ramsey County's estimate of $40,050 was 93 percent of the costs reported. The requirement in subpart 1 is consistent with current family day care rule requirements under Minnesota Rules, part 9502.0335, subpart 16 and adult foster care rule requirements under Minnesota Rule, part 9555.5415 subpart 2. No effort has been made to reconcile Ramsey County's unusually high estimate. The identified costs estimates have not been treated as "new" costs under Rule 13.

2. Subp. 2. Unlicensed child foster care. $0

Less than 10 percent of the responding counties identified subpart 2 as a new cost.

6. Part 9543.0090 CORRECTION ORDERS.

1. Subpart 1. Correction orders; training. $26,931

24 counties identified additional costs totalling $20,198. If the estimates represent 75 percent of the total costs to all counties, 100 percent is $26,931.

2. Subp. 4. Compliance with correction order. $28,549

17 counties identified additional costs totalling $114,194. A number of counties identified very high costs because they interpreted the rule to require on-site visits after every correction order issued. The rule has been clarified to require the license holder to provide verification of compliance with a correction order. Currently, license holders return a signed copy of the correction order when the correction has been made. This practice can continue. Requiring the license holder to submit verification of correction will reduce the fiscal impact on the counties. The estimated cost above is 25 percent of the costs originally reported.

7. Part 9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.

1. Subp. 2. Immediate suspension of license. $0

Less than 10 percent of the responding counties identified subpart 2 as a new cost.

2. Subp. 5. License probation. $3,351

5 counties identified additional costs totalling $2,513. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $3,351.

3. Subp. 6. Notice to parents of negative licensing actions. $0

Less than 10 percent of the responding counties identified subpart 6 as a new cost.

8. Part 9543.0110 ENFORCING ORDERS OF THE COMMISSIONER.

1. Subpart 1. Agency enforcement of commissioners orders. $0

Less than 10 percent of the responding counties identified subpart 1 as a new cost.

2. Subp. 2. Sanctioned programs. $3,652

5 counties identified additional costs totalling $2,739. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $3,652.

RULE 13 FISCAL NOTE

3. Subp. 3. Programs on probation. $21,024

9 counties identified additional costs totalling $15,768. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $21,024.

9. Part 9543.0120 REPRESENTING THE COMMISSIONER IN CONTESTED CASE PROCEEDINGS.

12 counties identified additional costs for "Representing the commissioner in contested case proceedings" and "Informal dispositions". Minnesota Statutes, section 388.051, subdivision 1 requires the county attorney to appear in all cases in which the county is a party. Part 9543.0120 will not result in new costs for the county beyond requirements already in statute.

10. Part 9543.0130 ADMINISTRATIVE REQUIREMENTS.

1. Subpart 1. Maintaining records. $9,940

5 counties identified additional costs totalling $7,455. If the cost estimates represent 75 percent of the costs to all the counties, 100 percent equals $9,940.

2. Subp. 3. Training requirements. $15,269

17 counties identified additional costs totalling $11,452. If the costs represent 75 percent of the total costs to all counties, 100 percent equals $15,269.

Estimated additional local costs are $368,799 for each of the two years following adoption of this rule.

DATE: 8-8-90

ANN WYNIA
COMMISSIONER OF HUMAN SERVICES

CH

RULE REVIEW CHECKLIST

File No. 1798
DATE RECEIVED 2-15-91
REVIEW DATE 2-25-91
DUE DATE 3-1-91
(DIS)APPROVED 3-1-91
WITHDRAWN _____

Docket No. 05 0009 0884
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 2-25-91
REVISOR (DIS)APPROVED 2-27-91
FILED W/SEC. OF STATE 3-1-91
RETURNED TO AGENCY 3-4-91

_____ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
December 19, 1988 Date published in State Register
_____ Comments

_____ Petition for Adoption of a Rule

_____ Board's Authorizing Resolution
_____ Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
245A.09 Statutory Authority 245A.16
_____ Small Business Statement
✓ Expenditure of public money statement
8-8-90 Signature

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
August 23, 1990 Dated 30/25 days before adoption
_____ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
August 27, 1990 Date 30/25 days before adoption

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

✓ Resolution Adopting
_____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
Feb 6, 1991 Date

✓ Written Requests, Submissions or Comments

_____ Declaration of Attorney
Hal Quinn Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable)

Affid... of ...

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Rules of the Department of Human Services Relating to Licensing Functions of County and Private Agencies; Parts 9543.0010 to 9543.0150

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

Laws of Minnesota 1987, chapter 333, replaced the Public Welfare Licensing Act, Minnesota Statutes, sections 245.781 to 245.812, with the Human Services Licensing Act. The Human Services Licensing Act, Minnesota Statutes, chapter 245A, continued many of the statutory requirements under the former licensing act. It also included new provisions. One of the new provisions authorized the delegation of licensing functions to county and private agencies and was codified under Minnesota Statutes, section 245A.16.

Under Minnesota Statutes, section 245A.16, subdivision 1, the Commissioner of Human Services is authorized to delegate licensing functions to county and private agencies. County and private agencies delegated licensing functions must comply with rules and directives of the commissioner governing those functions.

Under Minnesota Statutes, section 245A.16, subdivision 6, the commissioner must ensure that licensing rules are uniformly enforced throughout the state by reviewing county and private agencies for compliance with applicable laws and rules. County agencies that comply with section 245A.16, are to be certified by the commissioner.

The commissioner's certification of a county agency is important for two reasons. First, if a county agency fails to be certified by the commissioner, the commissioner is directed under Minnesota Statutes, section 245A.16, subdivision 6 to certify a reduction of up to 20 percent of the county's community social services act funding or an equivalent amount from state administrative aids. Second, certification is a prerequisite for a county to be indemnified by the state in connection with any claim arising from the county's performance of licensing functions under Minnesota Statutes, chapter 245A. Minnesota Statutes, section 466.131 states, in part, "After July 1, 1987, a municipality is an employee of the state for purposes of the indemnification provisions of section 3.736, subdivision 9, when the municipality is required by the public welfare licensing act and rules adopted under it to inspect or investigate a provider, and the municipality has been duly certified under standards for certification developed by the commissioner of human services." The proposed rule delegates to county agencies licensing functions related to the licensure of family day care, adult foster care, and

child foster care programs. Private agencies that comply with standards in the proposed rule may be authorized to perform licensing functions related to the licensure of child foster care programs. The rule also establishes standards for performance of those delegated functions to ensure that program rules are uniformly enforced by agencies.

County and private agencies' involvement in licensing activities preceded enactment of the Public Welfare Licensing Act of 1976. In 1987, the Human Services Licensing Act authorized the commissioner to set standards for county and private agencies that conduct licensing inspections of family day care and foster care programs on behalf of the state. In 1989, 12,173 family day care programs, 1,116 adult foster care programs and 3,199 child foster care programs were licensed based on recommendations from county agencies. An additional 1,062 child foster care programs were licensed based on recommendations from private agencies.

Agency requirements are currently set forth in program rules which include requirements for both applicants and agencies. For clarity, it makes sense to separate agency requirements from applicant requirements and standards. Rule 13 establishes uniform standards for performance of family day care, adult foster care, and child foster care licensing functions. Where appropriate, agency licensing requirements will be deleted from the individual program rule and incorporated in Rule 13.

A single rule will promote licensing uniformity and consistency statewide, reduce local administrative burdens, and facilitate department compliance review.

The proposed rule is being promulgated to comply with the statutory requirements under Minnesota Statutes, sections 245A.16 and 466.131.

SMALL BUSINESS CONSIDERATION IN RULEMAKING

The Department has considered the small business consideration requirements in Minnesota Statutes, section 14.115.

Minnesota Statutes, section 14.115, subdivision 7, paragraph (b) exempts agency rules that do not affect small business directly, including, but not limited to, rules relating to county or municipal administration of state and federal programs. Minnesota Statutes, section 14.115 does not apply to service businesses regulated by government bodies, for standards and costs, such as nursing homes, long-term care facilities, hospitals, providers of medical care, day care centers, groups homes, and residential care facilities. This rule is exempt from small business consideration under subdivision 7, paragraph (b) since it relates to county and private agency administration of a state program (human services program licensing).

The proposed rule governs performance of delegated licensing functions related to family day care, adult foster care, and child foster care programs. The rule does <u>not</u> impose requirements on license holders and applicants for licensure as a family day care, adult foster care,

or child foster care program. Adoption of the rule will not directly impact family day care, adult foster care, and child foster care license holders.

FISCAL NOTE DISCUSSION

The department in Request Bulletin No. 89-50C requested county agencies to review a draft of Rule 13 and identify additional agency costs directly attributable to the rule by specific rule part. Based on information supplied by the counties, additional local costs are estimated to be $368,799 per year. The fiscal note on Rule 13 provides a detailed discussion of costs by specific rule part.

RULE DEVELOPMENT PROCEDURES

In the development of the proposed rule, the Department followed the procedures mandated by the Administrative Procedures Act and internal department policies that insure maximum public input. Public input was sought through the Notice to Solicit Outside Opinion published December 19, 1988 in the State Register (13 S.R. 1451) and establishment of a rule advisory committee. The rule advisory committee consisted of 20 persons representing county and private agencies. Counties represented on the rule advisory committee were Blue Earth, Clay, Dakota, Jackson, Kandiyohi, Koochiching, Hennepin, Morrison, Ramsey, Stevens, St. Louis, and Washington. Private agencies represented on the rule advisory committee were Family Alternatives, Inc.; Lutheran Social Services of Minnesota; Professional Association of Treatment Homes; Amherst H. Wilder Foundation; and Volunteers of America Family Treatment Program. The Family Day Care Providers Association was invited to participate in the advisory committee meetings but did not attend any of the meetings.

The rule advisory committee met on September 7, 1989; September 21, 1989; October 5, 1989; and November 9, 1989. A list of the advisory committee members is attached.

9502.0335 **LICENSING PROCESS.**

Minnesota Rules, part 9502.0335, subpart 1, item C is being repealed because it is inconsistent with the proposed requirements in part 9543.0040, subpart 1 which sets forth license application procedures.

Part 9502.0335, subpart 3 is being repealed because it is inconsistent with the proposed requirements in part 9543.0040, subparts 2 to 5 which set forth requirements for a licensing study and for making licensing recommendations.

Part 9502.0335, subpart 14 is being repealed because it is inconsistent with the proposed requirements in part 9543.0040, subpart 6 which sets forth requirements for license renewal.

Part 9502.0335, subpart 16 is being repealed because it is inconsistent with the proposed requirements in part 9543.0080, subpart

1 which sets forth requirements for county investigation of unlicensed programs.

9543.0010 **PURPOSE AND APPLICABILITY.**

This part states the purpose of the rule and its applicability to county and private agencies.

Subpart 1. **Purpose.** This subpart is necessary to identify the purpose of the rule. The purpose of parts 9543.0010 to 9543.0150 is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs by establishing minimum standards that agencies must meet when performing the licensing functions related to those rules. Minnesota Statutes, section 245A.16, subdivision 6 requires the commissioner to ensure that rules are uniformly enforced throughout the state. It is necessary to establish standards for performance of licensing functions as a means of ensuring program rules are uniformly enforced by county and private agencies. The rule specifically cites family day care, adult foster care, and child foster care programs because these are the only programs for which county and private agencies perform licensing functions. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.09, subdivision 1 and section 245A.16, subdivision 6.

Subpart 2. **Full applicability to county agencies.** This subpart is necessary to identify rule parts that are applicable to county agencies. Parts 9543.0040 to 9543.0130 are applicable in their entirety to counties. The rule parts identify specific licensing requirements that must be complied with to ensure that rules are uniformly enforced. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.09, subdivision 1 and section 245A.16, subdivision 6.

Subpart 3. **Limited applicability to private agencies.** This subpart is necessary to identify rule parts that are applicable to private agencies. Private agencies perform only licensing functions related to child foster care. When performing licensing functions, counties and private agencies are held to the same standards. It is necessary that the standards be the same to ensure uniform enforcement. However, not all licensing functions have been delegated to the private agencies. Under Minnesota Statutes, section 245A.03, subdivision 3, unlicensed programs are a matter for the county attorney or attorney general; therefore, part 9543.0080 is not applicable to a private agency. In addition, authority to represent the commissioner in contested cases has not been delegated to private agencies. Therefore, part 9543.0120 is not applicable to private agencies. This subpart is reasonable because it clearly sets forth the rule parts that are applicable to private agencies and it is consistent with Minnesota Statutes, section 245A.09, subdivision 1 and section 245A.16, subdivision 6.

9543.0020 **DEFINITIONS.**

RULE 13 SNR

This part defines words and phrases that have meanings specific to parts 9543.0010 to 9543.0150, that otherwise may have several possible interpretations or that need exact definition to be consistent with statute or other department rules.

Subpart 1. **Scope.** This provision is necessary to clarify that the definitions apply to the entire sequence of parts 9543.0010 to 9543.0150. This subpart and the definitions that follow in subparts 2 to 21 are necessary to inform county and private agencies of the meaning of specific words used in this rule.

Subpart 2. **Abuse.** This definition is necessary to clarify a term used in the rule. Abuse of vulnerable adults is defined in Minnesota Statutes and requires reporting and investigation of the defined acts. Abuse in a licensed program is a license violation which must be investigated and may result in a negative licensing action. The definition of abuse is reasonable because it cites the statutory definitions of abuse under Minnesota Statutes, sections 626.557, subdivision 2, paragraph (d).

Subpart 3. **Agency.** This definition is necessary to clarify a term used in the rule. Agency means either a "county agency" or a "private agency". County agencies are delegated licensing functions related to family day care, adult foster care, and child foster care. Private agencies may be delegated licensing functions related to child foster care. Since county and private agencies may perform similar licensing functions and the rule requirements are the same, it is reasonable to use the generic term "agency" to shorten the length of the rule.

Subpart 4. **Applicant.** This definition is necessary to clarify a term used in the rule. Minnesota Statutes, section 245A.02, subdivision 3, defines "applicant" as an individual, corporation, partnership, voluntary association, controlling individual or other organization that has applied for licensure under sections 245A.01 to 245A.16 and the rules of the commissioner. Since an applicant for a family day care, child foster care, or adult foster care license is licensed under Minnesota Statutes, chapter 245A, it is reasonable to cite the statutory definition of "applicant" under Minnesota Statutes, section 245A.02, subdivision 3.

Subpart 5. **Authorized.** Minnesota Statutes, section 245A.16, subdivision 1 states, "County agencies and private agencies that have been designated or licensed by the commissioner to perform functions and activities ... shall comply with rules and directives of the commissioner governing those functions and this section." To ensure that program rules are uniformly enforced, it is necessary that private agencies comply with the requirements of parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110 and 9543.0130. This subpart is necessary to provide a term that means the private agency is in compliance with those rule provisions and has been licensed by the commissioner to perform the functions involved in licensing child foster care programs. It is reasonable to use a distinct term, "authorized" rather than "licensed" because of the confusion a single term would engender: "licensed" could refer either to the private

agency's license to perform licensing functions or to the license issued to the program by the commissioner.

Subpart 6. **Certification.** This definition is necessary to clarify a term used in the rule. Minnesota Statutes, section 245A.16 requires the commissioner to certify county agencies that comply with section 245A.16 and other applicable laws and rules. Minnesota Statutes, section 466.131 also states, "After July 1, 1987, a municipality is an employee of the state for purposes of the indemnification provisions of section 3.736, subdivision 9, when the municipality is required by the public welfare licensing act and rules adopted under it to inspect or investigate a provider, and the municipality has been duly certified under standards for certification developed by the commissioner of human services." Certification is the commissioner's written notice to a county agency that it is in compliance with requirements governing delegated licensing functions. This subpart is reasonable because it provide a descriptive term for the commissioner's written notice of compliance and is consistent with statutory terminology.

Subpart 7. **Commissioner.** This definition is necessary to clarify a term used in the rule. The commissioner is the official responsible for certifying county agencies that are in compliance with licensing requirements and for authorizing private agencies to perform licensing functions. The commissioner is the Commissioner of the Minnesota Department of Human Services or the commissioner's designated representative. It is necessary to include within the definition persons to whom the commissioner has the authority to delegate the commissioner's responsibilities since it is impossible for the commissioner herself to perform all the tasks assigned to her in statute. Including this delegation of responsibility in the definition serves to notify interested parties of the delegation. It is reasonable to shorten the term "Commissioner of the Department of Human Services or the commissioner's designated representative" to "commissioner" to shorten the length of the rule.

Subpart 8. **Complaint.** This definition is necessary to clarify a term used in the rule which may be subject to various interpretations. "Complaint" is defined as a report of an alleged license violation made to the agency about a program. This definition is reasonable because it defines "complaint" in terms of a violation of law or rule and provides a clear distinction between alleged licensing violations and general expressions of dissatisfaction or dislike.

Subpart 9. **County agency.** This definition is necessary to clarify a term used in the rule. The county agency is the agency delegated responsibility by the commissioner to perform licensing functions. The definition is reasonable because it cites the statutory definition of county agency under Minnesota Statutes, section 245A.02, subdivision 6.

Subpart 10. **Department.** This definition is necessary to clarify a term used in the rule and to identify the state agency which, under the direction of the commissioner, monitors compliance with Minnesota Statutes, chapter 245A and appropriate program rules. It is

reasonable to shorten "Minnesota Department of Human Services" to "department" to shorten the length of the rule.

Subpart 11. **Imminent danger.** This definition is necessary to clarify a term used in the rule. The definition here modifies the definition used in child protective services under Minnesota Rules, part 9560.0214, subpart 12, by including the term "vulnerable adult." It is necessary that the licensing definition of imminent danger be consistent with the definition used in child protection services to protect children served by licensed programs and to ensure consistency in actions taken to protect children at risk. It is also necessary to have a clear definition of "imminent danger" for vulnerable adults. It is reasonable to use the same "imminent danger" definition for vulnerable adults and children since both populations are vulnerable and unable to protect themselves from the dangers of abuse, neglect, and maltreatment.

Subpart 12. **License.** This definition is necessary to clarify a term used in the rule. A license is a certificate issued by the commissioner, authorizing a person to provide a particular program for a specified period of time. This definition is reasonable because it cites the statutory definition of license under Minnesota Statutes, section 245A.02, subdivision 8.

Subpart 13. **License holder.** This definition is necessary to clarify a term used in the rule. A license holder is the individual, corporation, partnership, voluntary association, or other organization that is legally responsible for the operation of a program. The definition is reasonable because it cites the statutory definition of license holder under Minnesota Statutes, section 245A.02, subdivision 9.

Subpart 14. **Maltreatment.** This definition is necessary to clarify a term used in the rule. The term maltreatment is used with respect to physical or sexual abuse or neglect of a child. The definition is reasonable because it cites the statutory definition of maltreatment under Minnesota Statutes, section 626.556, subdivision 10e.

Subpart 15. **Negative licensing action.** This definition is necessary to clarify a term used in the rule. "Negative licensing action" is a generic term for a licensing action involving denial of a license application, probation, suspension, revocation, or immediate suspension of a license. It is reasonable to use a generic term to describe these actions, because the requirements imposed on an agency before recommending one of these licensing actions are similar. The term negative licensing action is consistent with the program rule definitions found in Minnesota Rules, parts 9502.0341; 9545.0020, subpart 14; and 9555.6145.

Subpart 16. **Neglect.** This definition is necessary to clarify a term used in the rule. Neglect of a child or vulnerable adult is defined in Minnesota statutes requiring reporting and investigation of the defined acts. Neglect in a licensed program is a license violation which must be investigated and, if substantiated, will result in a negative licensing action. Since neglect of children or vulnerable

adults in a licensed program is a license violation, it is necessary to define the term. The definition is reasonable because it cites the statutory definition of neglect under Minnesota Statutes, sections 626.557, subdivision 2, paragraph (e) and 626.556, subdivision 2, paragraph (c).

Subpart 17. **Private agency.** This definition is necessary to clarify a term used in the rule. Minnesota Statutes, chapter 245A.02, subdivision 12, defines a private agency as an agency that places persons who cannot remain in their own homes in residential programs, foster care, or adoptive homes. Private agencies that place children are required to be licensed under Minnesota Rule, parts 9545.0750 to 9545.0830. Private agencies that place children are not affected by this rule unless they also perform child foster care licensing functions and are authorized to perform those functions under part 9543.0150. The definition is reasonable because it is consistent with Minnesota Statutes.

Subpart 18. **Program.** This definition is necessary to clarify a term used in the rule. The rule delegates licensing functions governing family day care, adult foster care, and child foster care programs and establishes uniform requirements for performing those licensing functions. Instead of repeating the phrase "family day care, adult foster care, and child foster care programs" throughout the rule, the generic term "program" is used in the rule to collectively refer to those programs. The definition is reasonable because it shortens the length of the rule.

Subpart 19. **Prospective applicant.** This definition is necessary to clarify a term used in the rule. By definition, an "applicant" is someone who has applied for licensure by signing a license application form. County and private agencies are often approached by individuals who express an interest in becoming licensed but, for any number of reasons, never sign a license application form. It is necessary to have a term to identify this population since county and private agencies are required to provide licensing information to these individuals so they can decide whether to become an applicant. This definition is reasonable because it provides a means of distinguishing individuals who express an interest in becoming licensed from applicants who have completed and signed a license application form.

Subpart 20. **Variance.** This definition is necessary to clarify a term used in the rule. A variance is written permission from the commissioner to temporarily depart from a standard specified in rule. The definition is consistent with the program definitions in part 9502.0315, subpart 31 and part 9555.5105, subpart 38 and similar to the definition of waiver under part 9545.0010, subpart 14. The definition is reasonable because it is consistent with Minnesota Statutes, section 245A.04, subdivision 9.

Subpart 21. **Violation.** This definition is necessary to clarify a term used in the rule. "Violation" is a generic term for the failure to comply with any applicable law or rule governing a program. A consequence of a violation is a correction order, fine, or negative licensing action. The definition is reasonable because it provides a

common term for those incidents or actions that will result in a correction order, fine or negative licensing action.

9543.0030 LICENSING FUNCTIONS.

This part identifies specific licensing functions delegated to county and private agencies.

Subpart 1. **Delegation to county agencies.** Minnesota Statutes, section 245A.16, authorizes the commissioner to delegate certain licensing functions to county agencies. This subpart is necessary to specify the delegated functions. County and private agencies currently perform the specified functions while the commissioner retains overall licensing authority.

Item A, accept and process license applications, is authorized by Minnesota Statutes, section 245A.16, subdivision 1 and section 245A.04, subdivision 1. See discussions under part 9543.0040.

Item B, conduct inspections, studies, and evaluations of programs, is authorized by Minnesota Statutes, section 245A.16, subdivisions 1 and 3 and section 245A.04, subdivisions 3, 4, 5, and 6. See discussions under part 9543.0040.

Item C, recommend approval or denial of applications for licensure, is authorized by Minnesota Statutes, section 245A.16, subdivision 1 and 3 and section 245A.05. See discussions under part 9543.0040.

Item D, process variance requests, is authorized by Minnesota Statutes, section 245A.16, subdivision 1 and section 245A.04, subdivision 9. See discussions under part 9543.0050.

Item E, monitor compliance with applicable licensing rules, is authorized by Minnesota Statutes, section 245A.16, subdivisions 1 and 2 and sections 245A.06 and 245A.07. See discussions under part 9543.0110.

Item F, investigate allegations of license violations, is authorized by Minnesota Statutes, section 245A.16, subdivision 2. See discussions under part 9543.0070.

Item G, investigate unlicensed programs, is authorized by Minnesota Statutes, section 245A.03, subdivision 3. See part 9543.0080.

Item H, issue correction orders, is authorized by Minnesota Statutes, section 245A.16, subdivision 1 and section 245A.06. See discussions under part 9543.0090.

Item I, recommend forfeiture orders and negative licensing actions, is authorized by Minnesota Statutes, section 245A.16, subdivision 1 and section 245A.05 and 245A.07. See discussions under part 9543.0100.

Item J, enforce orders of the commissioner, is authorized by Minnesota Statutes, section 245A.16, subdivision 4. See discussions under part 9543.0110.

Item K, represent the commissioner in contested case proceedings conducted under Minnesota Statutes, chapter 14, is required by Minnesota Statutes, section 245A.16, subdivision 4 [1990]. See discussions under part 9543.0120.

This subpart is reasonable because it clearly identifies the delegated licensing functions and is consistent with the Human Services Licensing Act.

Subpart 2. **Delegation to private agencies.** Minnesota Statutes, chapter 245A authorizes the commissioner to delegate performance of licensing functions to private agencies. This subpart is necessary to specify the licensing functions delegated by the commissioner to private agencies. These are limited to functions related to the licensure of child foster care. Foster care licensing functions delegated to private agencies are the same as those delegated to counties with the following exceptions:

1) Taking action against unlicensed programs. Minnesota Statutes, section 245A.03, paragraph (b) states:

"(b) If, after receiving notice that a license is required, the individual, corporation, partnership, voluntary association, other organization, or controlling individual has failed to apply for a license, the commissioner may ask the appropriate county attorney or the attorney general to begin proceedings to secure a court order against the continued operation of the program. The county attorney and the attorney general have a duty to cooperate with the commissioner."

No statutory requirements governing unlicensed programs apply to private agencies. Therefore private agencies are excluded from this function.

2) Representing the commissioner in contested cases. County attorneys are required by statute to appear in all cases in which the county is a party (Minnesota Statutes, section 388.051, subdivision 1, paragraph (a)) and to enforce and defend orders of the commissioner under Minnesota Statutes, section 245A.16, subdivision 4. No similar statutory requirement is placed on private agencies. Under Minnesota Statutes, section 8.06, the attorney general acts as the attorney for all state officers in matters pertaining to their official duties. Therefore, it is reasonable that the attorney general represent the commissioner when defending a negative action where the county is not a party. However, in order to effectively represent the agency in a case involving a foster care license holder supervised by a private agency, it is necessary that the private agency assist in preparation of the case. It is reasonable to require this assistance and cooperation by the private agency.

9543.0040 LICENSE APPLICATION PROCEDURES.

This part sets forth procedures for handling license applications, including information that must be given to prospective applicants; licensing study requirements; and standards for making licensing recommendations.

Subpart 1. **Licensure information.** This subpart is necessary to identify the license information that must be provided to prospective applicants. It is necessary to specify this information to ensure prospective applicants receive information to make informed decisions. The term "prospective applicant" is necessary to distinguish those individuals from "applicant". A prospective applicant is an individual who may be interested in applying for a license but has not taken the step of signing a formal license application. During committee discussions, county and private agencies indicated that they receive a large number of requests for licensure information from individuals who never follow through with an application for licensure. The agencies expressed concern about the expense of providing detailed licensing information to individuals with only casual interest in licensure. The informational requirements in item A, subitems (1) to (3) are reasonable because they ensure prospective applicants are informed of general licensing requirements, licensing processes, and licensing timetables without overly burdening county and private agencies.

Item A requires agencies to provide summary information about license requirements and a description of the licensing study process. Agencies are also required to inform applicants of the agency's timelines for processing license applications. A number of variables may affect the length of time it takes to process the license applications such as the number of pending requests, staffing levels, licensure requirements beyond the control of the agency, e.g. fire marshal inspections. Since a program must not operate without a license, it is reasonable that agencies inform applicants how long it will take to process the license application to prevent misunderstanding about how soon an applicant will be able to begin operation.

This item is reasonable because it is consistent with Minnesota Statutes, section 245A.04, subdivision 1, which requires the commissioner to provide the applicant information about the rule and requirements of other state agencies that affect the applicant. Item B requires agencies to provide prospective applicants a license application form upon request. This requirement is necessary to ensure that no one will be denied an opportunity to apply for a program license. Although a prospective applicant may not be eligible for licensure, an individual has a right to apply and, if a license is denied, to appeal that decision under Minnesota Statutes, section 245A.05. This item prevents arbitrary rejection by an agency and is consistent with Minnesota Statutes, sections 245A.04, subdivision 1 and 245A.05.

Item C requires the agency, upon receipt of a completed and signed application form, to provide an applicant a copy of the program rules.

It is reasonable that the applicant be given a copy of the program rule since the applicant must meet rule requirements to be licensed, and the summary of license requirements given to prospective applicants may not fully describe all licensing requirements. This item is reasonable because it is consistent with Minnesota Statutes, section 245A.04, subdivision 1.

Subpart 2. **Licensing study.** This subpart is necessary to establish criteria for performing a study of the applicant to determine eligibility for licensure. The licensing study consists of the background study; a home study; three letters of reference; reports from the fire marshal, building official, or health authority; and other reports and evaluations necessary to fully evaluate the applicant. These studies are consistent with current program licensure requirements.

A background study is required under Minnesota Statutes, section 245A.04, subdivision 3. Item A is reasonable because it is consistent with the statutory requirements for conducting a background study.

Minnesota Statutes, section 245A.04, subdivisions 4 and 6 require the commissioner to inspect and evaluate applicants for licensure. Items B through G are reasonable and consistent with statute, requiring the home study, letters of reference, reports from the fire marshal, building official, or health authority, and other reports necessary to evaluate the applicant. These requirements are currently in program rules: Minnesota Rules, parts 9502.0315 to 9502.0445; 9545.0010 to 9545.0260; and 9555.5105 to 9555.6265. Item D is reasonable to require the agency to obtain information about the previous license history of an applicant who was previously licensed by another agency. Previous license history is public data under Minnesota Statutes, section 13.46, subdivision 4, paragraph (b). The applicant's record with the earlier agency may indicate problem areas that should be explored in more detail as part of the licensing study. This requirement applies when the agency is aware that the applicant has been previously licensed, e.g., through self-disclosure by the applicant or notification from the state Licensing Division.

Subpart 3. **Background study.** Minnesota Statutes, section 245A.04, subdivision 3 requires that a background study be conducted of specified individuals who will have direct contact with persons served in licensed programs. This subpart is necessary to implement the statutory mandate in family day care, child foster care, and adult foster care programs. Although these background studies will eventually be handled by the state Licensing Division, it is not administratively feasible at the present time for the state agency to perform the approximately 20,000 family systems background studies required annually. It is reasonable to require the county and private agencies, which have been performing background studies for day care and foster care programs since 1985, to continue this function for the present and to establish procedures implementing the statutory mandate.

Item A is reasonable because it lists the individuals for whom a background study is required under Minnesota Statutes, section

245A.04, subdivision 3, paragraph (a). The records listed in item B, subitems (1), (3), and (4) are listed in Minnesota Statutes, section 245A.04, subdivision 3, paragraph (a). That statutory provision also requires the commissioner to investigate county agency records of abuse and neglect in licensed programs.

It is reasonable in subitem (2) to require a search of all county agency records of substantiated maltreatment and abuse and neglect, not just substantiated reports involving licensed programs. Frequently in family systems programs, only the license holder and/or family members interact with persons served in contrast to other licensed programs where staff change and abuse or neglect is less likely to be unnoticed or unreported. Further, as the name indicates, the nature of family systems programs is similar to the family itself. Therefore, it is necessary to conduct a background study that includes family as well as facility reports of substantiated abuse, neglect, and maltreatment, to ensure the safety and well-being of persons served in these programs.

Item C is reasonable because it informs agencies of the notice and reconsideration procedures specified in Minnesota Statutes, section 245A.04, subdivisions 3a and 3b and Minnesota Rules, parts 9543.3000 to 9543.3090 [Rule 11, governing background studies (proposed)]. It is reasonable to require the agency to inform the applicant that a disqualification is grounds for license denial as well as the availability of reconsideration; and to require the agency to make a recommendation whether the disqualification should be set aside, since the agency may have knowledge of factors relevant to reconsideration.

Subpart 4. **Completed application.** This subpart is necessary to clearly establish when a license application is complete. It is necessary to establish when an application is complete because of statutory timeframes. Minnesota Statutes, section 245A.16, subdivision 3 requires that the county or private agency forward its recommendation regarding the appropriate licensing action to the commissioner within 20 working days of receipt of a completed application. The commissioner is required under Minnesota Statutes, section 245A.04, subdivision 1, paragraph (a) to act on a completed application within 90 working days. An agency cannot make an appropriate licensing recommendation until it has received and reviewed all the information required under subpart 2. Therefore it is reasonable to define an application as completed when the studies, reports, and evaluations in subparts 2 and 3 have been completed and received by the agency.

Subpart 5. **Licensing recommendation.** Minnesota Statutes, section 245A.16, subdivision 3 requires that the county or private agency forward its recommendation to the commissioner. This subpart is necessary to establish standards for making licensing recommendations so that licensure standards are consistent statewide. Agencies can make one of three different recommendations identified in items A to C.

Item A requires an agency to recommend that the commissioner issue a license if an applicant fully complies with the laws and rules governing the program and is qualified for licensure.

Under item B, an agency may recommend that the commissioner issue a license and grant a variance. This recommendation could be appropriate when an applicant does not fully comply with the rules governing the program but could follow alternative equivalent measures that ensure the health and safety of persons receiving services. This item is consistent with the commissioner's authority to grant rule variances under Minnesota Statutes, section 245A.04, subdivision 9.

Item C requires an agency to recommend that the commissioner deny a license application if the applicant fails to fully comply with laws and rules governing the program and variance requirements cannot be met. Item C also requires an agency to submit evidence supporting its recommendation and provides examples of kinds of evidence to support a denial recommendation. This is reasonable to ensure the commissioner has adequate data to make an informed decision and to uphold a denial in case of appeal. Subitems (1) through (8) describe the type of data the commissioner needs to make a fully informed decision.

This subpart is reasonable because it provides county and private agencies clear standards for making licensing recommendations.

Subpart 6. **License Renewal.** This subpart is necessary to establish criteria for ensuring timely license renewals. Under Minnesota Statutes, section 245A.04, subdivision 7 a license expires on the day after the expiration date; if the license is not renewed by the expiration date a provider is operating an unlicensed program. If a day care license holder is operating an unlicensed program, the license holder will lose public funds such as state child care subsidy or federal food program funds. If the agency fails to perform its licensing functions in a timely manner, federal funding such as Title IV-E may be lost to an unlicensed program. This subpart is reasonable because it provides agencies maximum flexibility in scheduling license renewal studies while promoting continuity in program licensure. It is reasonable to require the agency to notify the license holder 30 days before the expiration date (Item A) because of the consequences of failure to renew on time as noted above. Thirty days provides the license holder sufficient time to submit an application for relicensure and for the agency to conduct the renewal study required item B and to make the recommendation required in item C.

Subpart 7. **License extension.** This subpart is necessary to clarify the situation of a licensed program that is under investigation or has an appeal pending on the date the license expires. It is reasonable to require the agency to notify the commissioner so that the license can be extended until the matter is resolved. This has been the practice of the state agency when a negative action is being appealed, and permits the license holders who are awaiting hearing to retain their license until the merits of the disputed issues are resolved. This right to continue to operate is implied in Minnesota Statutes, section 245A.07, which states that a license holder whose license is immediately suspended must immediately cease operation; however, no

similar mandate is included in the statutory provisions governing license suspension or revocation.

It is also reasonable to extend a license under investigation; this clarifies the status of the license so that, depending on the outcome of the investigation, whatever action is appropriate may be taken. It would be inconsistent with Minnesota Statutes, section 245A.08, subdivision 1, which requires consideration of the nature, severity and chronicity of the violation when imposing sanctions, to limit negative action to denial of a new license as opposed to revocation, suspension, or probation simply because the license had expired.

Subpart 8. **Tracking licensing progress.** Before the agency makes a licensing recommendation, a number of studies, reports, and evaluations must be completed. Not all of these activities are performed by the agency. Some are performed by the fire marshal, building inspector, etc. Therefore, it is necessary to require the agency to follow an application tracking system to ensure the licensing process proceeds in a timely manner and that applications do not get lost. This subpart is reasonable because it provides a means for agencies to monitor the status of license applications and for the commissioner to monitor the timeliness of the agency's licensing process.

The commissioner will be issuing a form listing the required activities which will simplify the agency's tracking process as well as enable the commissioner to monitor compliance with rule requirements and timelines.

As a practical matter, agencies already track license applications following a license application through the required studies, agency recommendation, and license issuance date. New requirements include a status update after 120 days from receipt of a signed application and, if an application is withdrawn, the date and circumstances of withdrawal.

It is necessary to be able to distinguish between incomplete applications and withdrawn applications to determine if applications are being processed in a timely manner. It is necessary to require recording withdrawals to ensure accurate tracking of licensing applications and to provide information to the agency and to the commissioner that may be useful in terms of program rule requirements, general and particular eligibility factors, appropriateness of withdrawal rather than denial, etc. Recording the withdrawal does not have to be elaborate; it may simply note the date of withdrawal and, if no reason is given, a notation that no reason was given for the withdrawal. This item(C) also ensures that information is maintained and available later, should the individual apply to another agency for licensure (See part 9543.0040, subpart 2, item D).

9543.0050 VARIANCE REQUESTS.

Subpart 1. **Variance information.** This subpart is necessary to identify information that must be included in a request for a variance

from a program rule requirement. This subpart is reasonable because it is consistent with the variance requirements under part 9502.0335, subpart 8a governing family day care; part 9555.6125, subpart 9 governing adult foster care; and part 9545.0020, subpart 12 governing child foster care.

Subpart 2. **Variance procedures.** This subpart is necessary to establish a uniform procedure for handling variance requests. Item A requires that a request for a variance must be submitted by a family day care applicant or license holder in writing to the county agency. Item B requires the agency to forward the variance request information and the agency's recommendation to the commissioner within ten working days of receipt of the request except where variance authority has been granted to a county. Minnesota Rules, part 9502.0335, subpart 8b, provides that an agency may request that the commissioner delegate to the county agency the authority to grant variances to the standards governing licensing capacity, child/adult ratios and age distribution restrictions if the need for the variance is to cover short overlaps of time when children are entering or leaving a family day care residence or for an emergency. Where a county agency has been delegated this authority, the county would act upon the variance request. Item C requires the commissioner to notify the applicant or license holder and the county in writing of her decision to grant or deny the variance request.

Subpart 2 is consistent with current practices except for requiring written notice from the commissioner to both the applicant or license holder and the county. At the present time, the commissioner notifies the county and the county notifies the applicant or license holder. Item C will eliminate paperwork for the counties and should result in some cost savings. This subpart is reasonable because it establishes a clear and uniform procedure for handling variance requests and is consistent with Minnesota Statutes, section 14.05, subdivision 4, which requires an agency to set forth in rule standards and procedures by which variances are granted and denied.

Subpart 3. **Foster care capacity variance at request of agency.** This subpart is necessary to establish a variance procedure for child foster care capacity variances at the request of an agency. If a foster care license holder is at licensed capacity, the license holder cannot take an additional placement without a variance. Due to the emergency nature of certain placements, it is too cumbersome to require submission of a written request for a variance from the license holder. This subpart allows a county agency to seek verbal approval of the variance from the commissioner and, if approved, to provide a written request within five working days after placement. The capacity variance is different from other variances because generally the county is seeking the variance on behalf of the license holder in order to make an emergency placement. This subpart is reasonable because it provides a procedure for handling capacity variances which need to be handled more quickly than the regular procedure.

9543.0060 LICENSING FOSTER CARE PROGRAMS.

This part establishes additional licensing requirements for foster care programs. Foster care programs serve vulnerable populations in 24 hour residential programs. The setting is usually a family home and is isolated in comparison to institutional or staff-based programs. As a result, additional licensing requirements are necessary to ensure the safety of persons in care.

Subpart 1. **Additional foster care licensing requirements.** This subpart is necessary to inform county and private agencies of the additional licensing requirements for foster care. The additional subparts are identified in subparts 2 to 6.

Subpart 2. **Program information.** This subpart is necessary to establish a minimum standard governing provision of foster care program information to prospective applicants. In addition to the general program information under part 9543.0040, subpart 1, prospective applicants need information on the types of individuals placed by the agency, the responsibilities of the license holder and the agency, and agency policies governing foster care. It is reasonable to provide prospective applicants more detailed program information since foster care requires a strong commitment by the provider. Therefore, it is imperative that potential license holders are well informed about persons served and program requirements.

Subpart 3. **Orientation and preplacement training.** This subpart is necessary to inform agencies that they must provide the orientation and preplacement training to applicants that is required in the program rules. This subpart is reasonable because it is consistent with parts 9545.0020, subpart 5; 9555.5505, subpart 2; and 9555.6185, subpart 1.

Subpart 4. **Foster care licensing study.** This subpart is necessary to establish additional licensing study requirements for foster care. In addition to the licensing study under part 9543.0040, subpart 2, the agency must conduct in-person interviews with all family members and other adults living in the household. This is necessary since foster care is a residential program and the family members of the license holder will constitute the new family for the person in foster care. Therefore, it is important to consider the family environment and family attitudes regarding foster care. For the same reason, it is necessary to consider social history information to determine whether there are dysfunctional elements which may indicate that the family could not provide a loving, safe, and stable environment. Finally, the licensing study must include an evaluation of specific qualifications required under the child foster care or adult foster care rules. A written copy of the licensing study must be maintained in the applicant's record. This subpart is reasonable because it is consistent with Minnesota Rules, parts 9545.0090 and 9555.6125.

Subpart 5. **Duties of agency.** This subpart is necessary to identify licensing requirements specific to foster care programs.

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Item A requires the agency to enter into a foster parent agreement with the license holder for child foster care. This requirement is consistent with Minnesota Rules, parts 9545.0100.

Item B requires the agency to coordinate with placement workers to ensure that the license holder is visited at least monthly for the first six months after the placement in child foster care. The purpose of requiring agencies to coordinate with placement workers is to ensure that foster families receive needed agency support during the initial placement period, which may present many new and perhaps difficult adjustments for everyone. In some agencies, the placement worker and licensor are the same individual; however, in other agencies the licensing functions and placement functions may be separated. In the latter instances, item B will ensure that the license holder is visited monthly during the first six month after initial placement and both licensing and placement workers can work together with family and child to promote a successful placement. This item is reasonable because it is consistent with part 9545.0100.

Item C requires the agency to provide the foster home license holder a copy of the annual relicensing evaluation report. It is reasonable to share the evaluation report with the license holder so that the agency and foster family can work together on behalf of clients. Deficiencies and problems may need to be corrected; where no problems are identified, the evaluation report serves as positive feedback for the license holder. This item is reasonable because it is consistent with part 9545.0100. Although no similar requirement currently exists for adult foster care, it is reasonable that adult foster care license holders receive a copy of the annual evaluation report for the same reasons.

Item D requires the agency to establish a grievance mechanism for resolving differences between the agency and the license holder and to provide the license holder with a description of the grievance procedures. This item is reasonable because it is consistent with the current requirement under part 9545.0100. Although no similar requirement is identified under the program rules for adult foster care, it is reasonable to require a grievance mechanism for resolving differences between license holders and the agency, for the good of clients.

Item E requires that agency staff be available to license holders on a 24-hour basis. Although in emergencies a license holder can dial 911 and obtain emergency police, fire, and ambulance service, agency staff must be available to assist providers in other emergencies. This item is reasonable because it is consistent with parts 9545.0180, subpart 5 and 9555.5705, subpart 3, item C.

Item F requires that the agency ensure training is available to enable license holders to meet the training requirements set forth in program rules. If license holders are required to receive training, it is reasonable to require the agency to ensure training is available. This item is reasonable because it is consistent with parts 9545.0100 and 9555.5505.

Subpart 6. **Notice of closure.** This subpart requires the agency to notify the commissioner when a foster care program is closed. Because the commissioner is responsible for issuing licenses, it is reasonable to inform the commissioner when a license is no longer operative, so that appropriate recordkeeping can occur. This subpart is reasonable because it is consistent with part 9545.0020, subpart 7.

9543.0070. INVESTIGATIONS OF LICENSED PROGRAMS.

Subpart 1. **Reports of abuse or neglect of persons served by licensed programs.** This subpart is necessary to clarify the agency's role in conducting investigations of licensed programs when reports of abuse or neglect are received by an agency. Reports of abuse or neglect must be reported immediately to the county child or adult protection unit. Minnesota Statutes, sections 626.556 and 626.557 set forth requirements governing investigation of licensed programs when abuse or neglect is reported. The role of the licensing agency is to report complaints to the county child or adult protection unit and to cooperate, as requested, in any investigation. Upon completion of the investigation, the licensing agency must take whatever licensing action is indicated by the findings of the protection investigation. This subpart is reasonable because it complies with Minnesota Statutes, chapters 626.556 and 626.557.

Subpart 2. **Timelines.** This subpart is necessary to establish a timetable for beginning investigations of complaints of licensing violations. Complaints that allege imminent danger or recurring physical injury must be immediately reported to the county or adult protection unit (subpart 1) and to the commissioner. Investigation of complaints that do not indicate imminent danger to persons served by the program but may result in a negative licensing action must begin within three working days. These are the more serious violations that indicate risk to persons in the program (See part 9543.0100). Examples include disqualifications such as abuse of prescription drugs or alcohol; termination of parental rights under Minnesota Statutes, section 260.221, paragraph (b); refusal to give written consent for disclosure of criminal history records; conviction of certain crimes; etc. Investigation of a complaint that does not involve an issue of safety for persons served by the program under items A or B must begin within ten working days. This subpart is reasonable because it establishes time lines for beginning investigations based on the seriousness of the violation and the risk to persons served by the program. Agencies do not have the resources to immediately respond to all complaints. Therefore, it is necessary to establish standards for initiating investigations of different types of complaints. This subpart is a reasonable implementation of Minnesota Statutes, section 245A.16, subdivision 2 which requires timely investigations.

Subpart 3. **Determination.** This subpart is necessary to ensure that county and private agencies gather sufficient information about a licensing complaint to reach a conclusion: whether a license violation occurred, did not occur, or insufficient information is available to make any determination. If a license violation occurred, the agency must issue a correction order or recommend a negative licensing

action. This subpart is a reasonable implementation of Minnesota Statutes, sections 245A.16, subdivision 2 which requires timely investigations.

Subpart 4. **Reports of death.** This subpart is necessary to inform agencies of the statutory requirement that the death of a person served by a program must be reported to the medical examiner or coroner and ombudsman. This subpart is reasonable because it is consistent with Minnesota Statutes, section 626.556, subdivision 9 and section 626.557, subdivision 9.

Subpart 5. **Recording complaints and investigations.** This subpart is necessary to ensure agencies maintain records of complaints. This requirement provides a process for handling complaints efficiently and serves to ensure that complaints are thoroughly investigated and acted upon. Item A requires agencies to maintain a register for recording complaints and for tracking the status of each investigation. Item B requires that the disposition of each complaint be recorded in a license holder's file. Item C requires that records be maintained in accordance with Government Data Practices Act requirements for welfare data. This subpart also provides a means of evaluating the adequacy of agency investigations and of ensuring rules are uniformly enforced as required under Minnesota Statutes, section 245A.16, subdivision 6.

9543.0080 COUNTY INVESTIGATION OF UNLICENSED PROGRAMS.

Subpart 1. **Unlicensed family day care and adult foster care.** There is currently considerable variation between counties on dealing with unlicensed programs. In order to ensure that rules are uniformly enforced, it is necessary to establish standards for dealing with unlicensed programs. This subpart is necessary to establish uniform procedures for dealing with unlicensed programs that are required by statute to be licensed. Under subpart 1 when a county learns that a family day care or adult foster care program that is required to be licensed is operating without a license, the county must inform the operator within five days that a license is required or the program must discontinue operation. Minnesota Statutes, section 245A.03, subdivision 3, provides that the commissioner may ask the appropriate county attorney or the attorney general to secure a court order against the continued operation of a program if, after receiving notice that a license is required, the operator has failed to apply for a license. Items A to C, clarify agency responsibilities when an operator has failed to apply for a license.

Under item A, if the operator discontinues operation after notification of the licensing requirement, no further action is required by the county.

Under item B, an operator who is eligible and wishes to continue to operate a program must sign a license application form within 30 days. The phrase "who is eligible" is used so that an operator who has been previously disqualified or who has a documented disqualification does not continue to operate a program during the interim period between initial notification and submission of a signed application. This

item also includes language that requires an applicant to cooperate in the licensing study. During committee discussion county representative pointed out that some unlicensed family day care operators fail to provide timely information needed to process the license application. To ensure that the onus is placed on the unlicensed operator to obtain a license, the rule clarifies that failure to cooperate in the licensing study is further grounds for seeking a court order against the continued operation of the program.

Although item B attempts to clarify Minnesota Statutes, section 245A.03, subdivision 3, paragraph (b), the purpose of licensure is to ensure the safety of vulnerable individuals. Nothing in items A and B prevent a county agency from immediately requesting that the county attorney seek a court order against the continued operation of an unlicensed program. Clearly in instances of imminent danger it would be contrary to the human services licensing act to permit continued operation of a program whether licensed or unlicensed. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.03.

Subpart 2. **Unlicensed child foster care.** This subpart is necessary to establish uniform procedures for handling unlicensed child foster care programs. The licensing agency is required to report to the county protection unit when it learns of a child in an unlicensed foster care program that is required to be licensed. Unless the foster care program is exempt from licensure, a child in an unlicensed foster care facility is considered to be neglected under Minnesota Statutes, section 260.015, subdivision 10, paragraph (g). Neglected children must be reported to the county agency under Minnesota Statutes, section 626.556.

9543.0090 CORRECTION ORDERS.

Subpart 1. **Correction order, training.** This subpart is necessary to ensure standards and procedures governing issuance of correction orders to license holders are clear, uniform, and consistent. Therefore, an agency may not issue correction orders unless the licensors have been trained by the department on standards and procedures for issuing correction orders. This subpart is also necessary to ensure that agencies do not issue correction orders for serious violations that warrant a negative licensing action. In addition to the training requirement, correction orders must be on forms prescribed by the commissioner and a copy of the correction order retained in the license holder's file. Retention of the correction forms will assist licensors to monitor programs and will enable department staff to monitor agency issuance of correction orders. This subpart is reasonable because it provides a means of ensuring rule requirements are uniformly applied without imposing excessive reporting requirements on agencies.

Subpart 2. **Criteria for issuing correction orders.** This subpart is necessary to establish when a correction order may be issued. A correction order may be issued if the violation does not imminently endanger the health, safety, or rights or persons served by the

program; is not listed in part 9543.0100, subpart 3; is not serious or chronic; and is correctable within a reasonable time. This subpart is reasonable because correction orders are only issued for less severe, correctable licensing violations, and this subpart provides a standard for when a correction order is appropriate. This subpart is consistent with Minnesota Statutes, section 245A.06, subdivision 1.

Subpart 3. **Time limitation.** This subpart is necessary to ensure that correction orders state a time limit for correcting a violation, consistent with Minnesota Statutes, section 245A.06, subdivision 1. This subpart ensures the license holder is notified of the specific date by which a violation must be corrected. If the license holder fails to correct the violation by the stated date, the agency should recommend further action such as a fine or negative licensing action to the commissioner.

Subpart 4. **Compliance with correction order.** This subpart is necessary to ensure the health and safety of clients by requiring agencies to ensure license holders verify they have made required corrections. The agency may recommend further action including fines or a negative licensing action under Minnesota Statutes, section 245A.06, subdivision 3, to the commissioner if the agency finds that a violation has not been corrected. This requirement is a reasonable means of ensuring that license holders comply with a correction order or that appropriate follow-up action can be taken if necessary.

9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.

Subpart 1. **Basis for recommendation.** This subpart is necessary to establish uniform standards for recommending a negative licensing action. Minnesota Statutes, section 245A.04, subdivision 6 requires that before granting, suspending, revoking, or making probationary a license, the commissioner shall evaluate certain information. The evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, consumer evaluations of the program, and information about the character and qualifications of the personnel employed by the applicant or license holders. This subpart sets forth the information that agencies must submit to the commissioner when recommending a negative licensing action. This information is necessary for the commissioner to determine the appropriate negative licensing action. Item A, subitems (1), (2), and (3) are consistent with Minnesota Statutes, section 245A.07, subdivision 1. Subitems (4), (5) and (6) are consistent with Minnesota Statutes, section 245A.04, subdivision 6. This information includes:

Subitem (1), requiring the citation to laws or rules that have been violated. This information is needed by the commissioner (who orders the negative action) to ensure government actions are not arbitrary or capricious and are based on law and rule.

Subitem (2), the nature and severity of each violation. The nature and severity of a violation are necessary information for the commissioner in determining the appropriate negative licensing action.

Subitem (3), whether the violation is chronic or nonrecurring. This information is important in considering conditions and circumstances concerning the program's operation to determine the appropriate sanction.

Subitem (4), effect of the violation on persons served by the program. This item is necessary because the commissioner is required under Minnesota Statutes, section 245A.04, subdivision 6 to consider the well-being of persons served by the program in determining the appropriate sanction.

Subitem (5), an evaluation of the risk of harm to persons served. The commissioner is required under Minnesota Statutes, section 245A.04, subdivision 6 to consider the well-being of persons served by the program and the character and qualifications of the personnel employed. Use of the risk assessment completed under part 9560.0222, subpart 9 (the risk assessment required in investigations of reports of maltreatment of children) provides a consistent method of evaluation.

Subitem (6), any evaluations of the program by persons served or their families. The commissioner is required under Minnesota Statutes, section 245A.04, subdivision 6 to consider consumer evaluations of the program.

Subitem (7), relevant facts, conditions and circumstances concerning the operation of the program. Minnesota Statutes, section 245A.04, subdivision 6 requires the commissioner to evaluate facts, conditions, and circumstances concerning the program's operation before suspending, revoking, or making probationary a license.

Subitem (8), any relevant information about the qualifications of the applicant or license holder or persons living in the residence. This subpart is consistent with Minnesota Statutes, section 245A.04, subdivision 6 which requires information about the character and qualifications of the personnel employed by the applicant or license holder. Subdivision 6 also requires the commissioner's evaluation concerning the well-being of persons served by the program.

Subitem (9), any aggravating or mitigating factors related to the violation is necessary to ensure the commissioner is fully informed of all relevant factors when making a negative licensing action decision. This item is consistent with requirements in Minnesota Statutes, section 245A.07, subdivision 1, that the commissioner consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

Item B is reasonable to require the county agency to notify the county attorney when recommending a negative action to the commissioner. Should a negative action be appealed, the county agency is required to represent the commissioner and the agency at the contested case hearing (Minnesota Statutes, section 245A.16, subdivision 4). It is reasonable to ensure the county attorney is made aware of potential legal action in a timely manner so that the county attorney is fully informed and can advise the agency and adequately prepare the case.

Subpart 2. **Immediate suspension of license.** This subpart is necessary to establish uniform standards and procedures for handling immediate license suspension, which is the most drastic negative licensing action because the program is closed immediately and may not operate pending appeal. This subpart is necessary to ensure the health and safety of persons in the program as well as due process rights of license holders.

Item A requires an agency that has reasonable cause to believe the health, safety, or rights of persons served by the program are in imminent danger, to immediately notify the commissioner.

Item B requires the agency to arrange delivery by personal service of written notice of immediate suspension to the license holder if the commissioner orders an immediate suspension. The notice must include: the reason for the immediate suspension; that the program must discontinue operation immediately; the license holder's right to appeal and a contested case hearing; and that the commissioner has taken the action.

Item C requires the agency to make a recommendation for further action to the commissioner. Following the immediate suspension, a second action is necessary to revoke the license or to take a less severe action. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.07, subdivision 2.

Subpart 3. **Revocation or denial of license.** Minnesota Statutes, section 245A.07, subdivision 3 authorizes the commissioner to suspend, revoke, or make probationary a license if a license holder fails to comply fully with applicable laws or rules. This subpart is necessary to identify license violations that are grounds for the most severe sanctions, license revocation or denial. It is reasonable to identify violations that are grounds for revocation or denial to ensure agency recommendations for license sanctions are consistent statewide. Violations listed in items A to G identify those rule violations that constitute the most serious threat to persons in care and have been grounds for revocation and denial in the past.

Item A includes violations that involve imminent danger to persons served by the program. The commissioner is required to immediately suspend a license if the license holder's failure to comply with applicable law or rule has placed the health, safety or rights of persons served by the program in imminent danger. If imminent danger exists, it is reasonable to follow the immediate suspension with an order revoking the license as well.

Item B includes disqualifications under part 9543.3070 and rules governing the particular type of program. Parts 9543.3000 to 9543.3090 ("Rule 11") have been proposed to implement the criminal history background study mandated in Minnesota Statutes, section 245A.04, subdivision 3. While the procedures for conducting background studies in Rule 11 are not applicable at this time to agencies governed by this rule, the disqualification factors and reconsideration in that rule are applicable to family systems programs. It is reasonable to reference part 9543.3070, which sets forth the factors or characteristics which disqualify an individual

from direct contact with or access to children and to adults in foster care. Because these are characteristics that demonstrate a risk to persons served and because direct contact in family systems programs cannot be avoided, it is reasonable to recommend revocation or denial when an individual affiliated with a family systems program has one of the characteristics listed in part 9543.3070.

Rules governing family systems programs include provisions disqualifying an individual from licensure in addition to the characteristics that are included in Rule 11. For example, adult foster care rule disqualifies a caregiver or household member with a mental illness or condition that jeopardizes the health, rights or safety of residents (part 9555.6125, subpart 4, item H). County agency staff who license adult foster care programs were very concerned that the disqualifications such as this that are currently in rule be retained, for the well-being of persons served in the program. Therefore, revocation or denial is appropriate when a program rule disqualification exists. This provision is consistent with Minnesota Statutes, section 245A.04, subdivision 6 which requires the commissioner to evaluate a program before issuing, suspending or revoking a license and to apply disqualification standards set forth in rules governing the program.

Item B also includes any other violation that is a disqualification under rules governing the individual program.

Item C includes knowingly making a false statement on the license application. It is necessary that the information provided by an applicant on an application form be true and accurate to ensure proper evaluation of an applicant. Since the applicant attests to the truthfulness and accuracy of the information provided in the application, it is reasonable to deny or revoke a license if the agency discovers the information provided is false.

Item D includes failure or refusal to provide the commissioner access to the physical plant and grounds, documents, persons served and staff. This item is reasonable because it is consistent with Minnesota Statutes, section 245A.04, subdivision 5.

Item E includes recurring failure to comply with discipline standards in rules governing the program. This item is necessary to ensure persons served by the program are not harmed by inappropriate discipline. It is reasonable to revoke a license if the license holder does not comply with discipline standards set forth in the rule governing the program, particularly the prohibition against corporal punishment. The term "recurring" is used to distinguish a "one time" incident from repeated violations. While probation or suspension may be appropriate for an isolated incident, continued violations of disciplinary standards should result in revocation, to protect the physical and emotional well-being of the children and vulnerable adults served by the program.

Item F includes severe or recurring failure to comply with capacity limits that place persons served at risk of harm. This item is necessary to protect the safety of persons served by the program. Capacity limits have been established to ensure proper ratios of

program staff to persons served by the program. Overcapacity may seriously undermine a program's ability to provide safe care as well as to meet the nurturing needs of children. The terms "severe" or "recurring" are used to distinguish less serious capacity violations. A brief period of overcapacity involving one child is significantly different from a daily occurrence involving more than one child. A single incident of overcapacity is less serious than repeated violations. Serious or repeated violations that indicate the license holder's refusal to comply with program rules and demonstrate a risk of harm to persons served by the program warrant revocation of the license.

Item G includes licensing violations that occur while the license is probationary or suspended. It is necessary to establish a standard to ensure full compliance with law and rules while a program is under suspension or probation. Revocation is reasonable when a license holder continues to violate applicable law or rules. Further violations demonstrate a license holder's disregard for the well-being of persons served and a risk of harm to persons served by the program.

Subpart 4. **License suspension.** This subpart is necessary to establish standards for recommending license suspension. Suspension is a less severe sanction than revocation, which carries a five year prohibition against relicensure under Minnesota Statutes, section 245A.08, subdivision 5. Sometimes the type of rule violation is a serious infraction listed under subpart 3, yet the effect of revocation on persons served indicate suspension is a more reasonable sanction. An example would be a case where the teen-aged child of a family day care provider fails to meet a disqualification standard yet the child plans to move out at the end of the school year. It is reasonable to suspend the license until the disqualified individual leaves the home; suspension in this case avoids the five year prohibition against relicensure following revocation and does not restrict the availability of scarce day care.

An agency may recommend suspension rather than revocation if the agency submits information demonstrating that revocation is not warranted and suspension rather than revocation is in the best interests of persons served by the program and would not pose a risk of harm to persons being served. Requiring the agency to submit information based on the factors listed in subpart 1 is reasonable to ensure consistent and uniform evaluation of facts, conditions, and circumstances concerning the program's operation by the commissioner. Requiring information about the best interests of persons served by the program to support the suspension recommendation is reasonable because it ensures the well-being of and potential risk to those persons is carefully considered as part of the sanction decision. This subpart is a reasonable implementation of Minnesota Statutes, section 245A.04, subdivision 6. This subpart allows the agency to present information to the commissioner to balance the interests of persons in the program against imposition of the most severe license sanction.

Subpart 5. **License probation.** This subpart is necessary to establish standards for recommending license probation. Probation is the least severe negative licensing action. An agency may recommend probation

if, on the basis of factors listed in subpart 1, revocation or suspension is not warranted for the particular violation; continued operation of the program is in the best interests of and poses no risk to persons served by the program; and the agency submits a plan for monitoring the program to ensure the safety of persons served during the probationary period. Items A through C are reasonable requirements to protect persons served in a program that has not been in full compliance with law or rule. This subpart is a reasonable implementation of Minnesota Statutes, section 245A.04, subdivision 6.

Subpart 6. **Notice to parents of negative licensing action.** This subpart is necessary to ensure parents of children in family day care are notified of negative licensing actions taken against the program. Parents often select licensed family day care because licensure indicates a certain level of program standards as well as background screening of license holders and persons who have direct contact with the children. If a negative licensing action has been ordered it is reasonable to inform parents with children in the program so the parent(s) may make an informed decision about the program and the best interest of their child(ren). The agency must inform the parents or guardians of children in the program in writing when it recommends a negative licensing action to the commissioner. When the commissioner orders a negative licensing action, the agency must inform the parents or guardians that a negative licensing action has been ordered and the circumstances for the action; the effect of the negative licensing action on the operation of the program; and that an explanation of the appeals process available to the license holder is available upon request. This notice is already required in the program rule governing family day care, part 9502.0341, subpart 10. If the commissioner does not order a negative licensing action following the agency recommendation, the agency must inform the parents and guardians when the agency receives the commissioner's decision.

Subpart 7. **Notice of negative licensing action to county.** This subpart requires private agencies to report negative licensing actions to the county agency in which the program is located and to any county that has placements in the home. This subpart is necessary to ensure county agencies are informed of negative licensing actions which may affect the well-being of children within the county. The county agency is responsible for child protection within the county. Since private agencies make licensing recommendations independent of the counties, it is possible without this reporting requirement that a county would not be aware of a negative licensing action involving a foster care provider. A county agency may unwittingly license a home that has been sanctioned. Any county responsible for a child placed in the sanctioned home needs to know about the negative action. It is reasonable to require private agencies to report negative licensing actions to the county so appropriate action is taken to protect children in foster care.

9543.0110 ENFORCING ORDERS OF THE COMMISSIONER.

Subpart 1. **Agency enforcement of commissioner orders.** This subpart is necessary to ensure county and private agencies are informed of their responsibility under Minnesota Statutes, section 245A.16,

subdivision 4 to enforce and defend commissioner's orders imposing a license sanction. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.16, subdivision 4.

Subpart 2. **Sanctioned programs.** This subpart is necessary to ensure that a program whose license has been sanctioned does not continue to operate in defiance of the sanction and to protect persons who may be continuing in the program. If an agency has knowledge that a program whose license has been immediately suspended, revoked, or suspended continues to operate, it must immediately report such operation to the county attorney and the commissioner. It is reasonable to require the agency to inform the county attorney and commissioner of the illegal operation so that appropriate legal action to enforce the commissioner's order can be taken.

Subpart 3. **Programs on probation.** This subpart is necessary to ensure that programs on probation are monitored by the agency for compliance with the terms of the probation, to ensure the health and safety of persons being served. This subpart is consistent with part 9543.0100, subpart 5, item C which requires the agency to submit a plan for monitoring the program that ensures the safety of persons served during the probationary period. It is reasonable to require agencies to monitor programs on probation so that immediate action can be taken to protect persons being served, should the license holder fail to comply with the terms of probation.

9543.0120 REPRESENTING THE COMMISSIONER IN CONTESTED CASE PROCEEDINGS.

This part is necessary to set forth procedures that county agencies must comply with when representing the commissioner in contested case proceedings.

Subpart 1. **Contested case proceedings.** This subpart is necessary to ensure that county agencies are aware of their responsibility to represent the commissioner in contested case proceedings involving appeals by applicants or license holders supervised by the county. This subpart is reasonable because the county is a party, with county employees performing the delegated licensing functions. Minnesota Statutes, section 388.051, subdivision 1 requires the county attorney to appear in all cases in which the county is a party. Therefore, it is reasonable to require the county to represent the commissioner in the contested case proceedings.

Item A through E list duties the local agency must perform to prepare for a contested case hearing.

Item A requires the county agency to arrange for legal consultation and representation by the county attorney. Item A is reasonable because the county attorney should be informed of the contested case as soon as possible in order to represent the agency effectively.

Item B requires the county agency to prepare all documents necessary for the contested case proceeding. Minnesota Rules, parts 1400.5100 to 1400.8402 set forth procedures governing contested cases. Item B

is reasonable because it informs the county agency of its responsibility to prepare the documents necessary for the contested case proceeding.

Item C requires the county agency to arrange with the office of administrative hearings for the services of an administrative law judge and arrange for a timely date and location within 30 days of the appeal. This item is reasonable because Minnesota Statutes, section 245A.08, subdivision 1 requires that upon a timely appeal or petition pursuant to Minnesota Statutes, sections 245A.05 to 245A.07, the commissioner shall issue a notice of and order for hearing to the appellant under chapter 14. It is necessary that a hearing be arranged in a timely manner since, except for an immediate suspension, a license holder who appeals a negative licensing action is allowed to continue to operate pending the commissioner's final order. A license holder also has a right to have an appeal heard in a timely manner.

Item D requires the county agency to serve the notice of and order for hearing as provided in Minnesota Rules, part 1400.5600. After the county agency makes arrangements with the Office of Administrative Hearings, it must serve the notice of and order for hearing on the individual appealing. Under Minnesota Statutes, section 14.58, the party appealing must be provided full notice of the charges against him or her. Adequate notice is a constitutional due process requirement as well.

Item E requires the county agency to send a copy of the notice of and order for hearing to the commissioner. This requirement ensures the commissioner is kept informed of the status of the appeal and makes possible continuing oversight of licensing functions.

Subpart 2. **Appeals involving private agencies.** This subpart is necessary to inform agencies that the attorney general will represent the commissioner in contested case appeals by license holders supervised by a private agency. The function of representing the commissioner in contested cases has not been delegated to private agencies. Therefore, it is the duty of the attorney general to represent the department in contested case proceedings.

Subpart 3. **Informal dispositions, stipulated agreements.** This subpart is necessary to establish uniform procedures for handling informal dispositions of contested cases. It is possible that a settlement can be reached on a contested negative licensing action without a hearing. The commissioner is responsible for final approval of any settlement agreement. Therefore, it is reasonable to require the county agency to receive preliminary approval before negotiating and executing a settlement agreement.

It is also reasonable to require the agency to monitor the program for compliance with the settlement terms, to ensure the well-being of persons served. If the parties are unable to reach a settlement, the agency must reschedule the case for a contested case hearing.

9543.0130 ADMINISTRATIVE REQUIREMENTS.

Subpart 1. **Maintaining records.** This subpart is necessary to ensure adequate records of licensing activities are maintained by county and private agencies. At a minimum, the record file must include records required by the program rule; a record of all investigations and dispositions, maintained in accordance with Minnesota Statutes, section 13.46; the dates and reports of all licensing studies; and a list of all persons being served by the foster care license holder. It is reasonable to require records be maintained in order to provide necessary documentation for licensing recommendations and to support negative licensing actions.

Subpart 2. **Commissioner access.** This subpart is necessary to implement the requirement in Minnesota Statutes, section 245A.16, subdivision 6 that the commissioner ensure uniform enforcement of licensing rules by reviewing each licensing agency for compliance with applicable law and rules. This subpart is reasonable because access to records and documents is necessary to ensure program rules are being uniformly enforced and provides a means for reviewing county and private agencies for compliance with this rule.

Subpart 3. **Training requirements.** This subpart is necessary to ensure that licensors receive adequate training to properly perform delegated licensing functions. Training is necessary to ensure that licensors understand the requirements for performance of licensing functions so that program licensing requirements are uniformly enforced throughout the state. This subpart is reasonable because the requirement can also be satisfied by a licensor receiving training in a program area (day care, child or adult foster care); such training will enhance performance of licensing activities as well as help the licensors to assist providers. The department intends to hold three six hour training sessions each year to provide information and support to agencies performing licensing functions. Licensors will only need to attend one of these meetings to satisfy this requirement. This subpart is consistent with Minnesota Statutes, section 245A.16, subdivision 5 which requires the commissioner and agencies to cooperate in ensuring employees participate in instruction and technical assistance provided by the commissioner.

Subpart 4. **Conflict of interest.** This subpart is necessary to prevent internal agency conflicts of interest which may operate to the detriment of persons being served. Agency employees or board members who apply for a license or operate a program must not be involved in the license recommendation or negative licensing action related to his or her program. This requirement is necessary to ensure objectivity and accountability in licensing recommendations made by the agency. It is reasonable to ensure that license recommendations are made in a fair and impartial manner so that vulnerable children and adults are not placed in programs that do not meet rule standards.

9543.0140 COUNTY CERTIFICATION.

This part is necessary to set forth procedures governing certification of county agencies.

Subpart 1. **County agency certification.** This subpart is necessary to establish in rule the county certification process. Under Minnesota Statutes, section 245A.16, subdivision 6, the commissioner must biennially determine a county agency's compliance with parts 9543.0040 to 9543.0130. When a county is in compliance with those parts, the commissioner shall certify the county agency for a two year period. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.16, subdivision 6.

Subpart 2. **Notification of noncompliance.** This subpart is necessary to establish procedures for informing county agencies when they are not in compliance with this rule. The procedures are necessary because Minnesota Statutes, section 245A.16 includes a financial sanction for noncompliance. It is reasonable to establish procedures that allow the county to take corrective actions so the county can avoid a financial sanction. This subpart requires the commissioner to issue a notice of noncompliance that describes the deficiencies in the agency's licensing procedures; the corrective action necessary to correct the deficiencies; and the time frame for correction of the deficiencies. This notice is reasonable because the county then has an opportunity to correct deficiencies in licensing procedures before further action by the commissioner.

Subpart 3. **County compliance.** This subpart is necessary to establish a time limit within which counties must respond to a notice of noncompliance. The county has 30 days to demonstrate compliance or to submit a corrective plan to the commissioner for approval. Thirty days is a reasonable time limit because it provides sufficient time to develop a corrective plan and also ensures that the county will take steps within a reasonable time to correct performance which may affect the well-being of persons in licensed programs.

Subpart 4. **Review of corrective action plan.** This subpart is necessary to provide a time limit within which the commissioner approves or disapproves a county's corrective action plan. Thirty days is a reasonable period to ensure adequate review of the plan and enable the commissioner to obtain additional information from the county should clarification be necessary. This subpart also ensures counties are notified of their certification status within a reasonable time.

Subpart 5. **Provisional certification.** This subpart is necessary to allow provisional certification of counties that do not fully comply with parts 9543.0040 to 9543.0130 but the failure to comply does not constitute a risk to persons served by licensed programs and action is being taken to correct the deficiency. Provisional certification is appropriate if the agency is not fully in compliance with parts 9543.0040 to 9543.0130 but decertification, with attendant financial sanctions, is too drastic since the agency deficiency does not constitute a risk to persons served by the licensed programs.

Subpart 6. **County agency decertification based on demonstrated risk of harm to program participants.** This subpart is necessary to establish a decertification procedure when a county's failure to comply with parts 9543.0040 to 9543.0130 poses a risk of harm to persons served by licensed programs. This subpart is reasonable

because it is consistent with Minnesota Statutes, section 245A.16, subdivision 6.

Subpart 7. **Funding sanction.** Minnesota Statutes, section 245A.16, subdivision 6 requires a funding sanction when a county fails to be certified. This subpart is necessary to inform the counties of the funding sanction provided in statute.

Subpart 8. **Expiration of certification.** This subpart is necessary to establish a specific time when a certification expires. A certification expires at 12.01 a.m. on the day after the expiration date stated on the certification. This subpart is reasonable because it is consistent with the expiration date for a license under Minnesota Statutes, section 245A.04, subdivision 7, paragraph (b).

Subpart 9. **Contracting licensing functions.** This subpart is necessary to inform counties that if the county contracts with an authorized private agency or another county to perform its delegated licensing functions, the county must receive prior approval from the commissioner and remains responsible for the performance of its delegated functions and is subject to the certification provision.

9543.0150 PRIVATE AGENCY AUTHORIZATION.

Subpart 1. **Private agency authorization.** This subpart is necessary to establish a procedure for licensing, "authorizing," private agencies to perform program licensing functions. Minnesota Statutes, section 245A.16 sets forth standards for county and private agencies that perform licensing functions. Subpart 1 requires the commissioner to at least biennially determine a private agency's compliance with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130. When a private agency is in compliance with those parts the commissioner shall authorize the private agency to perform licensing functions for a period of up to two years. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.16, subdivision 6.

Subpart 2. **Revocation of private agency's authorization.** This subpart is necessary to establish a procedure to annul a private agency's authorization to perform child foster care program licensing functions when the private agency's failure to comply with this rule poses a risk of harm to persons served by the licensed program. Minnesota Statutes, chapter 245A does not provide a sanction for a private agency analogous to county decertification and the funding sanction. It is reasonable, however, to revoke an agency's authorization to perform program licensing functions if the agency fails to comply with rule requirements. Private agencies must be licensed under Minnesota Rules, parts 9545.0750 to 9545.0830 to operate in this state. When failure to comply with this rule demonstrates a risk of harm to persons served by its program, there are reasonable grounds for a negative licensing action. It is reasonable to take a negative licensing action against a private child-placing agency when the agency's performance demonstrates disregard for the safety of the children under its care and supervision.

RULE 13 SNR

Repealer.

Part 9502.0335, subpart 3 is repealed because it is inconsistent with the proposed requirements in part 9543.0040, subparts 2 to 5 which set forth requirements for a licensing study and for making licensing recommendations.

Part 9502.0335, subpart 14 is repealed because it is inconsistent with the proposed requirements in part 9543.0040, subpart 6 which sets forth requirements for license renewal.

Part 9502.0335, subpart 16 is repealed because it is inconsistent with the proposed requirements in part 9543.0080, subpart 1, which sets forth requirements for county investigation of unlicensed programs.

Part 9502.0341, subpart 1 is repealed because it is inconsistent with proposed requirements in part 9543.0070 which sets forth requirements for investigations of licensed programs.

Part 9502.0341, subpart 9a is repealed because it is inconsistent with proposed requirements in part 9543.0090 which sets forth requirements for correction orders.

Part 9545.0020, subpart 3 is repealed because it is inconsistent with proposed requirements in part 9543.0040 which sets forth requirements for license applications.

Part 9545.0020, subpart 9 is repealed because it is inconsistent with proposed requirements in part 9543.0070 which sets forth requirements for investigations of licensed programs.

Part 9555.5415 is repealed because it is inconsistent with proposed requirements in part 9543.0040 which sets forth requirements for license applications; part 9543.0080 which sets forth requirements for county investigation of unlicensed programs; and part 9543.0070 which sets forth requirements for when an investigation must begin.

Part 9555.6145, subpart 6 is repealed because it is inconsistent with proposed requirements in part 9543.0090 which sets forth requirements for correction orders.

Effective date. This rule becomes effective January 1, 1991.

EXPERT WITNESS:

If this rule should go to public hearing, the Department does not plan to have outside expert witnesses testify on its behalf.

DATE: 8-8-90

ANN WYNIA
Commissioner

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STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Rules of the Department of Human Services Relating to Licensing Functions of County and Private Agencies; Parts 9543.0010 to 0543.0150

FISCAL NOTE

I. SUMMARY OF COSTS

	Local costs	State costs
Year One	$368,799	$0
Year Two	$368,799	$0
Total	$737,598	$0

The Department sent a survey to the 87 county human service agencies to gather fiscal information concerning this rule. See part III for details on the methodology used in estimating costs. There was considerable variation in rule parts identified by the counties as resulting in "new" costs. Except for a current rule requirement under the child foster care rule and a requirement to track license progress (which has since been modified), no single rule requirement was identified as particularly costly. The estimated local costs reflect the sum of many relatively small costs rather than the costs of one or two rule requirements. Major costs identified by rule requirement include:

A. Part 9543.0060, subpart 4, Foster Care Licensing Study, $45,928.
B. Part 9543.0060, subpart 5, Duties of agency, $39,520.
C. Part 9543.0040, subpart 1, Licensure information, $35,068
D. Part 9543.0070, subpart 2, Timelines, $32,640.

The variation in costs identified by the counties indicates a lack of licensing uniformity and serves to reinforce the need for this rule. The costs identified for the second year are estimated to be the same as those identified by the counties for the first year. See Part III for a detailed breakdown of costs.

II. BACKGROUND INFORMATION ON THE RULE AND AVAILABLE FUNDS

1. PURPOSE OF THE RULE

The purpose of parts 9543.0010 to 9543.0150 is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs; to establish minimum standards for performing licensing functions related to those rules; and to certify county agencies and authorize private agencies that are in compliance with this rule.

2. STATUTORY AUTHORITY FOR THE RULE

Minnesota Statutes, sections 245A.09 and 245A.16.

3. REASONS FOR ADOPTION OF THE RULE

Rule adoption is necessary to implement Minnesota Statutes, sections 245A.16 and 466.131.

Minnesota Statutes, section 245A.16, subdivision 6, of the Human Services Licensing Act requires the commissioner to ensure that licensing rules are uniformly enforced throughout the state by reviewing county and private agencies for compliance with applicable laws and rules. County agencies that comply with section 245A.16, are to be certified by the commissioner.

Minnesota Statutes, section 466.131 states, "After July 1, 1987, a municipality is an employee of the state for purposes of the indemnification provision of section 3.736, subdivision 9, when the municipality is required by the public welfare licensing act and rules adopted under it to inspect or investigate a provider, and the municipality has been duly certified under standards for certification developed by the commissioner of human services."

4. AVAILABILITY OF FUNDS

Family systems (child foster care, adult foster care, and family day care programs) licensing functions are funded through CSSA block grant funds and local revenue sources. The CSSA Block Grant for fiscal year 1990 is $50.4 million. Although CSSA block grant funds may be used to perform licensing functions, social services needs exceed available CSSA funding.

5. PROJECTED STATE AND LOCAL COSTS

A. STATE COSTS

Minnesota Statutes, section 245A.16 requires the commissioner to provide instruction and technical assistance to county and private agencies subject to section 245A.16 and to ensure that rules are uniformly enforced throughout the state by reviewing each county and private agency for compliance with section 245A.16 and other applicable laws and rules at least biennially. The legislature appropriated funds for three FTEs to enable the department to comply with the requirements in section 245A.16. No additional state costs are anticipated with the adoption of this rule.

B. LOCAL COSTS

Additional local costs with the adoption of this rule are estimated to be $368,799 per year.

Family systems licensing functions are performed by county and private agencies (private agencies recommend licensure of child foster care programs only). The purpose of Rule 13 is to ensure licensing functions

are uniformly performed throughout the state. Rule 13 sets forth minimum standards for performing these licensing functions. The licensing functions implement licensure of Family Systems: Family Day Care governed by Minnesota Rules, parts 9502.0315 to 9502.0445; Family Foster Care, Minnesota Rules, parts 9545.0010 to 9545.0260; and Adult Foster Care, Minnesota Rules, parts 9555.5105 to 9555.6265.

C. PRIVATE AGENCY COSTS

Private agencies perform licensing functions for child foster care programs. The 1,062 programs supervised by private agencies are 6 percent of the total Family Systems program licenses. Cost were not identified for private agencies since Minnesota Statutes, section 14.11 only requires a fiscal estimate for public bodies and private agencies are not required to perform licensing functions.

III. METHODOLOGY USED IN DETERMINING COSTS UNDER NEW RULE

The department in REQUEST BULLETIN NO. 89-50C requested county agencies to review a draft of Rule 13 and identify additional agency costs directly attributable to the rule by specific rule part. Attached is a copy of Request Bulletin No. 89-50C.

Use of the request bulletin afforded counties an opportunity to provide fiscal information to the department on the cost of the rule. Identification of additional costs by specific rule part permitted the department to reexamine proposed rule parts to determine if less costly alternatives were available to achieve the objective.

Forty-nine counties responded to the survey. Seven counties plus the foster care program in Dakota County did not identify specific cost areas but indicated compliance with Rule 13 would result in additional costs or additional staffing. Since it is not possible to determine in those instances whether costs are the result of new requirements or the cost of complying with existing requirements in program rules and statutes, the department did not include those costs estimates in the fiscal note. The seven counties and Dakota County's foster care program were treated as non-reporting counties.

Thirty counties identified as an additional cost the requirement to track license progress (part 9543.0040, subpart 6). Due to the number of counties identifying this requirement as an additional cost and the costs identified, this rule part has been modified. The commissioner will issue a form listing the required activities to simplify the agency's tracking process as well as enable the commissioner to monitor compliance with rule requirements. This change will result in lower costs to the counties than those initially identified.

In two rule parts high cost estimates were a result of misinterpretation of the rule requirements. The two rule parts were 9543.0060, subpart 5, item E and 9543.0090, subpart 4. Part 9543.0060, subpart 5, item E requires foster care providers have a means of contacting the agency 24 hours per day. Part 9543.0090, subpart 4 addresses compliance with correction orders. The department has subsequently modified the

proposed rule language to clarify these two rule requirements. Clarification of the two rule parts will result in lower costs to the county than those initially identified.

Some counties identified current statutory or rule requirements as additional costs under Rule 13. Where an identified cost is clearly a statutory or existing rule requirement, that cost has not been included in this fiscal note as a Rule 13 cost.

To adjust total costs to account for counties that did not respond to the survey, the department used the ratio of the number of programs licensed by the reporting counties to the total number of programs licensed by all counties. The 41 reporting counties (excludes the 7 counties that did not provide cost breakdowns plus foster care in Dakota County) license approximately 75 percent of all Family Systems programs. Specifically, these counties license: 9,039 family day care programs; 2,186 child foster care programs; and 697 adult foster care programs.

Reported costs were adjusted to provide an estimate of 100 percent of the costs had all counties responded to the survey, by dividing the total reported cost for each item by 75 percent.

Finally, there was considerable variation in rule parts that counties identified as new cost areas. Unless at least 10 percent of the counties responding (5 or more) identified a requirement as a new cost, the cost was not treated as a new cost. Notwithstanding differences which may exist between counties, if 9 out of 10 counties are currently performing a licensing function and have not identified the requirement as a new cost, it is reasonable to assume the requirement is not a new cost.

TREATMENT OF INDIVIDUAL COST ITEMS.

1. Part 9543.0040 LICENSE APPLICATION PROCEDURES.

    1. Subpart 1. LICENSE APPLICATION PROCEDURES. $35,068

24 counties identified additional costs totalling $26,301. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $35,068.

    2. Subp. 2 LICENSING STUDY. $23,683

17 counties identified additional costs totalling $124,212. Hennepin County's estimate of $50,000 for systems automation was deleted since that cost is not directly related to any Rule 13 requirement. Ramsey County's estimate of $56,450 was deleted since costs identified are statutory requirements (background study - 245A.04, subd. 3; and evaluation of a program - 245A.04, subd. 4). The adjusted cost estimate is $17,762. If the adjusted costs represent 75 percent of the total costs to all counties, 100 percent equals $23,683.

3. Subp. 5 LICENSE RENEWAL. $21,565

8 counties identified additional costs totalling $16,174. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $21,565.

4. Subp. 6. TRACKING LICENSING PROCESS. $8,797

30 counties identified additional costs totalling $87,967. Due to the number of counties identifying this subpart as an additional cost and the estimates reported, the proposed rule was modified. The modification requires the use of a checklist issued by the department to track licensing progress. Presumably, agencies currently track license applications by manually checking the file's content. The use of a checklist will provide a quick and simple means of providing an inventory of what is in a license file. The use of a checklist should have a minimal fiscal impact on county agencies. The cost figure above represents approximately 10 percent of the costs originally reported.

2. Part 9543.0050 VARIANCE REQUESTS.

Subpart 1. Variance information. $0

Less than 10 percent of the responding counties identified subpart 1 as new a cost.

Subp. 2. Variance procedures. $3,812

7 counties identified additional costs totalling $2,859. If the cost estimates represent 75 percent of the total costs of all counties, 100 percent equals $3,812.

Subp. 3. Foster care capacity variance at request of agency. $4,340

8 counties identified additional costs totalling $3,255. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $4,340

3. Part 9543.0060 LICENSING FOSTER CARE PROGRAMS.

1. Subp. 2. Program information. $5,363

10 counties identified additional costs totalling $4,022. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $5,363.

2. Subp. 3. Orientation and preplacement training. $11,776

7 counties identified additional costs totalling $8,832. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $11,776.

3. Subp. 4. Licensing study. $45,928

13 counties identified additional costs totalling $34,446. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $45,928.

4. Subp. 5. General requirements. $39,520

18 counties identified additional costs totalling $397,999. However, estimates for Hennepin, Ramsey, Dakota, and Anoka counties identified costs for conducting 6 licensing or placement visits to the foster home during the first six months after the first placement. This is a current rule requirement (Minnesota Rules, part 9545.0100, item B). Therefore, those cost estimates were excluded since they are not a new cost attributable to Rule 13. The adjusted cost estimate is $29,640. If the adjusted cost represents 75 percent of the total costs to all counties, 100 percent equals $39,520.

4. Part 9543.0070 INVESTIGATION OF LICENSED PROGRAMS.

1. Subp. 2. Timelines. $32,640

10 counties identified additional costs totalling $24,480. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $32,640.

2. Subp. 5. Recording complaints and investigations. $27,591

19 counties identified additional costs totalling $20,693. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $27,591.

5. Part 9543.0080 COUNTY INVESTIGATION OF UNLICENSED PROGRAMS.

1. Subpart 1. Unlicensed family day care and adult foster care. $0

9 counties identified additional costs totalling $43,275. Ramsey County's estimate of $40,050 was 93 percent of the costs reported. The requirement in subpart 1 is consistent with current family day care rule requirements under Minnesota Rules, part 9502.0335, subpart 16 and adult foster care rule requirements under Minnesota Rule, part 9555.5415 subpart 2. No effort has been made to reconcile Ramsey County's unusually high estimate. The identified costs estimates have not been treated as "new" costs under Rule 13.

2. Subp. 2. Unlicensed child foster care. $0

Less than 10 percent of the responding counties identified subpart 2 as a new cost.

6. Part 9543.0090 CORRECTION ORDERS.

1. Subpart 1. Correction orders; training. $26,931

24 counties identified additional costs totalling $20,198. If the estimates represent 75 percent of the total costs to all counties, 100 percent is $26,931.

2. Subp. 4. Compliance with correction order. $28,549

17 counties identified additional costs totalling $114,194. A number of counties identified very high costs because they interpreted the rule to require on-site visits after every correction order issued. The rule has been clarified to require the license holder to provide verification of compliance with a correction order. Currently, license holders return a signed copy of the correction order when the correction has been made. This practice can continue. Requiring the license holder to submit verification of correction will reduce the fiscal impact on the counties. The estimated cost above is 25 percent of the costs originally reported.

7. Part 9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.

1. Subp. 2. Immediate suspension of license. $0

Less than 10 percent of the responding counties identified subpart 2 as a new cost.

2. Subp. 5. License probation. $3,351

5 counties identified additional costs totalling $2,513. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $3,351.

3. Subp. 6. Notice to parents of negative licensing actions. $0

Less than 10 percent of the responding counties identified subpart 6 as a new cost.

8. Part 9543.0110 ENFORCING ORDERS OF THE COMMISSIONER.

1. Subpart 1. Agency enforcement of commissioners orders. $0

Less than 10 percent of the responding counties identified subpart 1 as a new cost.

2. Subp. 2. Sanctioned programs. $3,652

5 counties identified additional costs totalling $2,739. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $3,652.

3. Subp. 3. Programs on probation. $21,024

9 counties identified additional costs totalling $15,768. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $21,024.

9. Part 9543.0120 REPRESENTING THE COMMISSIONER IN CONTESTED CASE PROCEEDINGS.

12 counties identified additional costs for "Representing the commissioner in contested case proceedings" and "Informal dispositions". Minnesota Statutes, section 388.051, subdivision 1 requires the county attorney to appear in all cases in which the county is a party. Part 9543.0120 will not result in new costs for the county beyond requirements already in statute.

10. Part 9543.0130 ADMINISTRATIVE REQUIREMENTS.

1. Subpart 1. Maintaining records. $9,940

5 counties identified additional costs totalling $7,455. If the cost estimates represent 75 percent of the costs to all the counties, 100 percent equals $9,940.

2. Subp. 3. Training requirements. $15,269

17 counties identified additional costs totalling $11,452. If the costs represent 75 percent of the total costs to all counties, 100 percent equals $15,269.

Estimated additional local costs are $368,799 for each of the two years following adoption of this rule.

DATE: 8-8-90

ANN WYNIA
COMMISSIONER OF HUMAN SERVICES

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

Date: August 22 , 1990

Dear Chairperson Board of County Commissioners:

As required by Minnesota Statutes, section 256E.05, subdivision 3 (c), we are providing you with timely advance notice and a written summary of the fiscal impact of a proposed rule relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies, Minnesota Rules, parts 9543.0010 to 9543.0150 [Rule 13].

Parts 9543.0010 to 9543.0150 establish minimum standards that county and private agencies meet when performing licensing functions related to family day care, adult foster care, and child foster care. The rule sets forth standards for: processing license applications; conducting inspections, studies, and evaluations of programs; recommending approval or denial of an application for licensure; investigating allegations of licensing violations; issuing correction orders; recommending forfeiture orders and negative licensing actions; and representing the commissioner in contested case proceedings.

Any questions or comments about this notice should be made to:

Jim Schmidt
Rules and Bulletins Division
444 Lafayette Road
St. Paul, Minnesota 55155-3816
(612) 296-7815

Sincerely,

ANN WYNIA
Commissioner

Celebrate MINNESOTA 1990

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Department of Human Services Rules Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies, Parts 9543.0010 to 9543.0150

AFFIDAVIT OF MAILING TO COUNTY BOARD CHAIR

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

That on the 22nd day of August, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached letter and fiscal note 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 Chairperson of the 87 Minnesota County Boards of Commissioners.

Nancy L. Bishop

Subscribed and sworn to before me this 23 day of August, 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
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-38___

August 13, 1990

Representative Wayne Simoneau
House Appropriation Committee
Room 335
State Office Building
St. Paul, Minnesota 55155

Dear Representative Simoneau:

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

The Department of Human Services is proposing a new rule relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies (Minnesota Rules, parts 9543.0010 to 9543.0150) that would have a fiscal impact on state and local spending exceeding $100,000 during each of the two years following promulgation of the rule. Attached is the fiscal note, the proposed rule and the rulemaking notice.

The Department of Human Services will publish in the State Register on August 27, 1990, a NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING for this rule.

If you have any questions about the fiscal note please contact Jim Schmidt at 296-7815.

Sincerely,

ANN WYNIA
Commissioner

Enclosures

Celebrate MINNESOTA 1990

AN EQUAL OPPORTUNITY EMPLOYER

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

August 13, 1990

The Honorable Gene Merriam
Senate Finance Committee
Room 121
State Capitol Building
St. Paul, Minnesota 55155

Dear Senator Merriam:

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

The Department of Human Services is proposing a new rule relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies (Minnesota Rules, parts 9543.0010 to 9543.0150) that would have a fiscal impact on state and local spending exceeding $100,000 during each of the two years following promulgation of the rule. Attached is the fiscal note, the proposed rule and the rulemaking notice.

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If you have any questions about the fiscal note please contact Jim Schmidt at 296-7815.

Sincerely,

Ann Wynia

ANN WYNIA
Commissioner

Enclosures

Celebrate MINNESOTA 1990

AN EQUAL OPPORTUNITY EMPLOYER

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

August 13, 1990

Peter Hutchinson, Commissioner
Department of Finance
309 Administration Building
St. Paul, Minnesota 55155

Dear Commissioner Hutchinson:

Minnesota Statutes, section 15.065 requires the Department of Human Services to submit to the House Appropriations Committee and the Senate Finance Committee a fiscal note on permanent rules that will have a fiscal impact on state and local spending of more than $100,000 in either of the first two years following promulgation of the rule. The Department is proposing a rule relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies (Minnesota Rules, parts 9543.0010 to 9543.0150) that will have a fiscal impact of over $100,000. For your information, enclosed are copies of the materials sent to the House Appropriations Committee and the Senate Finance Committee on August 13, 1990.

If you have any questions about the fiscal note please contact Jim Schmidt at 296-7815.

Sincerely,

ANN WYNIA
Commissioner

Enclosure

Celebrate MINNESOTA 1990

AN EQUAL OPPORTUNITY EMPLOYER

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

August 13, 1990

Ms. Maryanne Hruby
Executive Director, LCRAR
55 State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

Pursuant to Minnesota Statutes, section 14.131, enclosed is a statement of need and reasonableness relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies, Minnesota Rules, parts 9543.0010 to 9543.0150. The public hearing for this rule is scheduled for October 4, 1990.

If you have any questions on the statement of need and reasonableness, please do not hesitate to contact me at 296-7815.

Sincerely,

Jim Schmidt

Jim Schmidt, DHS
Rulemaker

Enclosure

Celebrate MINNESOTA 1990

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies, Minnesota Rules, parts 9543.0010 to 9543.0150

AFFIDAVIT OF MAILING

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

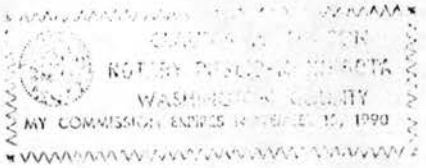
That on the 22nd day of August, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notices by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who have requested that their names be placed on file with the Department of Human Services for the purpose of receiving notice of hearing by this Department.

Nancy L. Bishop

Subscribed and sworn to before me

this 23 day of August, 1990

Claudia R. Eliason



STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies Minnesota Rules, parts 9543.0010 to 9543.0150

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, sections 245A.09 and 245A.16.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and 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, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON OCTOBER 4, 1990 UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between September 27, 1990 and October 3, 1990 at (612) 296-7815.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to: Jim Schmidt, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on September 26, 1990.

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.

A free copy of this rule is available upon request for your review from: Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816 or by calling (612) 296-7454.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

The purpose of the proposed rule is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs and to establish minimum standards for performing licensing functions related to those rules. The proposed rule affects county agencies performing family day care, adult foster care, and child foster care licensing functions and private agencies authorized to perform child foster care licensing functions.

The proposed rule identifies the purpose of the rule and its applicability to county and private agencies; defines words and phrases that have meanings specific to the rule; identifies specific licensing functions delegated to county and private agencies; sets forth procedures for handling license applications, including information that must be given to prospective applicants, licensing study requirements, and standards for making licensing recommendations; establishes procedures for variances; establishes additional licensing requirements for foster care programs; establishes requirements for investigating allegations of licensing violations; establishes procedures governing unlicensed programs that are required to be licensed; establishes requirements for issuing correction orders; establishes standards for recommending negative licensing actions; requires agencies to enforce orders of the commissioner; sets forth procedures that county agencies must comply with when representing the commissioner in contested cases; establishes certain administrative requirements; sets forth procedures governing certification of county agencies; and sets forth procedures for authorizing private agencies to perform licensing functions.

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

The adoption of this rule will increase aggregate local public body spending by over $100,000 in each of the first two years

following the rule's adoption. See the fiscal note attached to this notice which contains the Department's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered 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 Jim Schmidt, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

DATED: 8-8-90

ANN WYNIA
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Rules of the Department of Human Services Relating to Licensing Functions of County and Private Agencies; Parts 9543.0010 to 0543.0150

FISCAL NOTE

I. SUMMARY OF COSTS

	Local costs	State costs
Year One	$368,799	$0
Year Two	$368,799	$0
Total	$737,598	$0

The Department sent a survey to the 87 county human service agencies to gather fiscal information concerning this rule. See part III for details on the methodology used in estimating costs. There was considerable variation in rule parts identified by the counties as resulting in "new" costs. Except for a current rule requirement under the child foster care rule and a requirement to track license progress (which has since been modified), no single rule requirement was identified as particularly costly. The estimated local costs reflect the sum of many relatively small costs rather than the costs of one or two rule requirements. Major costs identified by rule requirement include:

A. Part 9543.0060, subpart 4, Foster Care Licensing Study, $45,928.
B. Part 9543.0060, subpart 5, Duties of agency, $39,520.
C. Part 9543.0040, subpart 1, Licensure information, $35,068
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The variation in costs identified by the counties indicates a lack of licensing uniformity and serves to reinforce the need for this rule. The costs identified for the second year are estimated to be the same as those identified by the counties for the first year. See Part III for a detailed breakdown of costs.

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1. PURPOSE OF THE RULE

The purpose of parts 9543.0010 to 9543.0150 is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs; to establish minimum standards for performing licensing functions related to those rules; and to certify county agencies and authorize private agencies that are in compliance with this rule.

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Minnesota Statutes, sections 245A.09 and 245A.16.

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Rule adoption is necessary to implement Minnesota Statutes, sections 245A.16 and 466.131.

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Family systems (child foster care, adult foster care, and family day care programs) licensing functions are funded through CSSA block grant funds and local revenue sources. The CSSA Block Grant for fiscal year 1990 is $50.4 million. Although CSSA block grant funds may be used to perform licensing functions, social services needs exceed available CSSA funding.

5. PROJECTED STATE AND LOCAL COSTS

A. STATE COSTS

Minnesota Statutes, section 245A.16 requires the commissioner to provide instruction and technical assistance to county and private agencies subject to section 245A.16 and to ensure that rules are uniformly enforced throughout the state by reviewing each county and private agency for compliance with section 245A.16 and other applicable laws and rules at least biennially. The legislature appropriated funds for three FTEs to enable the department to comply with the requirements in section 245A.16. No additional state costs are anticipated with the adoption of this rule.

B. LOCAL COSTS

Additional local costs with the adoption of this rule are estimated to be $368,799 per year.

Family systems licensing functions are performed by county and private agencies (private agencies recommend licensure of child foster care programs only). The purpose of Rule 13 is to ensure licensing functions

are uniformly performed throughout the state. Rule 13 sets forth minimum standards for performing these licensing functions. The licensing functions implement licensure of Family Systems: Family Day Care governed by Minnesota Rules, parts 9502.0315 to 9502.0445; Family Foster Care, Minnesota Rules, parts 9545.0010 to 9545.0260; and Adult Foster Care, Minnesota Rules, parts 9555.5105 to 9555.6265.

C. PRIVATE AGENCY COSTS

Private agencies perform licensing functions for child foster care programs. The 1,062 programs supervised by private agencies are 6 percent of the total Family Systems program licenses. Cost were not identified for private agencies since Minnesota Statutes, section 14.11 only requires a fiscal estimate for public bodies and private agencies are not required to perform licensing functions.

III. METHODOLOGY USED IN DETERMINING COSTS UNDER NEW RULE

The department in REQUEST BULLETIN NO. 89-50C requested county agencies to review a draft of Rule 13 and identify additional agency costs directly attributable to the rule by specific rule part. Attached is a copy of Request Bulletin No. 89-50C.

Use of the request bulletin afforded counties an opportunity to provide fiscal information to the department on the cost of the rule. Identification of additional costs by specific rule part permitted the department to reexamine proposed rule parts to determine if less costly alternatives were available to achieve the objective.

Forty-nine counties responded to the survey. Seven counties plus the foster care program in Dakota County did not identify specific cost areas but indicated compliance with Rule 13 would result in additional costs or additional staffing. Since it is not possible to determine in those instances whether costs are the result of new requirements or the cost of complying with existing requirements in program rules and statutes, the department did not include those costs estimates in the fiscal note. The seven counties and Dakota County's foster care program were treated as non-reporting counties.

Thirty counties identified as an additional cost the requirement to track license progress (part 9543.0040, subpart 6). Due to the number of counties identifying this requirement as an additional cost and the costs identified, this rule part has been modified. The commissioner will issue a form listing the required activities to simplify the agency's tracking process as well as enable the commissioner to monitor compliance with rule requirements. This change will result in lower costs to the counties than those initially identified.

In two rule parts high cost estimates were a result of misinterpretation of the rule requirements. The two rule parts were 9543.0060, subpart 5, item E and 9543.0090, subpart 4. Part 9543.0060, subpart 5, item E requires foster care providers have a means of contacting the agency 24 hours per day. Part 9543.0090, subpart 4 addresses compliance with correction orders. The department has subsequently modified the

proposed rule language to clarify these two rule requirements. Clarification of the two rule parts will result in lower costs to the county than those initially identified.

Some counties identified current statutory or rule requirements as additional costs under Rule 13. Where an identified cost is clearly a statutory or existing rule requirement, that cost has not been included in this fiscal note as a Rule 13 cost.

To adjust total costs to account for counties that did not respond to the survey, the department used the ratio of the number of programs licensed by the reporting counties to the total number of programs licensed by all counties. The 41 reporting counties (excludes the 7 counties that did not provide cost breakdowns plus foster care in Dakota County) license approximately 75 percent of all Family Systems programs. Specifically, these counties license: 9,039 family day care programs; 2,186 child foster care programs; and 697 adult foster care programs.

Reported costs were adjusted to provide an estimate of 100 percent of the costs had all counties responded to the survey, by dividing the total reported cost for each item by 75 percent.

Finally, there was considerable variation in rule parts that counties identified as new cost areas. Unless at least 10 percent of the counties responding (5 or more) identified a requirement as a new cost, the cost was not treated as a new cost. Notwithstanding differences which may exist between counties, if 9 out of 10 counties are currently performing a licensing function and have not identified the requirement as a new cost, it is reasonable to assume the requirement is not a new cost.

TREATMENT OF INDIVIDUAL COST ITEMS.

1. Part 9543.0040 LICENSE APPLICATION PROCEDURES.

    1. Subpart 1. LICENSE APPLICATION PROCEDURES. $35,068

24 counties identified additional costs totalling $26,301. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $35,068.

    2. Subp. 2 LICENSING STUDY. $23,683

17 counties identified additional costs totalling $124,212. Hennepin County's estimate of $50,000 for systems automation was deleted since that cost is not directly related to any Rule 13 requirement. Ramsey County's estimate of $56,450 was deleted since costs identified are statutory requirements (background study - 245A.04, subd. 3; and evaluation of a program - 245A.04, subd. 4). The adjusted cost estimate is $17,762. If the adjusted costs represent 75 percent of the total costs to all counties, 100 percent equals $23,683.

3. Subp. 5 LICENSE RENEWAL. $21,565

8 counties identified additional costs totalling $16,174. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $21,565.

4. Subp. 6. TRACKING LICENSING PROCESS. $8,797

30 counties identified additional costs totalling $87,967. Due to the number of counties identifying this subpart as an additional cost and the estimates reported, the proposed rule was modified. The modification requires the use of a checklist issued by the department to track licensing progress. Presumably, agencies currently track license applications by manually checking the file's content. The use of a checklist will provide a quick and simple means of providing an inventory of what is in a license file. The use of a checklist should have a minimal fiscal impact on county agencies. The cost figure above represents approximately 10 percent of the costs originally reported.

2. Part 9543.0050 VARIANCE REQUESTS.

Subpart 1. Variance information. $0

Less than 10 percent of the responding counties identified subpart 1 as new a cost.

Subp. 2. Variance procedures. $3,812

7 counties identified additional costs totalling $2,859. If the cost estimates represent 75 percent of the total costs of all counties, 100 percent equals $3,812.

Subp. 3. Foster care capacity variance at request of agency. $4,340

8 counties identified additional costs totalling $3,255. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $4,340

3. Part 9543.0060 LICENSING FOSTER CARE PROGRAMS.

1. Subp. 2. Program information. $5,363

10 counties identified additional costs totalling $4,022. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $5,363.

2. Subp. 3. Orientation and preplacement training. $11,776

7 counties identified additional costs totalling $8,832. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $11,776.

3. Subp. 4. Licensing study. $45,928

13 counties identified additional costs totalling $34,446. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $45,928.

4. Subp. 5. General requirements. $39,520

18 counties identified additional costs totalling $397,999. However, estimates for Hennepin, Ramsey, Dakota, and Anoka counties identified costs for conducting 6 licensing or placement visits to the foster home during the first six months after the first placement. This is a current rule requirement (Minnesota Rules, part 9545.0100, item B). Therefore, those cost estimates were excluded since they are not a new cost attributable to Rule 13. The adjusted cost estimate is $29,640. If the adjusted cost represents 75 percent of the total costs to all counties, 100 percent equals $39,520.

4. Part 9543.0070 INVESTIGATION OF LICENSED PROGRAMS.

1. Subp. 2. Timelines. $32,640

10 counties identified additional costs totalling $24,480. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $32,640.

2. Subp. 5. Recording complaints and investigations. $27,591

19 counties identified additional costs totalling $20,693. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $27,591.

5. Part 9543.0080 COUNTY INVESTIGATION OF UNLICENSED PROGRAMS.

1. Subpart 1. Unlicensed family day care and adult foster care. $0

9 counties identified additional costs totalling $43,275. Ramsey County's estimate of $40,050 was 93 percent of the costs reported. The requirement in subpart 1 is consistent with current family day care rule requirements under Minnesota Rules, part 9502.0335, subpart 16 and adult foster care rule requirements under Minnesota Rule, part 9555.5415 subpart 2. No effort has been made to reconcile Ramsey County's unusually high estimate. The identified costs estimates have not been treated as "new" costs under Rule 13.

2. Subp. 2. Unlicensed child foster care. $0

Less than 10 percent of the responding counties identified subpart 2 as a new cost.

6. Part 9543.0090 CORRECTION ORDERS.

1. Subpart 1. Correction orders; training. $26,931

24 counties identified additional costs totalling $20,198. If the estimates represent 75 percent of the total costs to all counties, 100 percent is $26,931.

2. Subp. 4. Compliance with correction order. $28,549

17 counties identified additional costs totalling $114,194. A number of counties identified very high costs because they interpreted the rule to require on-site visits after every correction order issued. The rule has been clarified to require the license holder to provide verification of compliance with a correction order. Currently, license holders return a signed copy of the correction order when the correction has been made. This practice can continue. Requiring the license holder to submit verification of correction will reduce the fiscal impact on the counties. The estimated cost above is 25 percent of the costs originally reported.

7. Part 9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.

1. Subp. 2. Immediate suspension of license. $0

Less than 10 percent of the responding counties identified subpart 2 as a new cost.

2. Subp. 5. License probation. $3,351

5 counties identified additional costs totalling $2,513. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $3,351.

3. Subp. 6. Notice to parents of negative licensing actions. $0

Less than 10 percent of the responding counties identified subpart 6 as a new cost.

8. Part 9543.0110 ENFORCING ORDERS OF THE COMMISSIONER.

1. Subpart 1. Agency enforcement of commissioners orders. $0

Less than 10 percent of the responding counties identified subpart 1 as a new cost.

2. Subp. 2. Sanctioned programs. $3,652

5 counties identified additional costs totalling $2,739. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $3,652.

3. Subp. 3. Programs on probation. $21,024

9 counties identified additional costs totalling $15,768. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $21,024.

9. Part 9543.0120 REPRESENTING THE COMMISSIONER IN CONTESTED CASE PROCEEDINGS.

12 counties identified additional costs for "Representing the commissioner in contested case proceedings" and "Informal dispositions". Minnesota Statutes, section 388.051, subdivision 1 requires the county attorney to appear in all cases in which the county is a party. Part 9543.0120 will not result in new costs for the county beyond requirements already in statute.

10. Part 9543.0130 ADMINISTRATIVE REQUIREMENTS.

1. Subpart 1. Maintaining records. $9,940

5 counties identified additional costs totalling $7,455. If the cost estimates represent 75 percent of the costs to all the counties, 100 percent equals $9,940.

2. Subp. 3. Training requirements. $15,269

17 counties identified additional costs totalling $11,452. If the costs represent 75 percent of the total costs to all counties, 100 percent equals $15,269.

Estimated additional local costs are $368,799 for each of the two years following adoption of this rule.

DATE: 8-8-90

ANN WYNIA
COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies Minnesota Rules, parts 9543.0010 to 9543.0150

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room 500 South, State Office Building, 100 Constitution Avenue, St. Paul, Minnesota on October 4, 1990 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between September 27, 1990 and October 3, 1990 at (612) 296-7815.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon L. Lunde, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7645, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of

the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

The purpose of the proposed rule is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs and to establish minimum standards for performing licensing functions related to those rules. The proposed rule affects county agencies performing family day care, adult foster care, and child foster care licensing functions and private agencies authorized to perform child foster care licensing functions.

The proposed rule identifies the purpose of the rule and its applicability to county and private agencies; defines words and phrases that have meanings specific to the rule; identifies specific licensing functions delegated to county and private agencies; sets forth procedures for handling license applications, including information that must be given to prospective applicants, licensing study requirements, and standards for making licensing recommendations; establishes procedures for variances; establishes additional licensing requirements for foster care programs; establishes requirements for investigating allegations of licensing violations; establishes procedures governing unlicensed programs that are required to be licensed; establishes requirements for issuing correction orders; establishes standards for recommending negative licensing actions; requires agencies to enforce orders of the commissioner; sets forth procedures that county agencies must comply with when representing the commissioner in contested cases; establishes certain administrative requirements; sets forth procedures governing certification of county agencies; and sets forth procedures for authorizing private agencies to perform licensing functions.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, sections 245A.09 and 245A.16. The adoption of this rule will increase aggregate local public body spending by over $100,000 in each of the first two years following the rule's adoption. See the fiscal note attached to this notice which contains the Department's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, or by calling (612) 296-7454. This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Jim Schmidt, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155-3816.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

DATED: 8-8-90

ANN WYNIA
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies, Minnesota Rules, parts 9543.0010 to 9543.0150

AFFIDAVIT OF ADDITIONAL MAILING

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

That on the 22nd day of August, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notices 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 Child-Caring/Child-Placing Agencies in Minnesota (Rule 4)
- Advisory Committee Members
- Interested Persons

Nancy L. Bishop

Subscribed and sworn to before me

this 23 day of August, 1990

Claudia G. Klein

CLAUDIA G. KLEIN
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 15, 1990

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies Minnesota Rules, parts 9543.0010 to 9543.0150	NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, sections 245A.09 and 245A.16.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and 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, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON OCTOBER 4, 1990 UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between September 27, 1990 and October 3, 1990 at (612) 296-7815.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to: Jim Schmidt, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on September 26, 1990.

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.

A free copy of this rule is available upon request for your review from: Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816 or by calling (612) 296-7454.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

The purpose of the proposed rule is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs and to establish minimum standards for performing licensing functions related to those rules. The proposed rule affects county agencies performing family day care, adult foster care, and child foster care licensing functions and private agencies authorized to perform child foster care licensing functions.

The proposed rule identifies the purpose of the rule and its applicability to county and private agencies; defines words and phrases that have meanings specific to the rule; identifies specific licensing functions delegated to county and private agencies; sets forth procedures for handling license applications, including information that must be given to prospective applicants, licensing study requirements, and standards for making licensing recommendations; establishes procedures for variances; establishes additional licensing requirements for foster care programs; establishes requirements for investigating allegations of licensing violations; establishes procedures governing unlicensed programs that are required to be licensed; establishes requirements for issuing correction orders; establishes standards for recommending negative licensing actions; requires agencies to enforce orders of the commissioner; sets forth procedures that county agencies must comply with when representing the commissioner in contested cases; establishes certain administrative requirements; sets forth procedures governing certification of county agencies; and sets forth procedures for authorizing private agencies to perform licensing functions.

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

The adoption of this rule will increase aggregate local public body spending by over $100,000 in each of the first two years

following the rule's adoption. See the fiscal note attached to this notice which contains the Department's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered 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 Jim Schmidt, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

DATED: 8-8-90

ANN WYNIA
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Rules of the Department of Human Services Relating to Licensing Functions of County and Private Agencies; Parts 9543.0010 to 0543.0150

FISCAL NOTE

I. SUMMARY OF COSTS

	Local costs	State costs
Year One	$368,799	$0
Year Two	$368,799	$0
Total	$737,598	$0

The Department sent a survey to the 87 county human service agencies to gather fiscal information concerning this rule. See part III for details on the methodology used in estimating costs. There was considerable variation in rule parts identified by the counties as resulting in "new" costs. Except for a current rule requirement under the child foster care rule and a requirement to track license progress (which has since been modified), no single rule requirement was identified as particularly costly. The estimated local costs reflect the sum of many relatively small costs rather than the costs of one or two rule requirements. Major costs identified by rule requirement include:

A. Part 9543.0060, subpart 4, Foster Care Licensing Study, $45,928.
B. Part 9543.0060, subpart 5, Duties of agency, $39,520.
C. Part 9543.0040, subpart 1, Licensure information, $35,068
D. Part 9543.0070, subpart 2, Timelines, $32,640.

The variation in costs identified by the counties indicates a lack of licensing uniformity and serves to reinforce the need for this rule. The costs identified for the second year are estimated to be the same as those identified by the counties for the first year. See Part III for a detailed breakdown of costs.

II. BACKGROUND INFORMATION ON THE RULE AND AVAILABLE FUNDS

1. PURPOSE OF THE RULE

The purpose of parts 9543.0010 to 9543.0150 is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs; to establish minimum standards for performing licensing functions related to those rules; and to certify county agencies and authorize private agencies that are in compliance with this rule.

2. STATUTORY AUTHORITY FOR THE RULE

Minnesota Statutes, sections 245A.09 and 245A.16.

3. REASONS FOR ADOPTION OF THE RULE

Rule adoption is necessary to implement Minnesota Statutes, sections 245A.16 and 466.131.

Minnesota Statutes, section 245A.16, subdivision 6, of the Human Services Licensing Act requires the commissioner to ensure that licensing rules are uniformly enforced throughout the state by reviewing county and private agencies for compliance with applicable laws and rules. County agencies that comply with section 245A.16, are to be certified by the commissioner.

Minnesota Statutes, section 466.131 states, "After July 1, 1987, a municipality is an employee of the state for purposes of the indemnification provision of section 3.736, subdivision 9, when the municipality is required by the public welfare licensing act and rules adopted under it to inspect or investigate a provider, and the municipality has been duly certified under standards for certification developed by the commissioner of human services."

4. AVAILABILITY OF FUNDS

Family systems (child foster care, adult foster care, and family day care programs) licensing functions are funded through CSSA block grant funds and local revenue sources. The CSSA Block Grant for fiscal year 1990 is $50.4 million. Although CSSA block grant funds may be used to perform licensing functions, social services needs exceed available CSSA funding.

5. PROJECTED STATE AND LOCAL COSTS

A. STATE COSTS

Minnesota Statutes, section 245A.16 requires the commissioner to provide instruction and technical assistance to county and private agencies subject to section 245A.16 and to ensure that rules are uniformly enforced throughout the state by reviewing each county and private agency for compliance with section 245A.16 and other applicable laws and rules at least biennially. The legislature appropriated funds for three FTEs to enable the department to comply with the requirements in section 245A.16. No additional state costs are anticipated with the adoption of this rule.

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proposed rule language to clarify these two rule requirements. Clarification of the two rule parts will result in lower costs to the county than those initially identified.

Some counties identified current statutory or rule requirements as additional costs under Rule 13. Where an identified cost is clearly a statutory or existing rule requirement, that cost has not been included in this fiscal note as a Rule 13 cost.

To adjust total costs to account for counties that did not respond to the survey, the department used the ratio of the number of programs licensed by the reporting counties to the total number of programs licensed by all counties. The 41 reporting counties (excludes the 7 counties that did not provide cost breakdowns plus foster care in Dakota County) license approximately 75 percent of all Family Systems programs. Specifically, these counties license: 9,039 family day care programs; 2,186 child foster care programs; and 697 adult foster care programs.

Reported costs were adjusted to provide an estimate of 100 percent of the costs had all counties responded to the survey, by dividing the total reported cost for each item by 75 percent.

Finally, there was considerable variation in rule parts that counties identified as new cost areas. Unless at least 10 percent of the counties responding (5 or more) identified a requirement as a new cost, the cost was not treated as a new cost. Notwithstanding differences which may exist between counties, if 9 out of 10 counties are currently performing a licensing function and have not identified the requirement as a new cost, it is reasonable to assume the requirement is not a new cost.

TREATMENT OF INDIVIDUAL COST ITEMS.

1. Part 9543.0040 LICENSE APPLICATION PROCEDURES.

    1. Subpart 1. LICENSE APPLICATION PROCEDURES. $35,068

24 counties identified additional costs totalling $26,301. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $35,068.

    2. Subp. 2 LICENSING STUDY. $23,683

17 counties identified additional costs totalling $124,212. Hennepin County's estimate of $50,000 for systems automation was deleted since that cost is not directly related to any Rule 13 requirement. Ramsey County's estimate of $56,450 was deleted since costs identified are statutory requirements (background study - 245A.04, subd. 3; and evaluation of a program - 245A.04, subd. 4). The adjusted cost estimate is $17,762. If the adjusted costs represent 75 percent of the total costs to all counties, 100 percent equals $23,683.

3. Subp. 5 LICENSE RENEWAL. $21,565

8 counties identified additional costs totalling $16,174. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $21,565.

4. Subp. 6. TRACKING LICENSING PROCESS. $8,797

30 counties identified additional costs totalling $87,967. Due to the number of counties identifying this subpart as an additional cost and the estimates reported, the proposed rule was modified. The modification requires the use of a checklist issued by the department to track licensing progress. Presumably, agencies currently track license applications by manually checking the file's content. The use of a checklist will provide a quick and simple means of providing an inventory of what is in a license file. The use of a checklist should have a minimal fiscal impact on county agencies. The cost figure above represents approximately 10 percent of the costs originally reported.

2. Part 9543.0050 VARIANCE REQUESTS.

Subpart 1. Variance information. $0

Less than 10 percent of the responding counties identified subpart 1 as new a cost.

Subp. 2. Variance procedures. $3,812

7 counties identified additional costs totalling $2,859. If the cost estimates represent 75 percent of the total costs of all counties, 100 percent equals $3,812.

Subp. 3. Foster care capacity variance at request of agency. $4,340

8 counties identified additional costs totalling $3,255. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $4,340

3. Part 9543.0060 LICENSING FOSTER CARE PROGRAMS.

1. Subp. 2. Program information. $5,363

10 counties identified additional costs totalling $4,022. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $5,363.

2. Subp. 3. Orientation and preplacement training. $11,776

7 counties identified additional costs totalling $8,832. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $11,776.

3. Subp. 4. Licensing study. $45,928

13 counties identified additional costs totalling $34,446. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $45,928.

4. Subp. 5. General requirements. $39,520

18 counties identified additional costs totalling $397,999. However, estimates for Hennepin, Ramsey, Dakota, and Anoka counties identified costs for conducting 6 licensing or placement visits to the foster home during the first six months after the first placement. This is a current rule requirement (Minnesota Rules, part 9545.0100, item B). Therefore, those cost estimates were excluded since they are not a new cost attributable to Rule 13. The adjusted cost estimate is $29,640. If the adjusted cost represents 75 percent of the total costs to all counties, 100 percent equals $39,520.

4. Part 9543.0070 INVESTIGATION OF LICENSED PROGRAMS.

1. Subp. 2. Timelines. $32,640

10 counties identified additional costs totalling $24,480. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $32,640.

2. Subp. 5. Recording complaints and investigations. $27,591

19 counties identified additional costs totalling $20,693. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $27,591.

5. Part 9543.0080 COUNTY INVESTIGATION OF UNLICENSED PROGRAMS.

1. Subpart 1. Unlicensed family day care and adult foster care. $0

9 counties identified additional costs totalling $43,275. Ramsey County's estimate of $40,050 was 93 percent of the costs reported. The requirement in subpart 1 is consistent with current family day care rule requirements under Minnesota Rules, part 9502.0335, subpart 16 and adult foster care rule requirements under Minnesota Rule, part 9555.5415 subpart 2. No effort has been made to reconcile Ramsey County's unusually high estimate. The identified costs estimates have not been treated as "new" costs under Rule 13.

2. Subp. 2. Unlicensed child foster care. $0

Less than 10 percent of the responding counties identified subpart 2 as a new cost.

6. Part 9543.0090 CORRECTION ORDERS.

1. Subpart 1. Correction orders; training. $26,931

24 counties identified additional costs totalling $20,198. If the estimates represent 75 percent of the total costs to all counties, 100 percent is $26,931.

2. Subp. 4. Compliance with correction order. $28,549

17 counties identified additional costs totalling $114,194. A number of counties identified very high costs because they interpreted the rule to require on-site visits after every correction order issued. The rule has been clarified to require the license holder to provide verification of compliance with a correction order. Currently, license holders return a signed copy of the correction order when the correction has been made. This practice can continue. Requiring the license holder to submit verification of correction will reduce the fiscal impact on the counties. The estimated cost above is 25 percent of the costs originally reported.

7. Part 9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.

1. Subp. 2. Immediate suspension of license. $0

Less than 10 percent of the responding counties identified subpart 2 as a new cost.

2. Subp. 5. License probation. $3,351

5 counties identified additional costs totalling $2,513. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $3,351.

3. Subp. 6. Notice to parents of negative licensing actions. $0

Less than 10 percent of the responding counties identified subpart 6 as a new cost.

8. Part 9543.0110 ENFORCING ORDERS OF THE COMMISSIONER.

1. Subpart 1. Agency enforcement of commissioners orders. $0

Less than 10 percent of the responding counties identified subpart 1 as a new cost.

2. Subp. 2. Sanctioned programs. $3,652

5 counties identified additional costs totalling $2,739. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $3,652.

3. Subp. 3. Programs on probation. $21,024

9 counties identified additional costs totalling $15,768. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $21,024.

9. Part 9543.0120 REPRESENTING THE COMMISSIONER IN CONTESTED CASE PROCEEDINGS.

12 counties identified additional costs for "Representing the commissioner in contested case proceedings" and "Informal dispositions". Minnesota Statutes, section 388.051, subdivision 1 requires the county attorney to appear in all cases in which the county is a party. Part 9543.0120 will not result in new costs for the county beyond requirements already in statute.

10. Part 9543.0130 ADMINISTRATIVE REQUIREMENTS.

1. Subpart 1. Maintaining records. $9,940

5 counties identified additional costs totalling $7,455. If the cost estimates represent 75 percent of the costs to all the counties, 100 percent equals $9,940.

2. Subp. 3. Training requirements. $15,269

17 counties identified additional costs totalling $11,452. If the costs represent 75 percent of the total costs to all counties, 100 percent equals $15,269.

Estimated additional local costs are $368,799 for each of the two years following adoption of this rule.

DATE: 8-8-90

ANN WYNIA
COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies Minnesota Rules, parts 9543.0010 to 9543.0150

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room 500 South, State Office Building, 100 Constitution Avenue, St. Paul, Minnesota on October 4, 1990 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between September 27, 1990 and October 3, 1990 at (612) 296-7815.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon L. Lunde, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7645, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of

the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

The purpose of the proposed rule is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs and to establish minimum standards for performing licensing functions related to those rules. The proposed rule affects county agencies performing family day care, adult foster care, and child foster care licensing functions and private agencies authorized to perform child foster care licensing functions.

The proposed rule identifies the purpose of the rule and its applicability to county and private agencies; defines words and phrases that have meanings specific to the rule; identifies specific licensing functions delegated to county and private agencies; sets forth procedures for handling license applications, including information that must be given to prospective applicants, licensing study requirements, and standards for making licensing recommendations; establishes procedures for variances; establishes additional licensing requirements for foster care programs; establishes requirements for investigating allegations of licensing violations; establishes procedures governing unlicensed programs that are required to be licensed; establishes requirements for issuing correction orders; establishes standards for recommending negative licensing actions; requires agencies to enforce orders of the commissioner; sets forth procedures that county agencies must comply with when representing the commissioner in contested cases; establishes certain administrative requirements; sets forth procedures governing certification of county agencies; and sets forth procedures for authorizing private agencies to perform licensing functions.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, sections 245A.09 and 245A.16. The adoption of this rule will increase aggregate local public body spending by over $100,000 in each of the first two years following the rule's adoption. See the fiscal note attached to this notice which contains the Department's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, or by calling (612) 296-7454. This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Jim Schmidt, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155-3816.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

DATED: 8-8-90

A. Wynia

ANN WYNIA
Commissioner

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of Rules of the State Department of Human Services Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies, Minnesota Rules, parts 9543.0010 to 9543.0150

CERTIFICATE

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a, and 14.22 or 14.30, that their names be placed on the State Department of Human Services rulemaking mailing list is accurate, complete, and current as of this 22nd day of August, 1990.

Nancy L. Bishop

SUMMARY OF RESPONSES ON COST SURVEY ON RULE 13

NUMBER OF COUNTIES RESPONDING: 49

NUMBER OF COUNTIES REPORTING NO SUBSTANTIAL COSTS DUE TO RULE 13: 7

NUMBER OF COUNTIES REPORTING ADDITIONAL COSTS < $2,000: 11

NUMBER OF COUNTIES REPORTING COSTS > $2000 and < $5,000: 9

NUMBER OF COUNTIES REPORTING COSTS > $5,000 and < $10,000: 5

NUMBER OF COUNTIES REPORTING COSTS > $10,000: 17

COUNTIES RESPONDING: Aitkin; Anoka; Becker; Big Stone; Blue Earth; Brown; Carlton; Clearwater; Cook; Crow Wing; Dakota; Dodge; Douglas; Faribault/Martin/Watonwan; Freeborn; Goodhue; Hennepin; Hubbard; Isanti; Kandiyohi; Koochiching; Lac Qui Parle; Lake of the Woods; LeSueur; Mahnomen; Marshall; McLeod; Meeker; Mille Lacs; Morrison; Nicollet; Nobles; Otter Tail; Pine; Pipestone; Ramsey; Redwood; Renville; Scott; Sibley; St. Louis; Stearns; Steele; Stevens; Todd; Wabasha; Washington; Winona; Yellow Medicine.

COUNTIES REPORTING NO SUBSTANTIAL COSTS DUE TO RULE 13: Aitkin; Brown; Carlton; Hubbard; Mahnomen; Steele; Todd.

COUNTIES REPORTING ADDITIONAL COSTS ≤$2,000: Meeker $150; Dodge $282 plus training; Nobles $500; Stevens $700; Cook $938; Clearwater $1,350; Renville $1,640; St. Louis $1,848; Koochiching $1,909; Sibley $2,000; Goodhue* ≤$2,000.

COUNTIES REPORTING COSTS > $2000 and < $5,000: Faribault/Martin/Watonwan $2,025; Yellow Medicine $2,527; McLeod $3,120; Pipestone* $3,500** [$2,000 to $5,000]; Lake of the Woods $3,936; Morrison $4,200; Nicollet $4,949 plus training and other unspecified costs; Isanti*; Redwood*.

COUNTIES REPORTING COSTS > $5,000 and < $10,000: Marshall $5,940; Freeborn $7,635; Wabasha $9,393; LeSueur; $9,690; Big Stone* $9,750** [$7,500 to $12,000].

COUNTIES REPORTING COSTS > $10,000: Mille Lacs $11,740; Becker $11,800; Lac Qui Parle $11,813 includes $6,900 for correction plan process; Scott $11,870; Pine $12,060; Kandiyohi $13,401; Crow Wing County $14,296; Douglas* $19,872; Otter Tail $20,440; Winona $21,092; Washington $27,320.

Anoka $46,402
Blue Earth* $62,048
Stearns $84,154
Dakota $129,413 [$116,613 Foster care*; $12,800 Family day care]
Ramsey $323,020 [$144,270 Family day care; $178,750 Foster care]
Hennepin $337,754 [Hennepin reported $3,070,526 which is their total cost to perform Family Systems licensing functions].

* Individual costs were not identified.
** Midpoint of cost range

RULE 13
COST SURVEY SUMMARY

SUMMARY OF UNADJUSTED COSTS BY RULE PART:

1. **Part 9543.0040 LICENSE APPLICATION PROCEDURES.**

Subpart 1. Licensure information. (24 counties)

$1,040; $100; $2,920; $104; $100; $1,320; $1,000; $700; $1,568; $234; $45; $375; $219; $1,400; $610; $1,759; $282; $1,050; $1,500; $800; $8,340; $480; $155; $200.

Anoka $8,340
Ramsey Day Care $2,920
Wabasha $1,759
Ramsey Foster Care $1,500
Morrison $1,400

Subp. 2. Licensing study. (17 counties)

$2,179; $31,250; $2,000; $2,000; $1,120; $390; $550; $1,445; $2,440; $950; $3,600; $25,200; $50,000; $60; $450; $78; $500.

Hennepin $50,000 (Systems automation unrelated to Rule 13)
Ramsey Day Care $31,250 (Currently not observing program)
Ramsey Foster Care $25,200 (BCA searches)

Subp. 5. License renewal. (8 counties)

$1,634; $2,000; $1,000; $840; $7,150; $1,800; $750; $1000.

Mille Lacs $7,150

Subp. 6. Tracking licensing progress. (30 counties) [Rule to be modified]

$650; $3,133; $50; $18,750; $197; $3,120; $521; $840; $756; $320; $700; $11,820; $1,000; $18,000; $672; $390; $100; $1,500; $600; $50; $975; $161; $250; $720; $7,900; $10,750; $630; $2,268; $144; $1000.

Ramsey Day Care $18,750
Stearns $18,000
Washington $11,820
Hennepin $10,750

2. **Part 9543.0050 VARIANCE REQUESTS.**

Subpart 1. Variance information. (4 counties)

$272; $200; $50; $500.

Becker $500

Subp. 2. Variance procedures. (7 counties)

$272; $117; $1,440; $200; $280; $50; $500.

Pine $1,440
Becker $500

Subp. 3. Capacity variance at request of agency. (8 counties)

$250; $817; $58; $740; $180; $80; $630; $500.

3. Part 9543.0060 LICENSING FOSTER CARE PROGRAMS.

Subp. 2. Program information. (10 counties)

$312; $945; $200; $780; $100; $525; $160; $300; $200; $500.

Subp. 3. Orientation and preplacement training. (7 counties)

$1,634; $868; $200; $700; $4,810; $120; $500.

Wabasha $4,810
Winona $1,634

Subp. 4. Licensing study. (13 counties)

$2,179; $10,416; $200; $13,500; $1,120; $150; $140; $520; $415; $5,000; $90; $216; $500.

Stearns $13,500
Crow Wing $10,416
Ramsey Foster Care $5,000

Subp. 5. General requirements. (18 counties)

$2,000; $1,362; $694; $2,760; $120; $500; $500; $140; $520; $1,044; $300; $660; $81,250; $270,854; $20,000; $90; $14,505; $700.

Hennepin $270,854 (additional staff 6 visits first six months)
Ramsey $81,250 ($63,000 cost visits first six months)
Dakota $20,000 (6 visits first six months)
Anoka $14,505 (6 visits first six months)

4. Part 9543.0070 INVESTIGATION OF LICENSED PROGRAMS.

Subp. 2. Timelines. (10 counties)

$545; $5,000; $1,250; $2,800; $2,250; $160; $1,625; $5,000; $5,250; $600.

Anoka $5,250
Ramsey Day Care $5,000
Ramsey Foster Care $5,000

Subp. 5. Recording complaints and investigations. (19 counties)

$250; $2,500; $173; $3,360; $200; $120; $2,800; $234; $50; $2,700; $300; $80; $161; $2,900; $900; $360; $330; $545; $2,730

Pine $3,360
Ramsey Foster care $2,900
Otter Tail $2,800
Anoka $2,730
Ramsey Day Care $2,500

RULE 13
COST SURVEY SUMMARY

5. Part 9543.0080 COUNTY INVESTIGATION OF UNLICENSED PROGRAMS.

Subpart 1. Unlicensed family day care and adult foster care. (9 counties)

$40,050; $260; $200; $500; $560; $650; $135; $420; $500.

Ramsey Day Care $40,050

Subp. 2. Unlicensed child foster care. (2 counties)

$200; $90;

6. Part 9543.0090 CORRECTION ORDERS.

Subp. 1. Correction orders; training. (24 counties)

$1,362; $1,800; $175; $174; $420; $3,000; $320; $1,280; $1,300; $2,254; $360; $1,120; $156; $312; $720; $154; $950; $400; $321; $250; $120; $2,500; $250; $500.

Kandiyohi $3,000
Hennepin $2,500

Subp. 4. Compliance with correction order. (17 counties) [Rule to be modified]

$2,452; $40,000; $175; $347; $1,440; $500; $5,000; $10,125; $280; $390; $525; $40; $900; $50,000; $1,100; $720; $200.

Ramsey Foster Care $50,000
Ramsey Day Care $40,000
Stearns $10,125

7. Part 9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.

Subp. 2. Immediate suspension of license. (4 counties)

$840; $156; $15; $360;

Subp. 5. License probation. (5 counties)

$233; $1,250; $840; $40; $150;

Stearns $1,250

Subp. 6. Notice to parents of negative licensing actions. (2 counties)

$321; $195;

RULE 13
COST SURVEY SUMMARY

8. Part 9543.0110 ENFORCING ORDERS OF THE COMMISSIONER.

Subpart 1. Agency enforcement of commissioners orders. (1 county)

$360

Subp. 2. Sanctioned programs. (5 counties)

$272; $2,000; $20; $87; $360

Ramsey Day Care $2,000

Subp. 3. Programs on probation. (9 counties)

$272; $1,166; $1,250; $1,680; $390; $720; $480; $360; $9,450

Anoka $9,450
Otter Tail $1,680
Stearns $1,250
Faribault/Martin/Watonwan $ 1,166

9. Part 9543.0120 REPRESENTING THE COMMISSIONER IN CONTESTED CASE PROCEEDINGS.

Subpart 1. Contested case proceedings. (12 counties)

$272; $1,800; $5,000; $160; $30,625; $2,240; $1,560; $768; $100; $1,080; $155; $300.

Stearns $30,625
Kandiyohi $5,000
Otter Tail $2,240

Subp. 3. Informal dispositions; stipulated agreements. (11 counties)

$3,250; $545; $2,500; $160; $4,500; $1,120; $78; $360; $768; $1,800; $300.

Stearns $4,500
Nicollet $3,250
Kandiyohi $2,500
Freeborn $1,800

10. Part 9543.0130 ADMINISTRATIVE REQUIREMENTS.

Subpart 1. Maintaining records. (5 counties)

$200; $3,120; $1,400; $735; $2000.

Washington $3,120
Becker $2000
Otter Tail $1,400

RULE 13
COST SURVEY SUMMARY

Subp. 3. Training requirements. (17 counties)

$1,345; $1,848; $339; $1,000; $140; $156; $150; $555; $950; $180; $401; $250; $60; $1,050; $1,728; $300; $1000.

St. Louis $1,848
Lake of the Woods $1,728
Winona $1,345
Kandiyohi $1,000
Becker $1,000

Other costs identified: (1 county) correction plans to correct deficiencies $6,900 (1 county) Part 9543.0100, subpart 1, item F $1,050

Pipestone $2,000 to $5,000 (did not identify specific costs)
Blue Earth $62,048 (did not identify cost areas)
Dakota $96,613 based on additional FTE
Douglas $19,872 (did not identify cost areas -- increase in staff)

DEPARTMENT OF HUMAN SERVICES

Rule 13 -- Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies, Minnesota Rules, part 9543.0010 to 9543.0150

WRITTEN AND ORAL COMMENTS RECEIVED BY THE DEPARTMENT
COMMENT PERIOD ENDED SEPTEMBER 26, 1990

I. REQUESTS FOR A PUBLIC HEARING

1. Sharon Kannenberg, Home and Community Options, Inc. -- see letter dated August 24, 1990

2. Darlene Lee, Blue Earth County -- see letter dated September 7, 1990

3. David L. Dierenfeld, Blue Earth County -- see letter dated September 7, 1990

4. Diane M. Phillippi, Arden Hills, Minnesota -- see letter dated September 21, 1990.

5. Kevin P. Kenney, Hennepin County -- see letter dated September 25, 1990

II. PUBLIC COMMENTS WITHOUT A REQUEST FOR HEARING

1. Bob Goudge, Lake of the Woods County, -- see letter addressed to Administrative Law Judge Jon Lunde dated September 6, 1990.

2. Marty Coyne (telephone conversation) -- see Memorandum for the Record dated September 7, 1990. [I requested that Mr. Coyne contact other counties and have them contact me regarding the county's concern regarding informational meetings. I received telephone calls from Lorna Jones, Anoka; David Homorody, Dakota; Mary Lou Johnson, Hennepin; and Shirley Tulberg, Ramsey counties requesting the Department reinstate the original rule draft language governing informational meetings.] Also see September 13, 1990 Facsimile to Barbara Eggiman.

3. Carol DuClos, Association of Minnesota Family Child Care Licensors -- see letter dated September 17, 1990 (informational meetings).

4. David Homorody, Dakota County -- see letter dated September 17, 1990 (informational meetings).

5. Karen Karls, Itasca County Human Services -- see letter dated September 20, 1990.

6. Kathleen M. Smith & JeAnn Rudich, Washington County -- see letter dated September 21, 1990 (informational meetings).

7. James R. Schug, Washington County -- See cover letter dated September 26, 1990 containing copy of letter from Kathleen Smith & JeAnn Rudich (#6) and copy of September 25 letter from Kathleen Smith and Kristen A. Harvieux.

8. Jane E. Merritt, Olmsted County -- See facsimile dated September 26, 1990.

III. PUBLIC COMMENTS RECEIVED AFTER CLOSE OF COMMENT PERIOD

1. Marjorie Mereen, Children's Home Society -- see letter dated October 2, 1990.

2. Gina Washburn, Executive Director, MN County Attorney's Association -- see letter dated October 23, 1990.

IV. REQUEST FOR HEARING RECEIVED AFTER CLOSE OF COMMENT PERIOD

1. M. J. McCauley, Donald O. Peterson, John Brand, Lee Luebbe, and Lester Ladewig, Winona County Board of Commissioners -- [letter dated September 26, 1990, postmarked September 28, 1990 [Five requests for a public hearing]

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on August 27, 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 August 22, 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 rule for 30 days after notice of proposed rulemaking. The agency received five (5) requests for a public hearing. (5) Five additional requests for a public hearing were received after the close of the comment period. Therefore the agency did not receive requests for a public hearing from 25 or more persons.

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

(6) 1. Marty Coyne, Hennepin County; David Homorody, Dakota County; Lorna Jones (telephone) Anoka County; Shirley Tulberg (telephone) Ramsey County; Carol DuClos, Association of Minnesota Family Child Care Licensors; and Washington County (two letters) requested that the Department reinstate earlier rule draft language that permitted an agency to require prospective applicants to attend an informational meeting before receiving a license application form. Reference to an informational meeting was deleted from the rule draft that was published in the State Register. Jane E. Merritt and Marjorie Mereen also stated that it would be unrealistic to provide license application forms "immediately" to persons requesting them.

FINDINGS: The earlier rule draft language was deleted because the Department believed the rule part was unnecessary. As indicated by the comments from the county licensors, informational meetings are necessary to manage licensing caseloads since a large number of prospective applicants do not follow through with licensing. If a county is required to immediately provide a license application form to every prospective applicant, the county will spend time processing applications on individuals

who do not intend to become licensed. This is an inefficient use of already strained county resources and each application that is processed for a prospective applicant who does not intend to become licensed delays the licensing of applicants who wish to obtain a license. The counties indicated that the informational meetings are beneficial to the public since program requirements are clearly explained and an opportunity exists for prospective applicants to have specific questions governing licensing and program requirements answered by county licensors.

The Department accepts the recommendation of the counties to reinstate earlier rule draft language which is beneficial to both the counties and the public. On page 5, line 11, delete the letter "C" and insert in lieu thereof the letter "D". On page 5, line 19, delete the word "immediately". On page 5, after line 21, insert a new item to read:

"C. An agency that requires prospective applicants to attend an informational meeting before receiving a license application form must ensure that meetings take place at least every two months on either a group or individual basis."

On page 5, line 22, delete "C" and reletter the item "D".

The change is supported by data and views submitted to the Department and does not result in a substantial change.

2. Kevin Kenney, Hennepin County. Mr. Kenney indicated that Part 9543.0120, Subpart 1C is not clear, 30 days from what point?

FINDINGS: The Department is amending the rule to clarify the time period for scheduling the date and location for a hearing. On page 18, line 8, after the phrase "Within 30 days" insert "after receipt of the appeal packet from the department".

The change is supported by views submitted to the Department and does not result in a substantial change.

3. Mr. Kenney proposed that the last line of Part 9543.0140, Subpart 9 read, "This subpart does not apply to P.O.S. [Purchase of Service] contracts which have as their primary purpose to provide foster care services for individual clients." Mr. Kenney is concerned that if this is left vague, a county could be held responsible for monitoring compliance with Rule 13 for private agencies with which it contracts.

FINDINGS: The Department is amending the proposed rule as suggested. On page 21, line 10, after the word "contracts" insert the phrase "which have as their primary purpose to provide foster care services". This change is necessary to clarify that county contracts with private agencies to provide foster care services to children are not included within the meaning of this rule provision.

The change is supported by views submitted to the Department and does not result in a substantial change.

4. Mr. Kenney objected to the rule on the cost issue, arguing that even if new costs to Hennepin County are $100,000 per year, this constitutes additional tax dollars to the Hennepin County taxpayer that it did not previously have to sustain.

FINDINGS: Notwithstanding the fact that counties have historically performed family systems licensing functions, Hennepin County's position is family systems licensing should be a state licensing function and not a county function. The proposed rule does not change the existing state supervised, county administered family systems licensing program. Nevertheless, Hennepin County reported a Rule 13 cost of $3,070,526 which includes $2,732,772 in current licensing costs.

Under Minnesota Statutes, section 245A.16, subdivision 6, the commissioner is directed to ensure that rules are uniformly enforced throughout the state by reviewing each county and private agency for compliance with section 245A.16 and other applicable laws and rules at least biennially. County agencies that comply with section 245A.16 are to be certified by the commissioner.

The Department has been cognizant of cost issues throughout the rulemaking process; and has sought to ensure uniform licensing standards, as required under Minnesota Statutes, section 245A.16, subdivision 6, at a minimum cost to the counties. The rule establishes "minimum" licensing standards based, to the extent possible, on existing county licensing practices and on current rule requirements. To assist the Department in identifying existing county licensing practices, the rule advisory committee included representatives from 12 different counties including Hennepin County.

The Department also sent a cost survey to all 87 counties to gather cost information on the rule. Forty-nine counties responded to the cost survey. Thirty-eight counties did not. As noted in the fiscal note, there was considerable variation in rule parts identified by the counties as resulting in "new" costs. Seven of the 49 counties that responded to the survey reported no substantial costs to the county under the proposed rule. Eleven additional counties reported total costs of $2,000 or less. Except for an existing rule requirement under the child foster care rule and a requirement to track license progress (which was modified to address cost concerns), no single rule requirement was identified by the counties as particularly costly. There was considerable variation between the counties on which rule parts resulted in "new" costs. The county costs identified in the fiscal note reflected the sum of scattered costs rather than the costs of one or two rule

requirements. The cost survey vividly pointed out the lack of uniformity among the counties.

To the extent that a county does not currently comply with the minimum standards, there are additional costs imposed on the county. In some instances, those costs will be offset by the benefits of indemnification by the state under Minnesota Statutes, section 466.131.

With respect to the Rule 13 costs identified by Hennepin County, Hennepin County reported a cost of $3,070,526 to license family systems programs; this included $2,732,772 in current licensing costs. If one subtracts Hennepin's current costs from the reported costs, this leaves a "new" cost total of $337,754. The "new" costs identified by Hennepin County included $50,000 for system automation (there is no rule requirement that requires any system automation). Subtracting $50,000 from $337,754 leaves a total of $287,754. $270,854 was identified as the costs to comply with existing foster care rule requirements under Minnesota Rules, parts 9545.0020 and 9545.0100. If those costs are subtracted from Hennepin County's total since they are not the result of a new rule requirement, the "new" cost is $16,900. The bulk of the remaining costs was attributed to the tracking requirement on licensing progress ($10,750). Due to the number of counties which identified this requirement as a "new" cost, the rule was modified before it was published in the State Register. The tracking requirement now consists of a checklist that simply identifies items in the license file. The checklist will provide a quick and simple means of identifying the contents of the licensing file and, as modified, will have a minimal impact on county agencies.

During the advisory committee meetings, numerous discussions were held on county licensing standards and practices. Hennepin County's licensing standards generally exceed the standards proposed in the rule. Therefore, the Department believes the cost impact on Hennepin County is small.

5. James R. Schug, Washington County -- Mr. Schug enclosed a letter from Kathleen M. Smith & JeAnne Rudich which expressed a concern about mailing out licensing rules to prospective providers. Washington County indicated that rules can be difficult to read and intimidating to many providers if they are not accompanied by an explanation. Washington County provides that explanation through the orientation process.

FINDINGS: While the agency must provide prospective applicants a general summary of licensure requirements, distribution of the program rule is not required until after an applicant submits a signed application form. By submitting a signed application form the applicant has indicated more than a cursory interest in becoming licensed. At that point it is reasonable to require the agency to provide a copy of the program rule because the

rule sets forth specifically the requirements the applicant must meet to become licensed. The rule, as modified under Findings #1, permits the county agency to require prospective applicants to attend an informational meeting before receiving a license application form. Therefore, Washington County will have the opportunity to provide any necessary explanation during its orientation process. Washington County's concern is addressed under Findings #1.

6. James R. Schug, Washington County -- Mr. Schug also enclosed a letter from Kathleen M. Smith & Kristen A. Harvieux indicating that Part 9543.0060, Subpart 5B, needs a clarification of roles between the licensing worker and the placement worker. Washington County pointed out this part states "the agency shall coordinate with placement workers to ensure that the license holder is visited by a placement worker or the licensor at least monthly for the first six months after the first placement in child foster care." Does this part put the licensing worker in a supervisory position over the placement worker? What is the purpose of the visit? Is it to deal with the child's direct services needs? If so, the placement worker should be present. Is it to deal with foster parenting issues? If so, the licensing worker needs to be present.

Washington County's current practice includes monthly contact by the placement worker with any child in foster care. However, these contacts could include school visits and may or may not include the license holder. Washington County licensing workers generally follow a policy of contacting a new foster home on a monthly basis for the first three months of their first placement.

Since placement workers are already functioning under a rule requiring monthly contact, Washington County recommends deleting the reference, and would agree with required monthly contact by the licensing worker for the first three months.

FINDINGS: It is necessary and reasonable that first-time foster parents are visited at least monthly for the first six months they have a child in placement (see SNR). This requirement ensures not only that the family is monitored by the agency but also that the agency expertise is available to the family as they begin the actual experience of parenting a foster child. Because of staffing limitations in many agencies, the proposed rule is flexible in that the six monthly home visits may be made either by the foster care placement worker or the licensing worker.

The Department is supportive of county policies that exceed the "minimum" standard proposed in this rule. However, the Department opposes a change to a higher standard that would require monthly contacts by both the placement worker and licensing worker since it would impose additional costs on those counties who do not comply with the higher standard. Nothing in the rule precludes Washington County from continuing monthly

visits by both the placement worker and the licensor. However, should the county wish to coordinate placement and licensing visits to the license holder during the first six months after placement, the rule permits them to do so.

7. Karen Karls, Itasca County, indicated that an orientation requirement for a small, rural county would impose an undue hardship: "... I hope if you reinstate the reference to orientations that there be some alternative for smaller counties, perhaps that of providing a complete copy of the licensing rule upon request. I know that larger counties with their vast number of applicants prefer not to do this. However, in our case this is the preferred way of initially dealing with a potential applicant."

FINDINGS: The rule does not contain a mandatory orientation requirement. Some counties may wish to provide an application form and copy of the program rule immediately upon request. Nothing in the rule precludes a county from doing so.

8. Ms. Karls stated "I find it interesting that the draft rule calls for giving a prospective applicant a copy of the application immediately upon request and then only providing a copy of the program rules upon receipt of the application forms. By doing this you seem to be creating a lot of unnecessary work for agencies. People may be applying for programs about which they know almost nothing. Fewer than one third of the people who inquire about either foster care or day care ever follow through with an application. If receipt of the application is what is required to trigger program information, then agencies will be forced to take action and track many applications from people who really had no intent of applying for the program. It seems more appropriate that applications be provided to people who either have gone through an orientation process or who have received a complete copy of the standards so that they understand the program for which they are applying.

FINDINGS: If an agency wishes to provide prospective applicants a copy of the program rules, nothing in the rule precludes them from doing so. However, the rule Advisory Committee strongly recommended that distribution of the program rule be required only <u>after</u> the orientation meeting, if it is county practice to hold orientation meetings. Because of the expense of distributing copies of the program rule, prospective applicants may be given a summary of licensure requirements until after they have submitted a completed application form. Upon receiving a completed and signed application form, the agency shall provide the applicant a copy of the program rules. A distinction is made in the rule between a "prospective applicant" and an "applicant."

9. Ms. Karls raised a concern regarding variance requests under 9543.0050, subpart 2. Similar concerns were raised by Diane M. Phillippi and Jane E. Merritt. Ms. Karls stated that "This subpart provides that requests for variance must be submitted in writing by

the applicant or license holder and shall include the recommendation to approve or deny the agency. It then states that the commissioner shall send a written decision to grant or deny the variance request to the applicant or license holder and to the agency. The agency has 10 days to act on variance request from the provider. There is no time line on the part of the commissioner. I believe this is unacceptable." Ms. Karls' related an example where the Department failed to respond to a variance request: She submitted a variance request on January 18, 1990 and a followed up letter on April 5, 1990. She indicated that there was no response to either. Ms. Karls' continues "... This same provider was then due for relicensing and submitted another request which was submitted on August 7, 1990. There has been no response to this request either" (Ms. Karls' letter is dated September 20, 1990).

FINDINGS: The Department receives approximately 100 variance requests each week. Family day care providers requesting a change in capacity or age limits submit the majority of these requests. Since financial reimbursement is involved, variances of this type (capacity or age limits) are given a higher priority to process. These variances are also the most time consuming to evaluate. The department is aware that response time has sometimes been a problem and is working on the development of a computerized system to enable quicker responses to variance requests. The Department is also reviewing program requirements to determine whether rule amendments can eliminate the need for variances that are routinely approved. It should also be noted that in August 1990, two additional staff were assigned to Family Systems to help process variance requests.

With respect to the specific variance requested on January 18, 1990, the variance involved a request to use bottled drinking water and was discussed verbally prior to being submitted. The county licensor was aware that the variance would be approved but, again in terms of the volume of those with a higher priority, it would be some time before a written response would be received. The written response was sent April 13, 1990.

Since variance requests must be reviewed on a case-by-case basis, the Department declines to state a timeframe in this rule in which variance requests will be approved or denied.

10. Diane M. Phillippi, Arden Hills stated that parts 9543.0040, Subp. 2B(3) and 9543.0040, Subp. 5B require an observation of the program as part of the licensing and renewal studies when the person has been operating a program. However, "observation" is not defined. Is this the same as the routine home visit? Or, is this something more/different? Ms. Merritt also asked, "What constitutes an "observation"? What type of documentation is required? Does this mean a summary of the provider's quality of care?

FINDINGS: Ms. Phillippi and Ms. Merritt both question what is meant by the phrase "observation of the program in operation." The

Department agrees that the phrase is vague and could be subject to different interpretation by different individuals. Therefore, the requirement under item B is being clarified to provide greater specificity. As suggested by Ms. Phillippi, an observation of the program is a routine home visit. The purpose of the home visit is to determine compliance with program requirements. The extent of documentation is dependent on whether program violations are noted and, if noted, the severity of the violation. The Department is amending Item B, subitem (3) (a) to read:

> (a) an ~~observation of the program in operation~~ in-home visit to observe compliance with program requirements.

The proposed change clarifies what is meant by "an observation of the program in operation." The change is supported by views submitted to the Department and does not result in a substantial change.

11. Ms. Phillippi also stated that part 9543.0040, Subp. 1C requires the licensing agency to provide the applicant a copy of the program rules upon receiving a completed and signed application. She argues that since it is a state rule, the state and not the licensing agency should provide this rule (just as the state provides a Driver's Manual for those wanting a driver's license). Secondly, if the state refuses to provide the rule, it should not require the licensing agency to do so, but rather give the option to the licensing agency of providing the applicant with the locations the rule can be obtained, and giving the applicant the responsibility of obtaining the rule. She states that the cost of printing and distributing the rule, particularly in large counties (like Ramsey) is costly. Ramsey Co. provides applicants with information on where to obtain the rule rather than providing the rule itself (because of the cost factor). She says this works well for applicants and the licensing agency.

FINDINGS: Rule 13 simply identifies agency requirements under existing Minnesota Rules. Specific rule parts that require the agency to provide a copy of the program rules are: Minnesota Rules, part 9502.0335, requires the agency to supply the applicant with a copy of the Family Day Care and Group Family Day Care rule; part 9545.0020, subpart 6 requires agencies to provide applicants with a copy of the Family Foster Care rule; and part 9555.5415, subpart 1 requires local agencies to supply the applicant with a copy of the Adult Foster Care rule.

12. Ms. Phillippi also stated that part 9543.0100, Subp. 6 requires the licensing agency to immediately notify parent/users when it recommends a negative licensing action. She does not object to that notification, but says there is no similar notification to the licensee. Therefore, the licensee will learn of the recommendation from those using his/or her services. She says this is rude and unfair. Licensors have been instructed to not tell/notify the licensee of negative licensing recommendations as DHS may not agree

with the recommendation, and says this section should be changed to include notifying the licensee at the same time as the notification to parent/users. Also, the letter to parents is to tell them they will be notified of the Commissioner's action on the recommendation. She says it currently takes "one and one-half months to never" for the Commissioner to respond to a negative licensing recommendation. The longer the time span between the two required letters to parent/users, the poorer the State and DHS look to the parent/users (taxpayers). She says that if the situation was serious enough to warrant a negative licensing recommendation, it is serious enough for a much prompter action by the commissioner.

FINDINGS: The failure of the rule to specifically require notification of the license holder when a negative license action is recommended was an oversight. The Department agrees with Ms. Phillippi that it is inappropriate to notify parents of a recommended negative licensing action without also notifying the license holder. On page 16, after line 26, insert a new subpart to read:

> Subp. 6. [Notification of licensee of negative licensing action.] The agency shall give written notice to a license holder when the agency recommends a negative licensing action to the commissioner.
>
> On page 16, line 27, renumber "Subp. 6." as "Subp. 7.".
> On page 17, line 13, renumber "Subp. 7." as "Subp. 8.".

In keeping with current practice, the county licensor must discuss the case with Department staff to determine the appropriate action before making a written recommendation. This is necessary to ensure that proper documentation has been gathered to support the recommendation and to assure consistency in negative licensing actions. Between January 1, 1990 and October 24, 1990, the Department received a total of 222 recommendations for negative licensing actions. Of this total, 25 recommendations were complete enough to proceed with a negative licensing action without additional documentation to support the negative licensing action. The statement that licensors have been instructed not to notify the license holder of an impending negative action is not a directive from DHS and the misconception is corrected by the new rule language.

The change is supported by views submitted to the Department and does not result in a substantial change.

13. Robert Goudge, Lake of the Woods County indicated that the proposed rule delegates to counties several functions which he felt should be the responsibility of the Department of Human Services. He stated that it is not appropriate for counties to act for the state in hearing appeals on licensing actions when:

(1) the rule is a state rule and not county policy and,

(2) the county may very well be at odds with the rule (being appealed) itself.

He also stated counties should not be placed in a position of having to arrange for a state hearings officer or do the necessary paperwork involved in the appeals process. He went on to say the county's duty on appeals is to assist the client in making his/her appeal (if they want help) and to present, if necessary, the county's side of the issue. Further, counties, especially small counties, do not have either the staff or staff time available to do DHS administrative work.

Mr. Goudge also objected to the "mandates" that counties "shall defend" all orders of the commissioner. He has no problem "enforcing" an order or rule, but has objections to the idea that he will automatically "defend" an order.

Mr. Goudge indicated that another point of disagreement has to do with the involvement of the county attorney. Since the county attorney represents a county agency in all legal matters and since the proposed rule attempts to mandate his defending commissioner's orders/rules, the commissioner would, in fact, have the county attorney not only "defending" such orders but be responsible for legal advice to the county on how to handle hearings for the state. It would appear that DHS would have the Attorney General Office plus the county attorneys do their legal work - and, meanwhile, having county social service agencies pick up their administrative responsibilities in licensing.

Mr. Goudge closed his letter with a statement that the proposed rule is administratively inappropriate and should be rejected in its entirety.

FINDINGS: In 1987 Minnesota Statutes, section 245A.16, authorized the commissioner to delegate authority to county agencies to perform licensing functions. However, county and private agencies' involvement in licensing activities preceded enactment of both the Human Services Licensing Act of 1987 and the Public Welfare Licensing Act of 1976. Historically, licensing functions related to family systems programs (family day care, child foster care, and adult foster care) have been performed by county and private agencies. The county processes the application, completes all the studies, investigates violations, etc. The proposed rule does not change the county agency's involvement in family systems licensing; family systems licensing continues to be a state supervised, county administered program. The rule does, however, clearly set forth, as required by statute, the delegated licensing functions.

In Mr. Goudge's letter to Administrative Judge Jon Lunde (only 5 requests for a hearing were received; therefore, no public hearing was held on the rule) Mr. Goudge generally objected to,

although he did not specifically identify, the delegated licensing functions under 9543.0030, items J and K. Item J delegates responsibility to enforce orders of the commissioner; Item K delegates responsibility to represent the commissioner in contested case proceedings conducted under Minnesota Statutes, chapter 14.

With respect to Items J and K, both requirements are logical conclusions to earlier actions taken by the county. The county monitors compliance with the rules, investigates allegations of license violations, and recommends forfeiture orders and negative licensing actions. If a negative licensing action is undertaken by the commissioner based on the recommendation of the county, the license holder has a right to challenge the investigation findings and the appropriateness of the action. It is incomprehensible that a county agency would recommend a negative licensing action then, if challenged, seek to divorce itself from the contested case. The Department does not understand why the county feels it is its duty to assist the license holder in the license holder's defense. In a negative licensing action the county is the prosecutor, not the public defender. Certainly, the county can and should explain the procedural requirements of a contested case hearing to the license holder; it should not assist in the license holder's defense.

While the Department acknowledges that counties do not always support every rule requirement, the Rules, as with statutes, have the force and effect of law throughout the state. Although individual law enforcers, administrators, or prosecutors may disagree with a particular rule or statute, as public officials they are obligated to enforce the law.

With respect to defending the Commissioner's orders, Minnesota Statutes, section 245A.16, subdivision 4, is clear "The <u>county or private agency shall enforce the commissioner's orders under section 245A.07 and 245A.08, subdivision 5, according to the instructions of the commissioner</u>. The county attorney shall assist the county agency in the enforcement and defense of the commissioner's orders under section 245A.07 and 245A.08 according to the instructions of the commissioner, unless a conflict of interest exists between the county attorney and the commissioner." (Emphasis added)

Statute clearly requires county and private agencies to enforce the orders of the commissioner. The county attorney shall assist the county agency in the enforcement and defense of the commissioner's order unless of conflict of interest exists. It is not unusual for a county attorney to have a conflict of interest in representing the county and takes the steps necessary to address the conflict situation. The county should not view this conflict of interest any differently.

RULE 13 FINDINGS OF FACT, CONCLUSIONS AND ORDER

The rule as proposed is necessary and reasonable.

14. Ms. Merritt asked whether part 9543.0040, Subp. 3, Item B, subitems (2) to (4) refers only to our County? Or does it apply to Counties in which the applicant had previously lived?

FINDINGS: The Department is amending the rule to clarify the extent of the background study for individuals who may have recently moved. On page 6, line 19 delete the letter "C" and insert in lieu thereof, the letter "D". On page 7, after line 6, insert:

"C." If the individual has lived in the county for less than five years, the study under item B shall include records from the previous county or counties of residence for the past five years."

On page 7, line 7, delete the letter "C" and insert in lieu thereof the letter "D".

The new item C is consistent with the standard established in the rule governing background studies conducted by the Department. (See Minnesota Rules, part 9543.3050). As noted in the statement of need and reasonableness for that rule, requiring a subject's county of residence for the past five years is necessary to make an adequate search of records; a background study limited to a current address might miss relevant information on individuals who have moved from one county to another.

The change is necessary to clarify the extent of the licensing study. The change is not a substantial change.

15. Ms. Merritt asked whether the licensing renewal study under part 9543.0040 means that the provider sites must be inspected by the Fire Marshal on an annual basis? It is unlikely that the Fire Marshal will be able to process this number of inspection requests in a timely manner.

FINDINGS: The program rule governs the required inspections by the Fire Marshal. Part 9543.0040, subpart 2, item E states "reports from the fire marshall, building officials, and health officials that are required by rules governing the program." (Emphasis added)

16. Ms. Merritt asked whether there is a required number of training orientation hours the applicants are to receive under part 9543.0060, Subp. 3.

FINDINGS: The rule states, "The agency shall provide applicants the orientation and preplacement training required in rules governing the program." (Emphasis added) Orientation and preplacement training requirements for family foster care are found in Minnesota Rules, part 9545.0150; adult foster care

orientation and preplacement training requirements are found in Minnesota Rules, parts 9555.5505, subpart 2 and 9555.6185.

17. Ms. Merritt stated the timeline under part 9543.0070, Subp. 2, Item B is unrealistic considering the possibility of a worker not being available due to sick leave, training, vacation, et cetera. It would be difficult for a co-worker to begin or conduct an investigation of another worker's client. A five day timeline may be more realistic than a three day timeline.

FINDINGS: The Department declines to change this requirement. If a complaint alleges risk to persons in care which could result in a negative licensing action, it is reasonable to begin the investigation within three working days.

18. Ms. Merritt asked if it is the agency's responsibility to go to the provider's home to verify if they are continuing unlicensed care (part 9543.0080, Subpart 1, Item A).

FINDINGS: The rule leaves to the professional judgment of individual counties what method of verification should be used.

19. Ms. Merritt stated it is unlikely that the County Attorney will have time available to deal with these situations (part 9543.0010, Subp. 2).

FINDINGS: The rule requires only that agencies report unlicensed operation to the county attorney. Minnesota Statutes, section 245A.03, subdivision 3, addresses unlicensed programs. Paragraph (b) states "The county attorney and the attorney general have a duty to cooperate with the commissioner." The county attorney, as with any other case, will view the evidence and determine the proper course of action.

20. Ms. Merritt asked if there was a change in training requirements from 12 hours to 6 hours per year?

FINDINGS: No. Part 9543.0130, subpart 3 sets forth training requirements for county licensors. Training requirements for providers should not be confused with those for county licensors.

21. Gina Washburn, Executive Director MN County Attorney Association, stated county attorneys who provide presentation to the county licensing unit are directly affected by some of the proposals but did not receive notice of the proposed adoption of these rules. In the future she requests that procedures be changed to provide timely notice to the county attorney as well as the licensing unit.

FINDINGS: A copy of the draft rule was sent to the chairman of the County Attorneys Association Human Services Committee in the fall of 1989 for distribution and comment from interested county attorneys. Comment was received from one county attorney in

December, 1989, and was incorporated into the rule. Copies of the draft rule were sent to all counties on December 5, 1989 as part of the fiscal note survey. Copies of the notices were sent to all counties on August 22, 1990.

In addition, pursuant to Ms. Washburn's request the Minnesota County Attorneys Association has been placed on the Department's mailing list and, in the future, copies of all rule notices will be sent directly to the Executive Director.

22. Ms. Washburn stated that proposed rule part 9543.0080, Subp. 1(b) at page 13 has omitted the provision previously contained in Rule 9502.0335, Subp. (b) which requires notification of the attorney with the authority to prosecute misdemeanor violations. Misdemeanor prosecution represents a useful alternative in obtaining compliance with the law requiring the licensing of providers. She suggests this rule be modified as follows:

(1) Shall notify the attorney with responsibility for misdemeanor prosecution so that appropriate action may be pursued;

(2) May ask the county attorney to take legal action to halt or continue the operation of the program; and

(3) Shall inform the commissioner of the unlicensed program.

FINDINGS: The Department is modifying the rule to provide specific reference to misdemeanor prosecution of the operator. On page 13, line 15, after the word "program" insert "<u>or obtain misdemeanor prosecution of the operator.</u>"

This amendment is not a substantial change. It simply clarifies the options for legal action against unlicensed programs in Minnesota Statutes, section 245A.03, subdivision 3.

23. Ms. Washburn stated that proposed rule part 9543.0120, item A, be revised to conform to the provisions of Minnesota Statutes, section 245A.16, subdivision 4 which provides "...The county attorney shall assist the county agency in the enforcement and defense of commissioner's orders under sections 245A.07 and 245A.08 according to the instructions of the commissioner, <u>unless a conflict of interest exists between the county attorney and the commissioner</u>." (Emphasis added)

She states that the rule should contain language consistent with the statute, and suggests it be revised as follows:

A. Arrange for legal consultation and representation by the county attorney, <u>unless a conflict of interest exists between the county attorney and the commissioner</u>.

FINDINGS: The Department declines to accept this recommendation. The rule is stating the obligation of the county agency, which is simply to arrange for legal consultation and representation by the county attorney. If a conflict of interest should develop between the county attorney and the commissioner, the county agency remains responsible to provide assistance and

consultation in the contested case proceeding. As noted earlier, it is not unusual for a county attorney to have a conflict of interest in representing the county and takes the steps necessary to address the conflict situation. The county should not view this conflict of interest any differently.

24. Ms. Washburn stated that with respect to Subp. 3(c) of this same provision (9543.0120) a provision be added requiring the commissioner to act to accept or reject signed settlement agreements submitted within ten days of receipt of the agreement by the Department of Human Services. In these instances, the terms of the agreement have been approved by the appropriate representative of the commissioner, and it would be helpful if a requirement were imposed which would require the commissioner's prompt action on these agreements.

FINDINGS: The Department declines to accept Ms. Washburn's suggestion. As noted in the statement of need and reasonableness, the subpart governing informal dispositions, stipulated agreements is necessary to establish uniform procedures for handling informal dispositions of contested cases. It is possible that a settlement can be reached on a contested negative licensing action without a hearing. However, as noted earlier, between January 1, 1990 and October 24, 1990, the Department received a total of 222 recommendations for negative licensing actions. Of this total, 25 recommendations were complete enough to proceed with a negative licensing action without additional documentation to support the negative licensing action. It is reasonable to anticipate situations where additional documentation may be necessary before an informal disposition can be signed by the commissioner. Therefore, it would be unreasonable to constrain the commissioner's authority to approve a settlement agreement within ten days of its receipt.

CONCLUSIONS

I hereby conclude that:

1. None of the modifications made to the proposed rule constitute substantial changes.

2. The rules, as modified, are necessary and reasonable. (8)

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

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

RULE 13 FINDINGS OF FACT, CONCLUSIONS AND ORDER

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

The above-captioned rule is needed and reasonable.[8]

NOW, THEREFORE, IT IS ORDERED that the rule identified as (9) Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies (as modified) is adopted this 6TH day of February, 1991, pursuant to authority vested in me by Minnesota Statutes, sections 245A.09 and 245A.16.

Natalie Haas Steffen

NATALIE HAAS STEFFEN
Commissioner

In the Matter of the Adoption
of the Rule of the State Department
of Human Services Governing Family
Day Care, Adult Foster Care, and
Child Foster Care Licensing Functions
of County and Private Agencies

DECLARATION OF
COUNSEL

I, Gail Olson, ~~Special~~ Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0884.

Dated: 2/1/91

~~Special~~ Assistant
Attorney General

Department of Human Services

Proposed Permanent Rules Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies

Rules as Proposed

9502.0335 LICENSING PROCESS.

Subpart 1. **License application.** A license to operate a family or group family day care residence must be obtained from the department.

[For text of items A and B, see M.R.]

~~C. The agency shall supply the applicant with the department application form, a copy of parts 9502.0315 to 9502.0445, and the department forms needed to determine compliance with parts 9502.0315 to 9502.0445. The agency shall stamp and date a signed and completed department application form on the date of receipt.~~

~~D.~~ An application for licensure is complete when the applicant completes, signs, and submits all department forms and documentation needed for licensure to the agency and the agency receives all inspection, zoning, evaluation, and investigative reports, documentation, and information required to verify compliance with parts 9545.0315 to 9545.0445 and Minnesota statutes.

[For text of subp 2, see M.R.]

Subp. 3. [See Repealer.]

[For text of subps 4 to 13, see M.R.]

Subp. 14. [See Repealer.]

[For text of subp 15, see M.R.]

Subp. 16. [See Repealer.]

Rules as proposed (all new material)

9543.0010 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** The purpose of parts 9543.0010 to 9543.0150, is to promote uniform enforcement of rules governing

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licensure of family day care, adult foster care, and child foster care programs and to establish minimum standards for performing licensing functions related to those rules.

Subp. 2. **Full applicability to county agencies.** Parts 9543.0040 to 9543.0130 apply in their entirety to county agencies.

Subp. 3. **Limited applicability to private agencies.** Parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130 apply to private agencies authorized by the commissioner to perform licensing functions related to child foster care.

9543.0020 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 9543.0010 to 9543.0150, the following terms have the meaning given them.

Subp. 2. **Abuse.** "Abuse" has the meaning given it in Minnesota Statutes, section 626.557, subdivision 2, paragraph (d).

Subp. 3. **Agency.** "Agency" means a county agency as defined in subpart 9 or a private agency as defined in subpart 17.

Subp. 4. **Applicant.** "Applicant" means an applicant as defined in Minnesota Statutes, section 245A.02, subdivision 3, who has completed and signed a license application form. Applicant includes a current license holder who is seeking relicensure.

Subp. 5. **Authorized.** "Authorized" means that a private agency is in compliance with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130 and has been licensed by the commissioner to perform the child foster care program licensing functions under part 9543.0030, subpart 2.

Subp. 6. **Certification.** "Certification" means the commissioner's written notice to a county agency performing licensing functions delegated under part 9543.0030, subpart 1, that the county agency is in compliance with the requirements in parts 9543.0040 to 9543.0130.

Subp. 7. **Commissioner.** "Commissioner" means the

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commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 8. **Complaint.** "Complaint" means a report of an alleged license violation made to the agency about a program.

Subp. 9. **County agency.** "County agency" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 6.

Subp. 10. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 11. **Imminent danger.** "Imminent danger" means a child or vulnerable adult is threatened with immediate and present abuse or neglect that is life-threatening or likely to result in abandonment, sexual abuse, or serious physical injury.

Subp. 12. **License.** "License" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 8.

Subp. 13. **License holder.** "License holder" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 9.

Subp. 14. **Maltreatment.** "Maltreatment" has the meaning given it in Minnesota Statutes, section 626.556, subdivision 10e.

Subp. 15. **Negative licensing action.** "Negative licensing action" means denial of a license application or probation, suspension, revocation, or immediate suspension of an existing license.

Subp. 16. **Neglect.** "Neglect" has the meaning given it in Minnesota Statutes, sections 626.556, subdivision 2, paragraph (c) and 626.557, subdivision 2, paragraph (e).

Subp. 17. **Private agency.** "Private agency" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 12.

Subp. 18. **Program.** "Program" means family day care, child foster care, or adult foster care programs.

Subp. 19. **Prospective applicant.** "Prospective applicant" means a person who expresses interest to an agency in applying for a license to provide a program but who has not submitted a signed application form to the agency.

Subp. 20. **Variance.** "Variance" means written permission

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from the commissioner for a license holder to depart for a specified time from a standard specified in rule.

Subp. 21. **Violation.** "Violation" means failure to comply with applicable laws or rules governing a program.

9543.0030 LICENSING FUNCTIONS.

Subpart 1. **Delegation to county agencies.** County agencies are delegated responsibility to perform the following functions related to licensure of programs:

A. accept and process license applications;

B. conduct inspections, studies, and evaluations of programs;

C. recommend approval or denial of applications for licensure;

D. process variance requests;

E. monitor compliance with applicable licensing rules;

F. investigate allegations of license violations;

G. investigate unlicensed programs;

H. issue correction orders;

I. recommend forfeiture orders and negative licensing actions;

J. enforce orders of the commissioner; and

K. represent the commissioner in contested case proceedings conducted under Minnesota Statutes, chapter 14.

Subp. 2. **Delegation to private agencies.** Private agencies must be authorized by the commissioner to perform the following functions related to the licensure of child foster care programs:

A. accept and process license applications;

B. conduct inspections, studies, and evaluations of programs;

C. recommend approval or denial of applications for licensure;

D. process variance requests;

E. monitor compliance with child foster care licensing rules;

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F. investigate allegations of license violations;

G. issue correction orders;

H. recommend forfeiture orders and negative licensing actions;

I. enforce orders of the commissioner; and

J. assist and cooperate with the commissioner and attorney general in contested case proceedings.

9543.0040 LICENSE APPLICATION PROCEDURES.

Subpart 1. **Licensure information.** The agency shall provide information on license application procedures to prospective applicants according to items A to C.

A. The agency shall provide in writing to all prospective applicants, the information in subitems (1) to (3):

(1) a summary of license requirements;

(2) a description of the agency's licensing study process; and

(3) the agency's timelines for processing license applications.

B. The agency shall immediately provide the license application form prescribed by the commissioner to every prospective applicant who requests an application.

C. Upon receiving a completed and signed license application form, the agency shall provide the applicant a copy of the program rules.

Subp. 2. **Licensing study.** The agency shall perform a licensing study of the applicant that includes:

A. a background study performed according to subpart 3;

B. a written record of a home study that includes:

(1) on-site inspection of the residence;

(2) home visits necessary to fully evaluate the applicant's qualification for licensure; and

(3) when an applicant has been operating a program:

(a) an observation of the program in

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operation;

(b) documented requests for program evaluations from parents or legal guardians of children in family day care; and

(c) evaluations from placement workers for foster care;

C. three letters of reference;

D. where the agency has knowledge the applicant was previously licensed, a reference from that previous agency;

E. reports from the fire marshal, building officials, and health officials that are required by rules governing the program;

F. for foster care licensing applicants, the information in part 9543.0060, subpart 4; and

G. any other reports or evaluations necessary to fully evaluate the applicant's qualifications for licensure and compliance with applicable laws and rules.

Subp. 3. **Background study.** The agency shall conduct a background study according to items A to C.

A. The study shall include the following individuals:

(1) the applicant;

(2) all individuals over age 13 living in the household; and

(3) any other individuals specified in Minnesota Statutes, section 245A.04, subdivision 3, paragraph (a).

B. The study shall include the following records:

(1) conviction records of the Minnesota Bureau of Criminal Apprehension;

(2) county agency records of substantiated abuse or neglect of vulnerable adults and maltreatment of minors;

(3) juvenile court records of delinquency proceedings held within the five years preceding application or five years preceding the 18th birthday of anyone over age 13 living in the household, whichever time period is longer; and

(4) any other information, including arrest and investigation records maintained by the Minnesota Bureau of

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Criminal Apprehension, county attorneys, county sheriffs, courts, county agencies, local police, and the national criminal record repository, and criminal records of other states, if there is reasonable cause to believe the information is pertinent to disqualification of the individual under part 9543.3070.

C. When a background study indicates a subject is disqualified under part 9543.3070, the agency shall:

(1) notify the applicant in writing that:

(a) the study indicates a subject is disqualified;

(b) the subject has the right to request reconsideration from the commissioner as provided in part 9543.3080; and

(c) the application will be denied unless the commissioner sets aside the disqualification; and

(2) make a recommendation to the commissioner whether the disqualification should be set aside.

Subp. 4. **Completed application.** An application is completed when all studies, reports, and evaluations in subparts 2 and 3 have been completed and received by the agency.

Subp. 5. **Licensing recommendation.** The agency shall forward its licensure recommendation to the commissioner within 20 working days after an application is completed. The agency shall make its recommendation according to items A to C:

A. The agency shall recommend that the commissioner issue a license when the agency determines that the applicant fully complies with laws and rules governing the program and is qualified for licensure.

B. The agency may recommend that the commissioner issue a license and grant a variance according to part 9543.0050.

C. The agency shall recommend that the commissioner deny a license application if the agency determines the applicant fails to fully comply with laws or rules governing the program and variance requirements. The agency shall submit evidence to support its recommendation. Evidence may include:

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(1) documentation of specific facility deficiencies that endanger the health or safety of persons served by the program;

(2) documentation of any disqualification that has not been set aside;

(3) reports of agency investigations and on-site observations;

(4) reports from law enforcement agencies;

(5) reports from county child or adult protection services;

(6) reports from fire, building, or health officials;

(7) complaints that relate to the program; or

(8) any other evidence that the applicant is not in compliance with applicable laws or rules governing the program.

Subp. 6. **License renewal.** Before the expiration date of a license, the agency shall:

A. at least 30 days before the license expiration date, provide an application form and notice of the license expiration date to the license holder;

B. conduct a licensing renewal study that includes information under subpart 2, items A, B, E, and F; and

C. make a licensing recommendation to the commissioner.

Subp. 7. **License extension.** Before the expiration date of a program that is being investigated or a program that is appealing an order of revocation or suspension, the agency shall request the commissioner to extend the license pending disposition of the investigation or appeal.

Subp. 8. **Tracking licensing progress.** The agency shall track the progress of each application for licensure on a form approved by the commissioner including:

A. the dates and documentation of all events described in subparts 2 to 7;

B. the status of the license application 120 calendar

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days after receipt of a signed application form;

C. the date and circumstances when a license application is withdrawn or a license is returned or not renewed by the license holder;

D. the date the license is issued or denied; and

E. if a license is issued, the date the license is effective and the expiration date of the license.

9543.0050 VARIANCE REQUESTS.

Subpart 1. **Variance information.** A variance request must include the following information:

A. the part or parts of the rule for which a variance is sought;

B. the reasons why a variance from the specified provisions is sought;

C. the period of time for which a variance is requested;

D. written approval from the fire marshal, building inspector, or health authority when the variance request is for a variance from a fire, building, or health code; and

E. alternative equivalent measures the applicant or license holder will take to ensure the health and safety of persons served by the program if the variance is granted.

Subp. 2. **Variance procedures.** Except as provided in subpart 3, a request for a variance must be submitted in writing by the applicant or license holder.

Except for variance authority granted to a county agency under part 9502.0335, subpart 8b, the agency shall forward to the commissioner within ten working days of receipt of the request the information in subpart 1 and the agency's recommendation to approve or deny the request.

The commissioner shall send a written decision to grant or deny the variance request to the applicant or license holder and to the agency.

Subp. 3. **Foster care capacity variance at request of agency.** The agency may orally request from the commissioner a

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variance from child foster care capacity limits on behalf of a license holder. If the commissioner grants the variance, the agency shall submit to the commissioner the information in subpart 1 within five working days after the variance is granted.

9543.0060 LICENSING FOSTER CARE PROGRAMS.

Subpart 1. **Additional foster care licensing requirements.** Agencies that perform foster care licensing functions shall comply with the requirements in subparts 2 to 6, in addition to other applicable requirements.

Subp. 2. **Program information.** The agency shall provide prospective applicants with information about foster care to enable the prospective applicant to decide whether to apply for licensure. The information must include:

A. the types of individuals the agency places in foster care;

B. the responsibilities of foster care license holders and of the agency; and

C. the agency's policies governing foster care.

Subp. 3. **Orientation and preplacement training.** The agency shall provide applicants the orientation and preplacement training required in rules governing the program.

Subp. 4. **Foster care licensing study.** In addition to the licensing study under part 9543.0040, subpart 2, the licensing study of an applicant for foster care must include:

A. in-person interviews with all family members and other adults living in the household;

B. social history information; and

C. an evaluation of whether the individual meets the specific qualifications required in Minnesota Rules governing child foster care or adult foster care.

A written report of the foster care licensing study must be kept in the applicant's record.

Subp. 5. **Duties of agency.** The agency shall:

A. enter into a foster parent agreement with the license holder for child foster care;

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B. coordinate with placement workers to ensure that the license holder is visited by a placement worker or the licensor at least monthly for the first six months after the first placement in child foster care;

C. provide the license holder a copy of the annual relicensing evaluation report;

D. establish a grievance mechanism for resolving differences between the agency and the license holder and provide the license holder with a written description of grievance procedures;

E. ensure that the foster care provider has a means of contacting the agency 24 hours per day, seven days per week; and

F. ensure that training is available to enable license holders to meet the training requirements in rules governing foster care programs.

Subp. 6. **Notice of closure.** When a foster care program is closed, the agency shall notify the commissioner on forms prescribed by the commissioner.

9543.0070 INVESTIGATIONS OF LICENSED PROGRAMS.

Subpart 1. **Reports of abuse or neglect of persons served by licensed programs.** If an agency receives a complaint alleging abuse or neglect of persons served by a program, the agency shall follow the procedures in items A to C.

A. The agency shall immediately report the complaint to the county child or adult protection unit where the program is located.

B. The agency shall cooperate with the county child or adult protection unit as requested in conducting the investigation required under part 9555.7300 or 9560.0222.

C. Upon completion of the investigation, the agency shall take the appropriate licensing action indicated by the findings of the investigation.

Subp. 2. **Timelines.** Except for reports of abuse, neglect, or maltreatment, the agency shall investigate all complaints of

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licensing violations received about programs for which it performs licensing functions. The agency shall investigate the complaints according to items A to C:

A. A complaint that alleges imminent danger or recurring physical injury to persons served by the program must be:

(1) reported according to subpart 1; and

(2) reported to the commissioner immediately.

B. Investigation of a complaint that does not indicate imminent danger to persons served by the program but that may result in a negative licensing action under part 9543.0100 must begin within three working days after the agency receives the complaint.

C. Investigation of a complaint that does not involve an issue of safety under item A or B for persons served by the program must begin within ten working days after the agency receives the complaint.

Subp. 3. **Determination.** The agency shall gather sufficient information about every complaint to:

A. make a determination that a licensing violation occurred, did not occur, or no determination can be made; and

B. if a violation occurred, issue a correction order or recommend a negative licensing action.

Subp. 4. **Reports of death.** The agency shall ensure that the death of a person served by a program is reported to the medical examiner or coroner and ombudsman as required in Minnesota Statutes, sections 626.556, subdivision 9, and 626.577, subdivision 9.

Subp. 5. **Recording complaints and investigations.** The agency shall:

A. maintain a register for recording complaints about licensed programs and tracking the status of each investigation;

B. record in the license holder's file the disposition of each complaint involving the license holder; and

C. maintain the records according to Minnesota Statutes, section 13.46.

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9543.0080 COUNTY INVESTIGATION OF UNLICENSED PROGRAMS.

Subpart 1. **Unlicensed family day care and adult foster care.** When a county agency learns that a family day care or adult foster care program required to be licensed is operating without a license, the county shall, within five working days, notify the operator in writing that a license is required or the program must discontinue operation.

A. If the operator discontinues the unlicensed operation, no further action is required.

B. If an operator who is eligible for licensure fails to sign an application form within 30 calendar days after notice that a license is required or fails to cooperate in the licensing study, the county agency shall:

(1) ask the county attorney to take legal action to halt the continued operation of the program; and

(2) inform the commissioner of the unlicensed program.

C. Nothing in items A and B prevents a county agency from immediately asking the county attorney to seek a court order against the continued operation of an unlicensed program.

Subp. 2. **Unlicensed child foster care.** The agency shall report to the county child protection unit when it learns of a child in an unlicensed foster care program that is required to be licensed.

9543.0090 CORRECTION ORDERS.

Subpart 1. **Correction order, training.** An agency shall not issue correction orders unless licensors have been trained by the department on procedures for issuing correction orders. A correction order must be on forms prescribed by the commissioner. A copy of the correction order must be kept in the license holder's file.

Subp. 2. **Criteria for issuing correction orders.** A correction order may be issued if all of the following conditions are met:

A. the violation does not imminently endanger the

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health, safety, or rights of persons served by the program;

B. the violation is not listed in part 9543.0100, subpart 3;

C. the violation is not serious or chronic; and

D. the violation will be corrected within a reasonable time.

Subp. 3. **Time limitation.** A correction order must include a specific time period for correcting the violation.

Subp. 4. **Compliance with correction order.** The agency shall ensure that license holders provide evidence of compliance with a correction order or, if appropriate, recommend further action to the commissioner.

9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.

Subpart 1. **Basis for recommendation.** When recommending a negative licensing action, the agency shall:

A. submit to the commissioner the following information:

(1) the citation to laws or rules that have been violated;

(2) the nature and severity of each violation;

(3) whether the violation is recurring or nonrecurring;

(4) the effect of the violation on persons served by the program;

(5) an evaluation of the risk of harm to persons served; the agency may use the risk assessment completed under part 9560.0222, subpart 9;

(6) any evaluations of the program by persons served or their families;

(7) relevant facts, conditions, and circumstances concerning the operation of the program, including information identified in part 9543.0040, subpart 5, item C;

(8) any relevant information about the qualifications of the applicant or license holder or persons living in the residence; and

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(9) any aggravating or mitigating factors related to the violation; and

B. notify the county attorney of the recommendation.

Subp. 2. **Immediate suspension of license.** If the agency has reasonable cause to believe that the health, safety, or rights of persons served by a program are in imminent danger, the agency must take actions described in items A to C:

A. The agency shall notify the commissioner immediately.

B. If the commissioner orders an immediate suspension, the agency shall arrange for delivery, by personal service, of written notice of immediate suspension to the license holder. The notice shall state:

(1) the reason for the immediate suspension;

(2) that the program must discontinue operation immediately;

(3) the license holder's right to appeal and a contested case hearing; and

(4) that the commissioner has taken the action.

C. The agency shall make a recommendation for further action to the commissioner.

Subp. 3. **Revocation or denial of license.** Violations that are grounds for recommending license revocation or denial include, but are not limited to:

A. immediate suspension of a license under subpart 2;

B. a disqualification in part 9543.3070, as proposed at .. State Register ...., .., 1990, and as later adopted, or in rules governing the program;

C. a false statement knowingly made by the license holder, on the license application;

D. failure or refusal to provide the commissioner access to the physical plant and grounds, documents, persons served, and staff;

E. recurring failure to comply with discipline standards in rules governing the program;

F. severe or recurring failure to comply with

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capacity limits; or

G. licensing violations that occur while the license is probationary or suspended.

Subp. 4. **License suspension.** The agency may recommend license suspension rather than revocation under subpart 3 if the agency submits information demonstrating:

A. on the basis of factors in subpart 1, revocation is not warranted; and

B. suspension rather than revocation:

(1) is in the best interests of persons served by the program; and

(2) would not pose a risk of harm to persons served by the program.

Subp. 5. **License probation.** The agency may recommend probation rather than revocation or suspension if:

A. on the basis of factors in subpart 1, the agency demonstrates that revocation or suspension is not warranted.

B. the agency demonstrates that continued operation of the program:

(1) is in the best interests of persons served by the program; and

(2) would not pose a risk of harm to persons served by the program; and

C. the agency submits to the commissioner a plan for monitoring the program to ensure the safety of persons served during the probationary period.

Subp. 6. **Notice to parents of negative licensing action.** The agency shall give written notice of a negative licensing action to the parents or guardians of children in the programs as follows:

A. When the agency recommends a negative licensing action to the commissioner, the agency shall immediately inform parents and guardians that a negative licensing action has been recommended and that they will be informed of the commissioner's action on the recommendation.

B. When the commissioner orders a negative licensing

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action, the agency shall immediately inform parents and guardians:

(1) that a negative licensing action has been ordered and the circumstances for the action;

(2) the effect of the negative licensing action on the operation of the program; and

(3) that an explanation of the appeal process available to the license holder is available upon request.

C. If the commissioner does not order a negative licensing action following the agency recommendation, the agency shall inform parents and guardians when the agency receives the commissioner's decision.

Subp. 7. **Notice of negative licensing action to county.** If a negative licensing action has been ordered against a child foster care program that is supervised by a private agency, the private agency shall notify in writing the county agency in which the program is located and any county that has placements in the home.

9543.0110 ENFORCING ORDERS OF COMMISSIONER.

Subpart 1. **Agency enforcement of commissioner orders.** The agency shall enforce and defend all orders of the commissioner, including immediate suspension, suspension, and revocation.

Subp. 2. **Sanctioned programs.** If the agency has knowledge that a program whose license has been immediately suspended, revoked, or suspended continues to operate, the agency shall immediately report the operation to the county attorney and the commissioner.

Subp. 3. **Programs on probation.** The agency shall monitor programs on probation for compliance with the plan developed under part 9543.0100, subpart 5. If a program fails to comply with the terms of its probation, the agency shall immediately report the noncompliance to the commissioner.

9543.0120 REPRESENTING THE COMMISSIONER IN CONTESTED CASE PROCEEDINGS.

Subpart 1. **Contested case proceedings.** The county agency

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shall represent the commissioner in contested case appeals of negative licensing actions involving license holders supervised by the county agency. The county agency shall:

A. arrange for legal consultation and representation by the county attorney;

B. prepare all documents necessary for the contested case proceeding;

C. within 30 days, arrange with the Office of Administrative Hearings for the services of an administrative law judge and a timely date and location for the hearing;

D. serve the notice of and order for hearing as provided in part 1400.5600; and

E. send a copy of the notice of and order for hearing to the commissioner.

Subp. 2. **Appeals involving private agencies.** The attorney general represents the commissioner in contested case appeals of licensing actions involving license holders licensed based on the recommendation of a private agency.

Subp. 3. **Informal dispositions, stipulated agreements.** In making an informal disposition of a contested case, the county agency shall follow the procedures in items A to D:

A. The county agency shall obtain preliminary approval from the commissioner to discuss an informal disposition of the contested case.

B. Before entering into any settlement agreement with an applicant or license holder appealing an order of the commissioner, the county agency shall discuss the terms of the proposed agreement with the commissioner.

C. If the commissioner approves of the proposed terms, the county agency shall:

(1) draft an agreement and obtain signatures of the party appealing and county representatives;

(2) submit the signed agreement to the commissioner for approval and signatures; the agreement is not effective until signed by the commissioner; and

(3) monitor the program for compliance with the

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terms of the agreement.

D. If the commissioner or parties are unable to reach a settlement, the county agency shall schedule a contested case hearing.

9543.0130 ADMINISTRATIVE REQUIREMENTS.

Subpart 1. **Maintaining records.** The agency must maintain a record file of each applicant and license holder that includes:

A. all records required by the rules governing the program;

B. a record of all investigations and dispositions of all investigations according to Minnesota Statutes, section 13.46;

C. dates and reports of all licensing studies; and

D. a list of all persons currently being served by the foster care license holder.

Subp. 2. **Commissioner access.** The agency shall provide the commissioner access to and, if requested, copies of all records and documents in an applicant or license holder's file.

Subp. 3. **Training requirements.** The agency shall require that licensors receive six hours of training each calendar year.

Training must be relevant to licensing functions or to licensed programs.

The agency must keep a record of completed training in each licensor's personnel file.

Subp. 4. **Conflict of interest.** The agency shall ensure that no agency employee or board member who applies for licensure or who is licensed to operate a program based on the agency's recommendation is involved in any licensing recommendation or action related to that employee or board member.

9543.0140 COUNTY CERTIFICATION.

Subpart 1. **County agency certification.** The commissioner shall biennially determine whether a county agency is in compliance with parts 9543.0040 to 9543.0130. When the county agency is in compliance with parts 9543.0040 to 9543.0130, the

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commissioner shall certify the county agency for two years.

Subp. 2. **Notification of noncompliance.** The commissioner shall notify the county agency when the county agency has failed to comply with parts 9543.0040 to 9543.0130. The notice must include:

A. the deficiencies in the county agency's licensing procedures;

B. the corrective action necessary to correct the deficiencies; and

C. the time frame for correction of the deficiencies.

Subp. 3. **County compliance.** Within 30 calendar days after receiving a notice of noncompliance, the county shall:

A. demonstrate compliance with parts 9543.0040 to 9543.0130; or

B. submit to the commissioner for approval a corrective action plan.

Subp. 4. **Review of corrective action plan.** The commissioner shall review and approve or disapprove the corrective action plan within 30 calendar days after receiving the plan.

Subp. 5. **Provisional certification.** If the county agency does not fully comply with parts 9543.0040 to 9543.0130, but the failure to comply does not constitute a risk to persons served by licensed programs, the commissioner may issue a provisional certification of the county agency upon approval of the corrective action plan submitted under subpart 3, item B.

Subp. 6. **County agency decertification based on demonstrated risk of harm to program participants.** When the commissioner determines that a county agency's failure to comply with parts 9543.0040 to 9543.0130 demonstrates a risk of harm to persons served by licensed programs, the commissioner shall immediately revoke certification of the county agency and initiate sanctions as provided in subpart 7.

Subp. 7. **Funding sanction.** If the county agency is decertified, the commissioner shall certify a funding reduction according to Minnesota Statutes, section 245A.16, subdivision 6.

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Subp. 8. **Expiration of certification.** A certification issued to a county agency expires at 12:01 a.m. on the day after the expiration date stated on the certification.

Subp. 9. **Contracting licensing functions.** A county agency must receive prior approval from the commissioner before contracting with an authorized private agency or another county agency to perform licensing functions delegated under part 9543.0030, subpart 1, and remains subject to the certification provisions in part 9543.0140. This subpart does not apply to purchase of service contracts for individual clients.

9543.0150 PRIVATE AGENCY AUTHORIZATION.

Subpart 1. **Private agency authorization.** The commissioner shall at least biennially determine private agencies' compliance with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130. When a private agency is in compliance with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130, the commissioner shall authorize the private agency to perform licensing functions delegated under part 9543.0030, subpart 2, for a period up to two years. The authorization shall specify the effective and expiration dates of the authorization.

Subp. 2. **Revocation of private agency's authorization.** When the commissioner determines that a private agency's failure to comply with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130 demonstrates a risk of harm to persons served by licensed programs, the commissioner shall revoke the private agency's authorization to perform licensing functions under part 9543.0030, subpart 2. Revocation of a private agency's authorization is grounds for negative licensing action against a license issued under parts 9545.0750 to 9545.0830. Revocation of authorization or a negative licensing action may be appealed according to Minnesota Statutes, sections 245A.07 and 245A.08.

REPEALER. Minnesota Rules, parts 9502.0335, subparts 3, 14, and 16; 9502.0341, subparts 1 and 9a; 9545.0020, subparts 3

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and 9; 9555.5415; and 9555.6145, subpart 6, are repealed.

EFFECTIVE DATE. Parts 9543.0010 to 9543.0150 and the repealer are effective January 1, 1991.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies

AGENCY: Department of Human Services

MINNESOTA RULES: Chapters 9502; 9543; 9545; and 9555

The attached rules are approved for publication in the State Register

Robert P. Kittel

Robert P. Kittel
Assistant Deputy Revisor

Department of Human Services

Adopted Permanent Rules Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies

Rules as Adopted

9502.0335 LICENSING PROCESS.

Subpart 1. **License application.** A license to operate a family or group family day care residence must be obtained from the department.

[For text of items A and B, see M.R.]

C. An application for licensure is complete when the applicant completes, signs, and submits all department forms and documentation needed for licensure to the agency and the agency receives all inspection, zoning, evaluation, and investigative reports, documentation, and information required to verify compliance with parts 9545.0315 to 9545.0445 and Minnesota statutes.

[For text of subp 2, see M.R.]

Subp. 3. [See Repealer.]

[For text of subps 4 to 13, see M.R.]

Subp. 14. [See Repealer.]

[For text of subp 15, see M.R.]

Subp. 16. [See Repealer.]

9543.0010 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** The purpose of parts 9543.0010 to 9543.0150, is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs and to establish minimum standards for performing licensing functions related to those rules.

Subp. 2. **Full applicability to county agencies.** Parts 9543.0040 to 9543.0130 apply in their entirety to county agencies.

Subp. 3. **Limited applicability to private agencies.** Parts

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9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130 apply to private agencies authorized by the commissioner to perform licensing functions related to child foster care.

9543.0020 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 9543.0010 to 9543.0150, the following terms have the meaning given them.

Subp. 2. **Abuse.** "Abuse" has the meaning given it in Minnesota Statutes, section 626.557, subdivision 2, paragraph (d).

Subp. 3. **Agency.** "Agency" means a county agency as defined in subpart 9 or a private agency as defined in subpart 17.

Subp. 4. **Applicant.** "Applicant" means an applicant as defined in Minnesota Statutes, section 245A.02, subdivision 3, who has completed and signed a license application form. Applicant includes a current license holder who is seeking relicensure.

Subp. 5. **Authorized.** "Authorized" means that a private agency is in compliance with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130 and has been licensed by the commissioner to perform the child foster care program licensing functions under part 9543.0030, subpart 2.

Subp. 6. **Certification.** "Certification" means the commissioner's written notice to a county agency performing licensing functions delegated under part 9543.0030, subpart 1, that the county agency is in compliance with the requirements in parts 9543.0040 to 9543.0130.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 8. **Complaint.** "Complaint" means a report of an alleged license violation made to the agency about a program.

Subp. 9. **County agency.** "County agency" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 6.

Subp. 10. **Department.** "Department" means the Minnesota

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Department of Human Services.

Subp. 11. **Imminent danger.** "Imminent danger" means a child or vulnerable adult is threatened with immediate and present abuse or neglect that is life-threatening or likely to result in abandonment, sexual abuse, or serious physical injury.

Subp. 12. **License.** "License" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 8.

Subp. 13. **License holder.** "License holder" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 9.

Subp. 14. **Maltreatment.** "Maltreatment" has the meaning given it in Minnesota Statutes, section 626.556, subdivision 10e.

Subp. 15. **Negative licensing action.** "Negative licensing action" means denial of a license application or probation, suspension, revocation, or immediate suspension of an existing license.

Subp. 16. **Neglect.** "Neglect" has the meaning given it in Minnesota Statutes, sections 626.556, subdivision 2, paragraph (c) and 626.557, subdivision 2, paragraph (e).

Subp. 17. **Private agency.** "Private agency" has the meaning given it in Minnesota Statutes, section 245A.02, subdivision 12.

Subp. 18. **Program.** "Program" means family day care, child foster care, or adult foster care programs.

Subp. 19. **Prospective applicant.** "Prospective applicant" means a person who expresses interest to an agency in applying for a license to provide a program but who has not submitted a signed application form to the agency.

Subp. 20. **Variance.** "Variance" means written permission from the commissioner for a license holder to depart for a specified time from a standard specified in rule.

Subp. 21. **Violation.** "Violation" means failure to comply with applicable laws or rules governing a program.

9543.0030 LICENSING FUNCTIONS.

Subpart 1. **Delegation to county agencies.** County agencies

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are delegated responsibility to perform the following functions related to licensure of programs:

A. accept and process license applications;

B. conduct inspections, studies, and evaluations of programs;

C. recommend approval or denial of applications for licensure;

D. process variance requests;

E. monitor compliance with applicable licensing rules;

F. investigate allegations of license violations;

G. investigate unlicensed programs;

H. issue correction orders;

I. recommend forfeiture orders and negative licensing actions;

J. enforce orders of the commissioner; and

K. represent the commissioner in contested case proceedings conducted under Minnesota Statutes, chapter 14.

Subp. 2. **Delegation to private agencies.** Private agencies must be authorized by the commissioner to perform the following functions related to the licensure of child foster care programs:

A. accept and process license applications;

B. conduct inspections, studies, and evaluations of programs;

C. recommend approval or denial of applications for licensure;

D. process variance requests;

E. monitor compliance with child foster care licensing rules;

F. investigate allegations of license violations;

G. issue correction orders;

H. recommend forfeiture orders and negative licensing actions;

I. enforce orders of the commissioner; and

J. assist and cooperate with the commissioner and attorney general in contested case proceedings.

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9543.0040 LICENSE APPLICATION PROCEDURES.

Subpart 1. **Licensure information.** The agency shall provide information on license application procedures to prospective applicants according to items A to ~~C~~ D.

A. The agency shall provide in writing to all prospective applicants, the information in subitems (1) to (3):

(1) a summary of license requirements;

(2) a description of the agency's licensing study process; and

(3) the agency's timelines for processing license applications.

B. The agency shall ~~immediately~~ provide the license application form prescribed by the commissioner to every prospective applicant who requests an application.

C. An agency that requires prospective applicants to attend an informational meeting before receiving a license application form must ensure that meetings take place at least every two months on either a group or individual basis.

D. Upon receiving a completed and signed license application form, the agency shall provide the applicant a copy of the program rules.

Subp. 2. **Licensing study.** The agency shall perform a licensing study of the applicant that includes:

A. a background study performed according to subpart 3;

B. a written record of a home study that includes:

(1) on-site inspection of the residence;

(2) home visits necessary to fully evaluate the applicant's qualification for licensure; and

(3) when an applicant has been operating a program:

(a) an ~~observation-of-the-program-in operation~~ in-home visit to observe compliance with program requirements;

(b) documented requests for program

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evaluations from parents or legal guardians of children in family day care; and

(c) evaluations from placement workers for foster care;

C. three letters of reference;

D. where the agency has knowledge the applicant was previously licensed, a reference from that previous agency;

E. reports from the fire marshal, building officials, and health officials that are required by rules governing the program;

F. for foster care licensing applicants, the information in part 9543.0060, subpart 4; and

G. any other reports or evaluations necessary to fully evaluate the applicant's qualifications for licensure and compliance with applicable laws and rules.

Subp. 3. **Background study.** The agency shall conduct a background study according to items A to ~~E~~ D.

A. The study shall include the following individuals:

(1) the applicant;

(2) all individuals over age 13 living in the household; and

(3) any other individuals specified in Minnesota Statutes, section 245A.04, subdivision 3, paragraph (a).

B. The study shall include the following records:

(1) conviction records of the Minnesota Bureau of Criminal Apprehension;

(2) county agency records of substantiated abuse or neglect of vulnerable adults and maltreatment of minors;

(3) juvenile court records of delinquency proceedings held within the five years preceding application or five years preceding the 18th birthday of anyone over age 13 living in the household, whichever time period is longer; and

(4) any other information, including arrest and investigation records maintained by the Minnesota Bureau of Criminal Apprehension, county attorneys, county sheriffs, courts, county agencies, local police, and the national criminal

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record repository, and criminal records of other states, if there is reasonable cause to believe the information is pertinent to disqualification of the individual under part 9543.3070.

C. If the individual has lived in the county for less than five years, the study under item B shall include records from the previous county or counties of residence for the past five years.

D. When a background study indicates a subject is disqualified under part 9543.3070, the agency shall:

(1) notify the applicant in writing that:

(a) the study indicates a subject is disqualified;

(b) the subject has the right to request reconsideration from the commissioner as provided in part 9543.3080; and

(c) the application will be denied unless the commissioner sets aside the disqualification; and

(2) make a recommendation to the commissioner whether the disqualification should be set aside.

Subp. 4. **Completed application.** An application is completed when all studies, reports, and evaluations in subparts 2 and 3 have been completed and received by the agency.

Subp. 5. **Licensing recommendation.** The agency shall forward its licensure recommendation to the commissioner within 20 working days after an application is completed. The agency shall make its recommendation according to items A to C:

A. The agency shall recommend that the commissioner issue a license when the agency determines that the applicant fully complies with laws and rules governing the program and is qualified for licensure.

B. The agency may recommend that the commissioner issue a license and grant a variance according to part 9543.0050.

C. The agency shall recommend that the commissioner deny a license application if the agency determines the applicant fails to fully comply with laws or rules governing the

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program and variance requirements. The agency shall submit evidence to support its recommendation. Evidence may include:

(1) documentation of specific facility deficiencies that endanger the health or safety of persons served by the program;

(2) documentation of any disqualification that has not been set aside;

(3) reports of agency investigations and on-site observations;

(4) reports from law enforcement agencies;

(5) reports from county child or adult protection services;

(6) reports from fire, building, or health officials;

(7) complaints that relate to the program; or

(8) any other evidence that the applicant is not in compliance with applicable laws or rules governing the program.

Subp. 6. **License renewal.** Before the expiration date of a license, the agency shall:

A. at least 30 days before the license expiration date, provide an application form and notice of the license expiration date to the license holder;

B. conduct a licensing renewal study that includes information under subpart 2, items A, B, E, and F; and

C. make a licensing recommendation to the commissioner.

Subp. 7. **License extension.** Before the expiration date of a program that is being investigated or a program that is appealing an order of revocation or suspension, the agency shall request the commissioner to extend the license pending disposition of the investigation or appeal.

Subp. 8. **Tracking licensing progress.** The agency shall track the progress of each application for licensure on a form approved by the commissioner including:

A. the dates and documentation of all events

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described in subparts 2 to 7;

B. the status of the license application 120 calendar days after receipt of a signed application form;

C. the date and circumstances when a license application is withdrawn or a license is returned or not renewed by the license holder;

D. the date the license is issued or denied; and

E. if a license is issued, the date the license is effective and the expiration date of the license.

9543.0050 VARIANCE REQUESTS.

Subpart 1. **Variance information.** A variance request must include the following information:

A. the part or parts of the rule for which a variance is sought;

B. the reasons why a variance from the specified provisions is sought;

C. the period of time for which a variance is requested;

D. written approval from the fire marshal, building inspector, or health authority when the variance request is for a variance from a fire, building, or health code; and

E. alternative equivalent measures the applicant or license holder will take to ensure the health and safety of persons served by the program if the variance is granted.

Subp. 2. **Variance procedures.** Except as provided in subpart 3, a request for a variance must be submitted in writing by the applicant or license holder.

Except for variance authority granted to a county agency under part 9502.0335, subpart 8b, the agency shall forward to the commissioner within ten working days of receipt of the request the information in subpart 1 and the agency's recommendation to approve or deny the request.

The commissioner shall send a written decision to grant or deny the variance request to the applicant or license holder and to the agency.

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Subp. 3. **Foster care capacity variance at request of agency.** The agency may orally request from the commissioner a variance from child foster care capacity limits on behalf of a license holder. If the commissioner grants the variance, the agency shall submit to the commissioner the information in subpart 1 within five working days after the variance is granted.

9543.0060 LICENSING FOSTER CARE PROGRAMS.

Subpart 1. **Additional foster care licensing requirements.** Agencies that perform foster care licensing functions shall comply with the requirements in subparts 2 to 6, in addition to other applicable requirements.

Subp. 2. **Program information.** The agency shall provide prospective applicants with information about foster care to enable the prospective applicant to decide whether to apply for licensure. The information must include:

A. the types of individuals the agency places in foster care;

B. the responsibilities of foster care license holders and of the agency; and

C. the agency's policies governing foster care.

Subp. 3. **Orientation and preplacement training.** The agency shall provide applicants the orientation and preplacement training required in rules governing the program.

Subp. 4. **Foster care licensing study.** In addition to the licensing study under part 9543.0040, subpart 2, the licensing study of an applicant for foster care must include:

A. in-person interviews with all family members and other adults living in the household;

B. social history information; and

C. an evaluation of whether the individual meets the specific qualifications required in Minnesota Rules governing child foster care or adult foster care.

A written report of the foster care licensing study must be kept in the applicant's record.

Subp. 5. **Duties of agency.** The agency shall:

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A. enter into a foster parent agreement with the license holder for child foster care;

B. coordinate with placement workers to ensure that the license holder is visited by a placement worker or the licensor at least monthly for the first six months after the first placement in child foster care;

C. provide the license holder a copy of the annual relicensing evaluation report;

D. establish a grievance mechanism for resolving differences between the agency and the license holder and provide the license holder with a written description of grievance procedures;

E. ensure that the foster care provider has a means of contacting the agency 24 hours per day, seven days per week; and

F. ensure that training is available to enable license holders to meet the training requirements in rules governing foster care programs.

Subp. 6. **Notice of closure.** When a foster care program is closed, the agency shall notify the commissioner on forms prescribed by the commissioner.

9543.0070 INVESTIGATIONS OF LICENSED PROGRAMS.

Subpart 1. **Reports of abuse or neglect of persons served by licensed programs.** If an agency receives a complaint alleging abuse or neglect of persons served by a program, the agency shall follow the procedures in items A to C.

A. The agency shall immediately report the complaint to the county child or adult protection unit where the program is located.

B. The agency shall cooperate with the county child or adult protection unit as requested in conducting the investigation required under part 9555.7300 or 9560.0222.

C. Upon completion of the investigation, the agency shall take the appropriate licensing action indicated by the findings of the investigation.

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Subp. 2. **Timelines.** Except for reports of abuse, neglect, or maltreatment, the agency shall investigate all complaints of licensing violations received about programs for which it performs licensing functions. The agency shall investigate the complaints according to items A to C:

A. A complaint that alleges imminent danger or recurring physical injury to persons served by the program must be:

(1) reported according to subpart 1; and

(2) reported to the commissioner immediately.

B. Investigation of a complaint that does not indicate imminent danger to persons served by the program but that may result in a negative licensing action under part 9543.0100 must begin within three working days after the agency receives the complaint.

C. Investigation of a complaint that does not involve an issue of safety under item A or B for persons served by the program must begin within ten working days after the agency receives the complaint.

Subp. 3. **Determination.** The agency shall gather sufficient information about every complaint to:

A. make a determination that a licensing violation occurred, did not occur, or no determination can be made; and

B. if a violation occurred, issue a correction order or recommend a negative licensing action.

Subp. 4. **Reports of death.** The agency shall ensure that the death of a person served by a program is reported to the medical examiner or coroner and ombudsman as required in Minnesota Statutes, sections 626.556, subdivision 9, and 626.577, subdivision 9.

Subp. 5. **Recording complaints and investigations.** The agency shall:

A. maintain a register for recording complaints about licensed programs and tracking the status of each investigation;

B. record in the license holder's file the disposition of each complaint involving the license holder; and

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C. maintain the records according to Minnesota Statutes, section 13.46.

9543.0080 COUNTY INVESTIGATION OF UNLICENSED PROGRAMS.

Subpart 1. **Unlicensed family day care and adult foster care.** When a county agency learns that a family day care or adult foster care program required to be licensed is operating without a license, the county shall, within five working days, notify the operator in writing that a license is required or the program must discontinue operation.

A. If the operator discontinues the unlicensed operation, no further action is required.

B. If an operator who is eligible for licensure fails to sign an application form within 30 calendar days after notice that a license is required or fails to cooperate in the licensing study, the county agency shall:

(1) ask the county attorney to take legal action to halt the continued operation of the program or obtain misdemeanor prosecution of the operator; and

(2) inform the commissioner of the unlicensed program.

C. Nothing in items A and B prevents a county agency from immediately asking the county attorney to seek a court order against the continued operation of an unlicensed program.

Subp. 2. **Unlicensed child foster care.** The agency shall report to the county child protection unit when it learns of a child in an unlicensed foster care program that is required to be licensed.

9543.0090 CORRECTION ORDERS.

Subpart 1. **Correction order, training.** An agency shall not issue correction orders unless licensors have been trained by the department on procedures for issuing correction orders. A correction order must be on forms prescribed by the commissioner. A copy of the correction order must be kept in the license holder's file.

Subp. 2. **Criteria for issuing correction orders.** A

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correction order may be issued if all of the following conditions are met:

A. the violation does not imminently endanger the health, safety, or rights of persons served by the program;

B. the violation is not listed in part 9543.0100, subpart 3;

C. the violation is not serious or chronic; and

D. the violation will be corrected within a reasonable time.

Subp. 3. **Time limitation.** A correction order must include a specific time period for correcting the violation.

Subp. 4. **Compliance with correction order.** The agency shall ensure that license holders provide evidence of compliance with a correction order or, if appropriate, recommend further action to the commissioner.

9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.

Subpart 1. **Basis for recommendation.** When recommending a negative licensing action, the agency shall:

A. submit to the commissioner the following information:

(1) the citation to laws or rules that have been violated;

(2) the nature and severity of each violation;

(3) whether the violation is recurring or nonrecurring;

(4) the effect of the violation on persons served by the program;

(5) an evaluation of the risk of harm to persons served; the agency may use the risk assessment completed under part 9560.0222, subpart 9;

(6) any evaluations of the program by persons served or their families;

(7) relevant facts, conditions, and circumstances concerning the operation of the program, including information identified in part 9543.0040, subpart 5, item C;

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(8) any relevant information about the qualifications of the applicant or license holder or persons living in the residence; and

(9) any aggravating or mitigating factors related to the violation; and

B. notify the county attorney of the recommendation.

Subp. 2. **Immediate suspension of license.** If the agency has reasonable cause to believe that the health, safety, or rights of persons served by a program are in imminent danger, the agency must take actions described in items A to C:

A. The agency shall notify the commissioner immediately.

B. If the commissioner orders an immediate suspension, the agency shall arrange for delivery, by personal service, of written notice of immediate suspension to the license holder. The notice shall state:

(1) the reason for the immediate suspension;

(2) that the program must discontinue operation immediately;

(3) the license holder's right to appeal and a contested case hearing; and

(4) that the commissioner has taken the action.

C. The agency shall make a recommendation for further action to the commissioner.

Subp. 3. **Revocation or denial of license.** Violations that are grounds for recommending license revocation or denial include, but are not limited to:

A. immediate suspension of a license under subpart 2;

B. a disqualification in part 9543.3070, as proposed at 15 State Register 486, August 27, 1990, and as later adopted, or in rules governing the program;

C. a false statement knowingly made by the license holder, on the license application;

D. failure or refusal to provide the commissioner access to the physical plant and grounds, documents, persons served, and staff;

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E. recurring failure to comply with discipline standards in rules governing the program;

F. severe or recurring failure to comply with capacity limits; or

G. licensing violations that occur while the license is probationary or suspended.

Subp. 4. **License suspension.** The agency may recommend license suspension rather than revocation under subpart 3 if the agency submits information demonstrating:

A. on the basis of factors in subpart 1, revocation is not warranted; and

B. suspension rather than revocation:

(1) is in the best interests of persons served by the program; and

(2) would not pose a risk of harm to persons served by the program.

Subp. 5. **License probation.** The agency may recommend probation rather than revocation or suspension if:

A. on the basis of factors in subpart 1, the agency demonstrates that revocation or suspension is not warranted.

B. the agency demonstrates that continued operation of the program:

(1) is in the best interests of persons served by the program; and

(2) would not pose a risk of harm to persons served by the program; and

C. the agency submits to the commissioner a plan for monitoring the program to ensure the safety of persons served during the probationary period.

Subp. 6. **Notification of licensee of negative licensing action.** The agency shall give written notice to a license holder when the agency recommends a negative licensing action to the commissioner.

Subp. 7. **Notice to parents of negative licensing action.** The agency shall give written notice of a negative licensing action to the parents or guardians of children in the programs

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as follows:

A. When the agency recommends a negative licensing action to the commissioner, the agency shall immediately inform parents and guardians that a negative licensing action has been recommended and that they will be informed of the commissioner's action on the recommendation.

B. When the commissioner orders a negative licensing action, the agency shall immediately inform parents and guardians:

(1) that a negative licensing action has been ordered and the circumstances for the action;

(2) the effect of the negative licensing action on the operation of the program; and

(3) that an explanation of the appeal process available to the license holder is available upon request.

C. If the commissioner does not order a negative licensing action following the agency recommendation, the agency shall inform parents and guardians when the agency receives the commissioner's decision.

Subp. ~~7.~~ 8. **Notice of negative licensing action to county.** If a negative licensing action has been ordered against a child foster care program that is supervised by a private agency, the private agency shall notify in writing the county agency in which the program is located and any county that has placements in the home.

9543.0110 ENFORCING ORDERS OF COMMISSIONER.

Subpart 1. **Agency enforcement of commissioner orders.** The agency shall enforce and defend all orders of the commissioner, including immediate suspension, suspension, and revocation.

Subp. 2. **Sanctioned programs.** If the agency has knowledge that a program whose license has been immediately suspended, revoked, or suspended continues to operate, the agency shall immediately report the operation to the county attorney and the commissioner.

Subp. 3. **Programs on probation.** The agency shall monitor

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programs on probation for compliance with the plan developed under part 9543.0100, subpart 5. If a program fails to comply with the terms of its probation, the agency shall immediately report the noncompliance to the commissioner.

9543.0120 REPRESENTING THE COMMISSIONER IN CONTESTED CASE PROCEEDINGS.

Subpart 1. **Contested case proceedings.** The county agency shall represent the commissioner in contested case appeals of negative licensing actions involving license holders supervised by the county agency. The county agency shall:

A. arrange for legal consultation and representation by the county attorney;

B. prepare all documents necessary for the contested case proceeding;

C. within 30 days <u>after receipt of the appeal packet from the department</u>, arrange with the Office of Administrative Hearings for the services of an administrative law judge and a timely date and location for the hearing;

D. serve the notice of and order for hearing as provided in part 1400.5600; and

E. send a copy of the notice of and order for hearing to the commissioner.

Subp. 2. **Appeals involving private agencies.** The attorney general represents the commissioner in contested case appeals of licensing actions involving license holders licensed based on the recommendation of a private agency.

Subp. 3. **Informal dispositions, stipulated agreements.** In making an informal disposition of a contested case, the county agency shall follow the procedures in items A to D:

A. The county agency shall obtain preliminary approval from the commissioner to discuss an informal disposition of the contested case.

B. Before entering into any settlement agreement with an applicant or license holder appealing an order of the commissioner, the county agency shall discuss the terms of the

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proposed agreement with the commissioner.

C. If the commissioner approves of the proposed terms, the county agency shall:

(1) draft an agreement and obtain signatures of the party appealing and county representatives;

(2) submit the signed agreement to the commissioner for approval and signatures; the agreement is not effective until signed by the commissioner; and

(3) monitor the program for compliance with the terms of the agreement.

D. If the commissioner or parties are unable to reach a settlement, the county agency shall schedule a contested case hearing.

9543.0130 ADMINISTRATIVE REQUIREMENTS.

Subpart 1. **Maintaining records.** The agency must maintain a record file of each applicant and license holder that includes:

A. all records required by the rules governing the program;

B. a record of all investigations and dispositions of all investigations according to Minnesota Statutes, section 13.46;

C. dates and reports of all licensing studies; and

D. a list of all persons currently being served by the foster care license holder.

Subp. 2. **Commissioner access.** The agency shall provide the commissioner access to and, if requested, copies of all records and documents in an applicant or license holder's file.

Subp. 3. **Training requirements.** The agency shall require that licensors receive six hours of training each calendar year.

Training must be relevant to licensing functions or to licensed programs.

The agency must keep a record of completed training in each licensor's personnel file.

Subp. 4. **Conflict of interest.** The agency shall ensure that no agency employee or board member who applies for

Approved
by Revisor _____

licensure or who is licensed to operate a program based on the agency's recommendation is involved in any licensing recommendation or action related to that employee or board member.

9543.0140 COUNTY CERTIFICATION.

Subpart 1. **County agency certification.** The commissioner shall biennially determine whether a county agency is in compliance with parts 9543.0040 to 9543.0130. When the county agency is in compliance with parts 9543.0040 to 9543.0130, the commissioner shall certify the county agency for two years.

Subp. 2. **Notification of noncompliance.** The commissioner shall notify the county agency when the county agency has failed to comply with parts 9543.0040 to 9543.0130. The notice must include:

A. the deficiencies in the county agency's licensing procedures;

B. the corrective action necessary to correct the deficiencies; and

C. the time frame for correction of the deficiencies.

Subp. 3. **County compliance.** Within 30 calendar days after receiving a notice of noncompliance, the county shall:

A. demonstrate compliance with parts 9543.0040 to 9543.0130; or

B. submit to the commissioner for approval a corrective action plan.

Subp. 4. **Review of corrective action plan.** The commissioner shall review and approve or disapprove the corrective action plan within 30 calendar days after receiving the plan.

Subp. 5. **Provisional certification.** If the county agency does not fully comply with parts 9543.0040 to 9543.0130, but the failure to comply does not constitute a risk to persons served by licensed programs, the commissioner may issue a provisional certification of the county agency upon approval of the corrective action plan submitted under subpart 3, item B.

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by Revisor _____

Subp. 6. **County agency decertification based on demonstrated risk of harm to program participants.** When the commissioner determines that a county agency's failure to comply with parts 9543.0040 to 9543.0130 demonstrates a risk of harm to persons served by licensed programs, the commissioner shall immediately revoke certification of the county agency and initiate sanctions as provided in subpart 7.

Subp. 7. **Funding sanction.** If the county agency is decertified, the commissioner shall certify a funding reduction according to Minnesota Statutes, section 245A.16, subdivision 6.

Subp. 8. **Expiration of certification.** A certification issued to a county agency expires at 12:01 a.m. on the day after the expiration date stated on the certification.

Subp. 9. **Contracting licensing functions.** A county agency must receive prior approval from the commissioner before contracting with an authorized private agency or another county agency to perform licensing functions delegated under part 9543.0030, subpart 1, and remains subject to the certification provisions in part 9543.0140. This subpart does not apply to purchase of service contracts which have as their primary purpose to provide foster care services for individual clients.

9543.0150 PRIVATE AGENCY AUTHORIZATION.

Subpart 1. **Private agency authorization.** The commissioner shall at least biennially determine private agencies' compliance with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130. When a private agency is in compliance with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130, the commissioner shall authorize the private agency to perform licensing functions delegated under part 9543.0030, subpart 2, for a period up to two years. The authorization shall specify the effective and expiration dates of the authorization.

Subp. 2. **Revocation of private agency's authorization.** When the commissioner determines that a private agency's failure to comply with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130 demonstrates a risk of harm to persons

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served by licensed programs, the commissioner shall revoke the private agency's authorization to perform licensing functions under part 9543.0030, subpart 2. Revocation of a private agency's authorization is grounds for negative licensing action against a license issued under parts 9545.0750 to 9545.0830. Revocation of authorization or a negative licensing action may be appealed according to Minnesota Statutes, sections 245A.07 and 245A.08.

REPEALER. Minnesota Rules, parts 9502.0335, subparts 3, 14, and 16; 9502.0341, subparts 1 and 9a; 9545.0020, subparts 3 and 9; 9555.5415; and 9555.6145, subpart 6, are repealed.

EFFECTIVE DATE. Parts 9543.0010 to 9543.0150 and the repealer are effective ~~January 1~~ March 29, 1991.

Approved
by Revisor _____

APPROVED AS TO LEGALITY
March 1, 1991
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Charlene M. Hatcher
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 01 1991
Joan Anderson Growe
Secretary of State
3:25 P.M.
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Stat Authority 245A.09

The commissioner shall adopt rules under chapter 14 to govern the operation, maintenance, and licensure of programs subject to licensure under sections 245A.01 to 254A.16.

245A.16 - Standards for County Agencies and Private Agencies

End of comment period states September 26, 1990 in Notice of Intent

@ Rules -

180 14.26

end of Comment period September 26 - 3 141 days

submitted to our office - Feb 15 0.K

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: Jim Schmidt, Rulemaker
Department of Human Services

SUBJECT: Review of a Rule Adopted Without a Public Hearing; Proposed permanent rules relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies, Minnesota Rules Chapters 9502; 9543; 9545; and 9555

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

Official documents in this submitted material include:

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

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

3. The notice of intent to adopt a rule without a public hearing as mailed.

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

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

Celebrate MINNESOTA 1990

AN EQUAL OPPORTUNITY EMPLOYER

Submission to Attorney General for Administration
Review of Rule Adopted Without a Public Hearing
Relating to Family Day Care, Adult Foster Care,
and Child Foster Care Licensing Functions

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

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

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

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

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

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

If you have any questions on this submitted material, please call me at 296-7815.

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Human Services

Proposed Permanent Rules Relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies

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

NOTICE IS HEREBY GIVEN that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, section 14.22 to 14.28. The specific statutory authority to adopt the rule is *Minnesota Statutes*, sections 245A.09 and 245A.16.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and 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*, section 14.131 to 14.20. **PLEASE NOTE that if twenty-five or more persons submit written requests for a public hearing within the 30-day comment period, a hearing will be held on October 4, 1990 unless a sufficient number withdraw their request, in accordance with the Notice of Public Hearing on these same rules published in this *State Register* and mailed to persons registered with the Department of Human Services.** To verify whether a hearing will be held, please call the Department of Human Services between September 27, 1990 and October 3, 1990 at (612) 296-7815.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to: Jim Schmidt, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on September 26, 1990.

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.

A free copy of this rule is available upon request for your review from: Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816 or by calling (612) 296-7454.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the State of Minnesota.

The purpose of the proposed rule is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs and to establish minimum standards for performing licensing functions related to those rules. The proposed rule affects county agencies performing family day care, adult foster care, and child foster care licensing functions and private agencies authorized to perform child foster care licensing functions.

The proposed rule identifies the purpose of the rule and its applicability to county and private agencies; defines words and phrases that have meanings specific to the rule; identifies specific licensing functions delegated to county and private agencies; sets forth procedures for handling license applications, including information that must be given to prospective applicants, licensing study

requirements, and standards for making licensing recommendations; establishes procedures for variances; establishes additional licensing requirements for foster care programs; establishes requirements for investigating allegations of licensing violations; establishes procedures governing unlicensed programs that are required to be licensed; establishes requirements for issuing correction orders; establishes standards for recommending negative licensing actions; requires agencies to enforce orders of the commissioner; sets forth procedures that county agencies must comply with when representing the commissioner in contested cases; establishes certain administrative requirements; sets forth procedures governing certification of county agencies; and sets forth procedures for authorizing private agencies to perform licensing functions.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, or by calling (612) 296-7454.

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

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered 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 Jim Schmidt, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

Ann Wynia, Commissioner

Notice of Hearing and Notice of Intent to Cancel Hearing If Fewer than Twenty-Five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room 500 South, State Office Building, 100 Constitution Avenue, St. Paul, Minnesota on October 4, 1990 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, however, that the hearing will be cancelled if fewer than twenty-five persons request a hearing in response to the Notice of Intent to Adopt these same rules without a public hearing published in this *State Register* and mailed to persons registered with the Department of Human Services. To verify whether a hearing will be held, please call the Department of Human Services between September 27, 1990 and October 3, 1990 at (612) 296-7815.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon L. Lunde, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7645, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in *Minnesota Statutes*, sections 14.15 and 14.50. The rule hearing is governed by *Minnesota Statutes*, sections 14.14 to 14.20 and by *Minnesota Rules*, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

The purpose of the proposed rule is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs and to establish minimum standards for performing licensing functions related to those rules. The proposed rule affects county agencies performing family day care, adult foster care, and child foster care licensing functions and private agencies authorized to perform child foster care licensing functions.

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

The proposed rule identifies the purpose of the rule and its applicability to county and private agencies; defines words and phrases that have meanings specific to the rule; identifies specific licensing functions delegated to county and private agencies; sets forth procedures for handling license applications, including information that must be given to prospective applicants, licensing study requirements, and standards for making licensing recommendations; establishes procedures for variances; establishes additional licensing requirements for foster care programs; establishes requirements for investigating allegations of licensing violations; establishes procedures governing unlicensed programs that are required to be licensed; establishes requirements for issuing correction orders; establishes standards for recommending negative licensing actions; requires agencies to enforce orders of the commissioner; sets forth procedures that county agencies must comply with when representing the commissioner in contested cases; establishes certain administrative requirements; sets forth procedures governing certification of county agencies; and sets forth procedures for authorizing private agencies to perform licensing functions.

The agency's authority to adopt the proposed rules is contained in *Minnesota Statutes*, sections 245A.09 and 245A.16. The adoption of this rule will increase aggregate local public body spending by over $100,000 in each of the first two years following the rule's adoption. See the fiscal note attached to this notice which contains the Department's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, or by calling (612) 296-7454. This rule is also available for viewing at each of the county welfare or human service agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule contact Jim Schmidt, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155-3816.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in *Minnesota Statutes*, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

Ann Wynia, Commissioner

Fiscal Note: For fiscal note pertaining to this rule, see page 521 of this *State Register*.

Rules as Proposed

9502.0335 LICENSING PROCESS.

Subpart 1. **License application.** A license to operate a family or group family day care residence must be obtained from the department.

[For text of items A and B, see M.R.]

C. ~~The agency shall supply the applicant with the department application form, a copy of parts 9502.0315 to 9502.0445, and the department forms needed to determine compliance with parts 9502.0315 to 9502.0445. The agency shall stamp and date a signed and completed department application form on the date of receipt.~~

~~D.~~ An application for licensure is complete when the applicant completes, signs, and submits all department forms and documentation needed for licensure to the agency and the agency receives all inspection, zoning, evaluation, and investigative reports, documentation, and information required to verify compliance with parts 9545.0315 to 9545.0445 and *Minnesota Statutes*.

[For text of subp 2, see M.R.]

Subp. 3. [See Repealer.]

[For text of subps 4 to 13, see M.R.]

Subp. 14. [See Repealer.]

[For text of subp 15, see M.R.]

Subp. 16. [See Repealer.]

Rules as proposed (all new material)

9543.0010 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** The purpose of parts 9543.0010 to 9543.0150, is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs and to establish minimum standards for performing licensing functions related to those rules.

Subp. 2. **Full applicability to county agencies.** Parts 9543.0040 to 9543.0130 apply in their entirety to county agencies.

Subp. 3. **Limited applicability to private agencies.** Parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130 apply to private agencies authorized by the commissioner to perform licensing functions related to child foster care.

9543.0020 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 9543.0010 to 9543.0150, the following terms have the meaning given them.

Subp. 2. **Abuse.** "Abuse" has the meaning given it in *Minnesota Statutes*, section 626.557, subdivision 2, paragraph (d).

Subp. 3. **Agency.** "Agency" means a county agency as defined in subpart 9 or a private agency as defined in subpart 17.

Subp. 4. **Applicant.** "Applicant" means an applicant as defined in *Minnesota Statutes*, section 245A.02, subdivision 3, who has completed and signed a license application form. Applicant includes a current license holder who is seeking relicensure.

Subp. 5. **Authorized.** "Authorized" means that a private agency is in compliance with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130 and has been licensed by the commissioner to perform the child foster care program licensing functions under part 9543.0030, subpart 2.

Subp. 6. **Certification.** "Certification" means the commissioner's written notice to a county agency performing licensing functions delegated under part 9543.0030, subpart 1, that the county agency is in compliance with the requirements in parts 9543.0040 to 9543.0130.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 8. **Complaint.** "Complaint" means a report of an alleged license violation made to the agency about a program.

Subp. 9. **County agency.** "County agency" has the meaning given it in *Minnesota Statutes*, section 245A.02, subdivision 6.

Subp. 10. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 11. **Imminent danger.** "Imminent danger" means a child or vulnerable adult is threatened with immediate and present abuse or neglect that is life-threatening or likely to result in abandonment, sexual abuse, or serious physical injury.

Subp. 12. **License.** "License" has the meaning given it in *Minnesota Statutes*, section 245A.02, subdivision 8.

Subp. 13. **License holder.** "License holder" has the meaning given it in *Minnesota Statutes*, section 245A.02, subdivision 9.

Subp. 14. **Maltreatment.** "Maltreatment" has the meaning given it in *Minnesota Statutes*, section 626.556, subdivision 10e.

Subp. 15. **Negative licensing action.** "Negative licensing action" means denial of a license application or probation, suspension, revocation, or immediate suspension of an existing license.

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.

Subp. 16. **Neglect.** "Neglect" has the meaning given it in *Minnesota Statutes*, sections 626.556, subdivision 2, paragraph (c) and 626.557, subdivision 2, paragraph (e).

Subp. 17. **Private agency.** "Private agency" has the meaning given it in *Minnesota Statutes*, section 245A.02, subdivision 12.

Subp. 18. **Program.** "Program" means family day care, child foster care, or adult foster care programs.

Subp. 19. **Prospective applicant.** "Prospective applicant" means a person who expresses interest to an agency in applying for a license to provide a program but who has not submitted a signed application form to the agency.

Subp. 20. **Variance.** "Variance" means written permission from the commissioner for a license holder to depart for a specified time from a standard specified in rule.

Subp. 21. **Violation.** "Violation" means failure to comply with applicable laws or rules governing a program.

9543.0030 LICENSING FUNCTIONS.

Subpart 1. **Delegation to county agencies.** County agencies are delegated responsibility to perform the following functions related to licensure of programs:

A. accept and process license applications;

B. conduct inspections, studies, and evaluations of programs;

C. recommend approval or denial of applications for licensure;

D. process variance requests;

E. monitor compliance with applicable licensing rules;

F. investigate allegations of license violations;

G. investigate unlicensed programs;

H. issue correction orders;

I. recommend forfeiture orders and negative licensing actions;

J. enforce orders of the commissioner; and

K. represent the commissioner in contested case proceedings conducted under *Minnesota Statutes*, chapter 14.

Subp. 2. **Delegation to private agencies.** Private agencies must be authorized by the commissioner to perform the following functions related to the licensure of child foster care programs:

A. accept and process license applications;

B. conduct inspections, studies, and evaluations of programs;

C. recommend approval or denial of applications for licensure;

D. process variance requests;

E. monitor compliance with child foster care licensing rules;

F. investigate allegations of license violations;

G. issue correction orders;

H. recommend forfeiture orders and negative licensing actions;

I. enforce orders of the commissioner; and

J. assist and cooperate with the commissioner and attorney general in contested case proceedings.

9543.0040 LICENSE APPLICATION PROCEDURES.

Subpart 1. **Licensure information.** The agency shall provide information on license application procedures to prospective applicants according to items A to C.

A. The agency shall provide in writing to all prospective applicants, the information in subitems (1) to (3):

(1) a summary of license requirements;

(2) a description of the agency's licensing study process; and

(3) the agency's timelines for processing license applications.

B. The agency shall immediately provide the license application form prescribed by the commissioner to every prospective applicant who requests an application.

C. Upon receiving a completed and signed license application form, the agency shall provide the applicant a copy of the program rules.

Subp. 2. **Licensing study.** The agency shall perform a licensing study of the applicant that includes:

A. a background study performed according to subpart 3;

B. a written record of a home study that includes:

(1) on-site inspection of the residence;

(2) home visits necessary to fully evaluate the applicant's qualification for licensure; and

(3) when an applicant has been operating a program:

(a) an observation of the program in operation;

(b) documented requests for program evaluations from parents or legal guardians of children in family day care; and

(c) evaluations from placement workers for foster care;

C. three letters of reference;

D. where the agency has knowledge the applicant was previously licensed, a reference from that previous agency;

E. reports from the fire marshal, building officials, and health officials that are required by rules governing the program;

F. for foster care licensing applicants, the information in part 9543.0060, subpart 4; and

G. any other reports or evaluations necessary to fully evaluate the applicant's qualifications for licensure and compliance with applicable laws and rules.

Subp. 3. **Background study.** The agency shall conduct a background study according to items A to C.

A. The study shall include the following individuals:

(1) the applicant;

(2) all individuals over age 13 living in the household; and

(3) any other individuals specified in *Minnesota Statutes*, section 245A.04, subdivision 3, paragraph (a).

B. The study shall include the following records:

(1) conviction records of the Minnesota Bureau of Criminal Apprehension;

(2) county agency records of substantiated abuse or neglect of vulnerable adults and maltreatment of minors;

(3) juvenile court records of delinquency proceedings held within the five years preceding application or five years preceding the 18th birthday of anyone over age 13 living in the household, whichever time period is longer; and

(4) any other information, including arrest and investigation records maintained by the Minnesota Bureau of Criminal Apprehension, county attorneys, county sheriffs, courts, county agencies, local police, and the national criminal record repository, and criminal records of other states, if there is reasonable cause to believe the information is pertinent to disqualification of the individual under part 9543.3070.

C. When a background study indicates a subject is disqualified under part 9543.3070, the agency shall:

(1) notify the applicant in writing that:

(a) the study indicates a subject is disqualified;

(b) the subject has the right to request reconsideration from the commissioner as provided in part 9543.3080; and

(c) the application will be denied unless the commissioner sets aside the disqualification; and

(2) make a recommendation to the commissioner whether the disqualification should be set aside.

Subp. 4. **Completed application.** An application is completed when all studies, reports, and evaluations in subparts 2 and 3 have been completed and received by the agency.

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.

Subp. 5. **Licensing recommendation.** The agency shall forward its licensure recommendation to the commissioner within 20 working days after an application is completed. The agency shall make its recommendation according to items A to C:

A. The agency shall recommend that the commissioner issue a license when the agency determines that the applicant fully complies with laws and rules governing the program and is qualified for licensure.

B. The agency may recommend that the commissioner issue a license and grant a variance according to part 9543.0050.

C. The agency shall recommend that the commissioner deny a license application if the agency determines the applicant fails to fully comply with laws or rules governing the program and variance requirements. The agency shall submit evidence to support its recommendation. Evidence may include:

(1) documentation of specific facility deficiencies that endanger the health or safety of persons served by the program;

(2) documentation of any disqualification that has not been set aside;

(3) reports of agency investigations and on-site observations;

(4) reports from law enforcement agencies;

(5) reports from county child or adult protection services;

(6) reports from fire, building, or health officials;

(7) complaints that relate to the program; or

(8) any other evidence that the applicant is not in compliance with applicable laws or rules governing the program.

Subp. 6. **License renewal.** Before the expiration date of a license, the agency shall:

A. at least 30 days before the license expiration date, provide an application form and notice of the license expiration date to the license holder;

B. conduct a licensing renewal study that includes information under subpart 2, items A, B, E, and F; and

C. make a licensing recommendation to the commissioner.

Subp. 7. **License extension.** Before the expiration date of a program that is being investigated or a program that is appealing an order of revocation or suspension, the agency shall request the commissioner to extend the license pending disposition of the investigation or appeal.

Subp. 8. **Tracking licensing progress.** The agency shall track the progress of each application for licensure on a form approved by the commissioner including:

A. the dates and documentation of all events described in subparts 2 to 7;

B. the status of the license application 120 calendar days after receipt of a signed application form;

C. the date and circumstances when a license application is withdrawn or a license is returned or not renewed by the license holder;

D. the date the license is issued or denied; and

E. if a license is issued, the date the license is effective and the expiration date of the license.

9543.0050 VARIANCE REQUESTS.

Subpart 1. **Variance information.** A variance request must include the following information:

A. the part or parts of the rule for which a variance is sought;

B. the reasons why a variance from the specified provisions is sought;

C. the period of time for which a variance is requested;

D. written approval from the fire marshal, building inspector, or health authority when the variance request is for a variance from a fire, building, or health code; and

E. alternative equivalent measures the applicant or license holder will take to ensure the health and safety of persons served by the program if the variance is granted.

Subp. 2. **Variance procedures.** Except as provided in subpart 3, a request for a variance must be submitted in writing by the applicant or license holder.

Except for variance authority granted to a county agency under part 9502.0335, subpart 8b, the agency shall forward to the commissioner within ten working days of receipt of the request the information in subpart 1 and the agency's recommendation to approve or deny the request.

The commissioner shall send a written decision to grant or deny the variance request to the applicant or license holder and to the agency.

Subp. 3. **Foster care capacity variance at request of agency.** The agency may orally request from the commissioner a variance from child foster care capacity limits on behalf of a license holder. If the commissioner grants the variance, the agency shall submit to the commissioner the information in subpart 1 within five working days after the variance is granted.

9543.0060 LICENSING FOSTER CARE PROGRAMS.

Subpart 1. **Additional foster care licensing requirements.** Agencies that perform foster care licensing functions shall comply with the requirements in subparts 2 to 6, in addition to other applicable requirements.

Subp. 2. **Program information.** The agency shall provide prospective applicants with information about foster care to enable the prospective applicant to decide whether to apply for licensure. The information must include:

A. the types of individuals the agency places in foster care;

B. the responsibilities of foster care license holders and of the agency; and

C. the agency's policies governing foster care.

Subp. 3. **Orientation and preplacement training.** The agency shall provide applicants the orientation and preplacement training required in rules governing the program.

Subp. 4. **Foster care licensing study.** In addition to the licensing study under part 9543.0040, subpart 2, the licensing study of an applicant for foster care must include:

A. in-person interviews with all family members and other adults living in the household;

B. social history information; and

C. an evaluation of whether the individual meets the specific qualifications required in *Minnesota Rules* governing child foster care or adult foster care.

A written report of the foster care licensing study must be kept in the applicant's record.

Subp. 5. **Duties of agency.** The agency shall:

A. enter into a foster parent agreement with the license holder for child foster care;

B. coordinate with placement workers to ensure that the license holder is visited by a placement worker or the licensor at least monthly for the first six months after the first placement in child foster care;

C. provide the license holder a copy of the annual relicensing evaluation report;

D. establish a grievance mechanism for resolving differences between the agency and the license holder and provide the license holder with a written description of grievance procedures;

E. ensure that the foster care provider has a means of contacting the agency 24 hours per day, seven days per week; and

F. ensure that training is available to enable license holders to meet the training requirements in rules governing foster care programs.

Subp. 6. **Notice of closure.** When a foster care program is closed, the agency shall notify the commissioner on forms prescribed by the commissioner.

9543.0070 INVESTIGATIONS OF LICENSED PROGRAMS.

Subpart 1. **Reports of abuse or neglect of persons served by licensed programs.** If an agency receives a complaint alleging abuse or neglect of persons served by a program, the agency shall follow the procedures in items A to C.

A. The agency shall immediately report the complaint to the county child or adult protection unit where the program is located.

B. The agency shall cooperate with the county child or adult protection unit as requested in conducting the investigation required under part 9555.7300 or 9560.0222.

C. Upon completion of the investigation, the agency shall take the appropriate licensing action indicated by the findings of the investigation.

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Subp. 2. **Timelines.** Except for reports of abuse, neglect, or maltreatment, the agency shall investigate all complaints of licensing violations received about programs for which it performs licensing functions. The agency shall investigate the complaints according to items A to C:

A. A complaint that alleges imminent danger or recurring physical injury to persons served by the program must be:

(1) reported according to subpart 1; and

(2) reported to the commissioner immediately.

B. Investigation of a complaint that does not indicate imminent danger to persons served by the program but that may result in a negative licensing action under part 9543.0100 must begin within three working days after the agency receives the complaint.

C. Investigation of a complaint that does not involve an issue of safety under item A or B for persons served by the program must begin within ten working days after the agency receives the complaint.

Subp. 3. **Determination.** The agency shall gather sufficient information about every complaint to:

A. make a determination that a licensing violation occurred, did not occur, or no determination can be made; and

B. if a violation occurred, issue a correction order or recommend a negative licensing action.

Subp. 4. **Reports of death.** The agency shall ensure that the death of a person served by a program is reported to the medical examiner or coroner and ombudsman as required in *Minnesota Statutes*, sections 626.556, subdivision 9, and 626.577, subdivision 9.

Subp. 5. **Recording complaints and investigations.** The agency shall:

A. maintain a register for recording complaints about licensed programs and tracking the status of each investigation;

B. record in the license holder's file the disposition of each complaint involving the license holder; and

C. maintain the records according to *Minnesota Statutes*, section 13.46.

9543.0080 COUNTY INVESTIGATION OF UNLICENSED PROGRAMS.

Subpart 1. **Unlicensed family day care and adult foster care.** When a county agency learns that a family day care or adult foster care program required to be licensed is operating without a license, the county shall, within five working days, notify the operator in writing that a license is required or the program must discontinue operation.

A. If the operator discontinues the unlicensed operation, no further action is required.

B. If an operator who is eligible for licensure fails to sign an application form within 30 calendar days after notice that a license is required or fails to cooperate in the licensing study, the county agency shall:

(1) ask the county attorney to take legal action to halt the continued operation of the program; and

(2) inform the commissioner of the unlicensed program.

C. Nothing in items A and B prevents a county agency from immediately asking the county attorney to seek a court order against the continued operation of an unlicensed program.

Subp. 2. **Unlicensed child foster care.** The agency shall report to the county child protection unit when it learns of a child in an unlicensed foster care program that is required to be licensed.

9543.0090 CORRECTION ORDERS.

Subpart 1. **Correction order, training.** An agency shall not issue correction orders unless licensors have been trained by the department on procedures for issuing correction orders. A correction order must be on forms prescribed by the commissioner. A copy of the correction order must be kept in the license holder's file.

Subp. 2. **Criteria for issuing correction orders.** A correction order may be issued if all of the following conditions are met:

A. the violation does not imminently endanger the health, safety, or rights of persons served by the program;

B. the violation is not listed in part 9543.0100, subpart 3;

C. the violation is not serious or chronic; and

D. the violation will be corrected within a reasonable time.

Subp. 3. **Time limitation.** A correction order must include a specific time period for correcting the violation.

Subp. 4. **Compliance with correction order.** The agency shall ensure that license holders provide evidence of compliance with a correction order or, if appropriate, recommend further action to the commissioner.

9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.

Subpart 1. **Basis for recommendation.** When recommending a negative licensing action, the agency shall:

A. submit to the commissioner the following information:

(1) the citation to laws or rules that have been violated;

(2) the nature and severity of each violation;

(3) whether the violation is recurring or nonrecurring;

(4) the effect of the violation on persons served by the program;

(5) an evaluation of the risk of harm to persons served; the agency may use the risk assessment completed under part 9560.0222, subpart 9;

(6) any evaluations of the program by persons served or their families;

(7) relevant facts, conditions, and circumstances concerning the operation of the program, including information identified in part 9543.0040, subpart 5, item C;

(8) any relevant information about the qualifications of the applicant or license holder or persons living in the residence; and

(9) any aggravating or mitigating factors related to the violation; and

B. notify the county attorney of the recommendation.

Subp. 2. **Immediate suspension of license.** If the agency has reasonable cause to believe that the health, safety, or rights of persons served by a program are in imminent danger, the agency must take actions described in items A to C:

A. The agency shall notify the commissioner immediately.

B. If the commissioner orders an immediate suspension, the agency shall arrange for delivery, by personal service, of written notice of immediate suspension to the license holder. The notice shall state:

(1) the reason for the immediate suspension;

(2) that the program must discontinue operation immediately;

(3) the license holder's right to appeal and a contested case hearing; and

(4) that the commissioner has taken the action.

C. The agency shall make a recommendation for further action to the commissioner.

Subp. 3. **Revocation or denial of license.** Violations that are grounds for recommending license revocation or denial include, but are not limited to:

A. immediate suspension of a license under subpart 2;

B. a disqualification in part 9543.3070, as proposed at .. *State Register* .... 1990, and as later adopted, or in rules governing the program;

C. a false statement knowingly made by the license holder, on the license application;

D. failure or refusal to provide the commissioner access to the physical plant and grounds, documents, persons served, and staff;

E. recurring failure to comply with discipline standards in rules governing the program;

F. severe or recurring failure to comply with capacity limits; or

G. licensing violations that occur while the license is probationary or suspended.

Subp. 4. **License suspension.** The agency may recommend license suspension rather than revocation under subpart 3 if the agency submits information demonstrating:

A. on the basis of factors in subpart 1, revocation is not warranted; and

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B. suspension rather than revocation:

(1) is in the best interests of persons served by the program; and

(2) would not pose a risk of harm to persons served by the program.

Subp. 5. **License probation.** The agency may recommend probation rather than revocation or suspension if:

A. on the basis of factors in subpart 1, the agency demonstrates that revocation or suspension is not warranted.

B. the agency demonstrates that continued operation of the program:

(1) is in the best interests of persons served by the program; and

(2) would not pose a risk of harm to persons served by the program; and

C. the agency submits to the commissioner a plan for monitoring the program to ensure the safety of persons served during the probationary period.

Subp. 6. **Notice to parents of negative licensing action.** The agency shall give written notice of a negative licensing action to the parents or guardians of children in the programs as follows:

A. When the agency recommends a negative licensing action to the commissioner, the agency shall immediately inform parents and guardians that a negative licensing action has been recommended and that they will be informed of the commissioner's action on the recommendation.

B. When the commissioner orders a negative licensing action, the agency shall immediately inform parents and guardians:

(1) that a negative licensing action has been ordered and the circumstances for the action;

(2) the effect of the negative licensing action on the operation of the program; and

(3) that an explanation of the appeal process available to the license holder is available upon request.

C. If the commissioner does not order a negative licensing action following the agency recommendation, the agency shall inform parents and guardians when the agency receives the commissioner's decision.

Subp. 7. **Notice of negative licensing action to county.** If a negative licensing action has been ordered against a child foster care program that is supervised by a private agency, the private agency shall notify in writing the county agency in which the program is located and any county that has placements in the home.

9543.0110 ENFORCING ORDERS OF COMMISSIONER.

Subpart 1. **Agency enforcement of commissioner orders.** The agency shall enforce and defend all orders of the commissioner, including immediate suspension, suspension, and revocation.

Subp. 2. **Sanctioned programs.** If the agency has knowledge that a program whose license has been immediately suspended, revoked, or suspended continues to operate, the agency shall immediately report the operation to the county attorney and the commissioner.

Subp. 3. **Programs on probation.** The agency shall monitor programs on probation for compliance with the plan developed under part 9543.0100, subpart 5. If a program fails to comply with the terms of its probation, the agency shall immediately report the noncompliance to the commissioner.

9543.0120 REPRESENTING THE COMMISSIONER IN CONTESTED CASE PROCEEDINGS.

Subpart 1. **Contested case proceedings.** The county agency shall represent the commissioner in contested case appeals of negative licensing actions involving license holders supervised by the county agency. The county agency shall:

A. arrange for legal consultation and representation by the county attorney;

B. prepare all documents necessary for the contested case proceeding;

C. within 30 days, arrange with the Office of Administrative Hearings for the services of an administrative law judge and a timely date and location for the hearing;

D. serve the notice of and order for hearing as provided in part 1400.5600; and

E. send a copy of the notice of and order for hearing to the commissioner.

Subp. 2. **Appeals involving private agencies.** The attorney general represents the commissioner in contested case appeals of licensing actions involving license holders licensed based on the recommendation of a private agency.

Subp. 3. **Informal dispositions, stipulated agreements.** In making an informal disposition of a contested case, the county agency shall follow the procedures in items A to D:

A. The county agency shall obtain preliminary approval from the commissioner to discuss an informal disposition of the contested case.

B. Before entering into any settlement agreement with an applicant or license holder appealing an order of the commissioner, the county agency shall discuss the terms of the proposed agreement with the commissioner.

C. If the commissioner approves of the proposed terms, the county agency shall:

(1) draft an agreement and obtain signatures of the party appealing and county representatives;

(2) submit the signed agreement to the commissioner for approval and signatures; the agreement is not effective until signed by the commissioner; and

(3) monitor the program for compliance with the terms of the agreement.

D. If the commissioner or parties are unable to reach a settlement, the county agency shall schedule a contested case hearing.

9543.0130 ADMINISTRATIVE REQUIREMENTS.

Subpart 1. **Maintaining records.** The agency must maintain a record file of each applicant and license holder that includes:

A. all records required by the rules governing the program;

B. a record of all investigations and dispositions of all investigations according to *Minnesota Statutes*, section 13.46;

C. dates and reports of all licensing studies; and

D. a list of all persons currently being served by the foster care license holder.

Subp. 2. **Commissioner access.** The agency shall provide the commissioner access to and, if requested, copies of all records and documents in an applicant or license holder's file.

Subp. 3. **Training requirements.** The agency shall require that licensors receive six hours of training each calendar year.

Training must be relevant to licensing functions or to licensed programs.

The agency must keep a record of completed training in each licensor's personnel file.

Subp. 4. **Conflict of interest.** The agency shall ensure that no agency employee or board member who applies for licensure or who is licensed to operate a program based on the agency's recommendation is involved in any licensing recommendation or action related to that employee or board member.

9543.0140 COUNTY CERTIFICATION.

Subpart 1. **County agency certification.** The commissioner shall biennially determine whether a county agency is in compliance with parts 9543.0040 to 9543.0130. When the county agency is in compliance with parts 9543.0040 to 9543.0130, the commissioner shall certify the county agency for two years.

Subp. 2. **Notification of noncompliance.** The commissioner shall notify the county agency when the county agency has failed to comply with parts 9543.0040 to 9543.0130. The notice must include:

A. the deficiencies in the county agency's licensing procedures;

B. the corrective action necessary to correct the deficiencies; and

C. the time frame for correction of the deficiencies.

Subp. 3. **County compliance.** Within 30 calendar days after receiving a notice of noncompliance, the county shall:

A. demonstrate compliance with parts 9543.0040 to 9543.0130; or

B. submit to the commissioner for approval a corrective action plan.

Subp. 4. **Review of corrective action plan.** The commissioner shall review and approve or disapprove the corrective action plan within 30 calendar days after receiving the plan.

Subp. 5. **Provisional certification.** If the county agency does not fully comply with parts 9543.0040 to 9543.0130, but the failure to comply does not constitute a risk to persons served by licensed programs, the commissioner may issue a provisional certification of the county agency upon approval of the corrective action plan submitted under subpart 3, item B.

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Subp. 6. **County agency decertification based on demonstrated risk of harm to program participants.** When the commissioner determines that a county agency's failure to comply with parts 9543.0040 to 9543.0130 demonstrates a risk of harm to persons served by licensed programs, the commissioner shall immediately revoke certification of the county agency and initiate sanctions as provided in subpart 7.

Subp. 7. **Funding sanction.** If the county agency is decertified, the commissioner shall certify a funding reduction according to *Minnesota Statutes*, section 245A.16, subdivision 6.

Subp. 8. **Expiration of certification.** A certification issued to a county agency expires at 12:01 a.m. on the day after the expiration date stated on the certification.

Subp. 9. **Contracting licensing functions.** A county agency must receive prior approval from the commissioner before contracting with an authorized private agency or another county agency to perform licensing functions delegated under part 9543.0030, subpart 1, and remains subject to the certification provisions in part 9543.0140. This subpart does not apply to purchase of service contracts for individual clients.

9543.0150 PRIVATE AGENCY AUTHORIZATION.

Subpart 1. **Private agency authorization.** The commissioner shall at least biennially determine private agencies' compliance with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130. When a private agency is in compliance with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130, the commissioner shall authorize the private agency to perform licensing functions delegated under part 9543.0030, subpart 2, for a period up to two years. The authorization shall specify the effective and expiration dates of the authorization.

Subp. 2. **Revocation of private agency's authorization.** When the commissioner determines that a private agency's failure to comply with parts 9543.0040 to 9543.0070, 9543.0090 to 9543.0110, and 9543.0130 demonstrates a risk of harm to persons served by licensed programs, the commissioner shall revoke the private agency's authorization to perform licensing functions under part 9543.0030, subpart 2. Revocation of a private agency's authorization is grounds for negative licensing action against a license issued under parts 9545.0750 to 9545.0830. Revocation of authorization or a negative licensing action may be appealed according to *Minnesota Statutes*, sections 245A.07 and 245A.08.

REPEALER. *Minnesota Rules*, parts 9502.0335, subparts 3, 14, and 16; 9502.0341, subparts 1 and 9a; 9545.0020, subparts 3 and 9; 9555.5415; and 9555.6145, subpart 6, are repealed.

EFFECTIVE DATE. Parts 9543.0010 to 9543.0150 and the repealer are effective January 1, 1991.

Department of Human Services

Proposed Permanent Rules Relating to Licensing; Background Studies

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

NOTICE IS HEREBY GIVEN that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, section 14.22 to 14.28. The specific statutory authority to adopt the rule is *Minnesota Statutes*, sections 245A.04, subdivision 3; and 245A.09, subdivision 1.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and 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*, section 14.131 to 14.20. **PLEASE NOTE that if twenty-five or more persons submit written requests for a public hearing within the 30-day comment period, a hearing will be held on October 3, 1990, unless a sufficient number withdraw their request, in accordance with the Notice of Public Hearing on these same rules published in this *State Register* and mailed to persons registered with the Department of Human Services.** To verify whether a hearing will be held, please call the Department of Human Services between September 27, 1990 and October 2, 1990, at (612) 296-7815.

The second part of the certificate shall be mailed by the county auditor to the Wildlife Section, Box 7 DNR Building, 500 Lafayette Road, St. Paul, Minnesota 55155-4007 immediately following receipt of the license fee. The third part of the certificate shall be returned to the bonus deer license buyer along with a special leg tag provided for bonus deer. Bonus deer licenses for undersubscribed areas must be purchased on or before November 2, 1990.

(d) Bonus deer licenses for Special Permit Areas may be purchased only at the headquarters for such areas either upon registering at the Special Permit Area or upon attending hunt orientation sessions for such areas. State Park and National Wildlife Refuge personnel are authorized to sell such bonus deer licenses to Special Area Permit holders at any time prior to the permit holders hunting on the special area.

(e) The purchase of a Metro Bow Bonus Deer License is authorized for any person who has purchased and presents a 1990 Bow and Arrow Deer License. The Metro Bow Bonus License authorizes the taking of a bonus antlerless deer within the Metro Bow Bonus Deer Area as shown on a map provided to all purchasers of this license. This license is also valid in some special hunts as specified in Sec. 2(c). Metro Bow Bonus licenses and maps are available from county auditors in Anoka, Carver, Dakota, Hennepin, Scott and Washington Counties and from the DNR License Bureau in St. Paul. No Metro Bow Bonus licenses will be sold after November 2, 1990.

(f) A bonus deer license for an undersubscribed Antlerless Permit Area is valid for the taking of one antlerless deer only within the Antlerless Permit Area designated on the bonus deer license.

(g) A bonus deer license for a Special Permit Area is valid only for the taking of one antlerless deer within the Special Permit Area designated on that bonus deer license.

Dated at St. Paul, Minnesota, this 9th day of August, 1990.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Proposed Rule (continued from page 476)

Department of Human Services

FISCAL NOTE: In the Matter of Proposed Rules of the Department of Human Services Relating to Licensing Functions of County and Private Agencies; Parts 9543.0010 to 9543.0150

I. Summary of Costs

	Local costs	State costs
Year One	$368,799	$0
Year Two	$368,799	$0
Total	$737,598	$0

The Department sent a survey to the 87 county human service agencies to gather fiscal information concerning this rule. See part III for details on the methodology used in estimating costs. There was considerable variation in rule parts identified by the counties as resulting in "new" costs. Except for a current rule requirement under the child foster care rule and a requirement to track license progress (which has since been modified), no single rule requirement was identified as particularly costly. The estimated local costs reflect the sum of many relatively small costs rather than the costs of one or two rule requirements. Major costs identified by rule requirement include:

A. Part 9543.0060, subpart 4, Foster Care Licensing Study, $45,928.

B. Part 9543.0060, subpart 5, Duties of agency, $39,520.

C. Part 9543.0040, subpart 1, Licensure information, $35,068

D. Part 9543.0070, subpart 2, Timelines, $32,640.

The variation in costs identified by the counties indicates a lack of licensing uniformity and serves to reinforce the need for this rule. The costs identified for the second year are estimated to be the same as those identified by the counties for the first year. See Part III for a detailed breakdown of costs.

II. Background Information on the Rule and Available Funds

1. PURPOSE OF THE RULE

The purpose of parts 9543.0010 to 9543.0150 is to promote uniform enforcement of rules governing licensure of family day care, adult foster care, and child foster care programs; to establish minimum standards for performing licensing functions related to those rules; and to certify county agencies and authorize private agencies that are in compliance with this rule.

2. STATUTORY AUTHORITY FOR THE RULE

Minnesota Statutes, sections 245A.09 and 245A.16.

3. REASONS FOR ADOPTION OF THE RULE

Rule adoption is necessary to implement *Minnesota Statutes*, sections 245A.16 and 466.131.

Minnesota Statutes, section 245A.16, subdivision 6, of the Human Services Licensing Act requires the commissioner to ensure that licensing rules are uniformly enforced throughout the state by reviewing county and private agencies for compliance with applicable laws and rules. County agencies that comply with section 245A.16, are to be certified by the commissioner.

Minnesota Statutes, section 466.131 states, "After July 1, 1987, a municipality is an employee of the state for purposes of the indemnification provision of section 3.736, subdivision 9, when the municipality is required by the public welfare licensing act and rules adopted under it to inspect or investigate a provider, and the municipality has been duly certified under standards for certification developed by the commissioner of human services."

4. AVAILABILITY OF FUNDS

Family systems (child foster care, adult foster care, and family day care programs) licensing functions are funded through CSSA block grant funds and local revenue sources. The CSSA Block Grant for fiscal year 1990 is $50.4 million. Although CSSA block grant funds may be used to perform licensing functions, social services needs exceed available CSSA funding.

5. PROJECTED STATE AND LOCAL COSTS

A. STATE COSTS

Minnesota Statutes, section 245A.16 requires the commissioner to provide instruction and technical assistance to county and private agencies subject to section 245A.16 and to ensure that rules are uniformly enforced throughout the state by reviewing each county and private agency for compliance with section 245A.16 and other applicable laws and rules at least biennially. The legislature appropriated funds for three FTEs to enable the department to comply with the requirements in section 245A.16. No additional state costs are anticipated with the adoption of this rule.

B. LOCAL COSTS

Additional local costs with the adoption of this rule are estimated to be $368,799 per year.

Family systems licensing functions are performed by county and private agencies (private agencies recommend licensure of child foster care programs only). The purpose of Rule 13 is to ensure licensing functions are uniformly performed throughout the state. Rule 13 sets forth minimum standards for performing these licensing functions. The licensing functions implement licensure of Family Systems: Family Day Care governed by *Minnesota Rules*, parts 9502.0315 to 9502.0445; Family Foster Care, *Minnesota Rules*, parts 9545.0010 to 9545.0260; and Adult Foster Care, *Minnesota Rules*, parts 9555.5105 to 9555.6265.

C. PRIVATE AGENCY COSTS

Private agencies perform licensing functions for child foster care programs. The 1,062 programs supervised by private agencies are 6 percent of the total Family Systems program licenses. Cost were not identified for private agencies since *Minnesota Statutes*, section 14.11 only requires a fiscal estimate for public bodies and private agencies are not required to perform licensing functions.

III. METHODOLOGY USED IN DETERMINING COSTS UNDER NEW RULE

The department in REQUEST BULLETIN NO. 89-50C requested county agencies to review a draft of Rule 13 and identify additional agency costs directly attributable to the rule by specific rule part. Attached is a copy of Request Bulletin No. 89-50C.

Use of the request bulletin afforded counties an opportunity to provide fiscal information to the department on the cost of the rule. Identification of additional costs by specific rule part permitted the department to reexamine proposed rule parts to determine if less costly alternatives were available to achieve the objective.

Forty-nine counties responded to the survey. Seven counties plus the foster care program in Dakota County did not identify specific cost areas but indicated compliance with Rule 13 would result in additional costs or additional staffing. Since it is not possible to determine in those instances whether costs are the result of new requirements or the cost of complying with existing requirements in program rules and statutes, the department did not include those costs estimates in the fiscal note. The seven counties and Dakota County's foster care program were treated as non-reporting counties.

Thirty counties identified as an additional cost the requirement to track license progress (part 9543.0040, subpart 6). Due to the number of counties identifying this requirement as an additional cost and the costs identified, this rule part has been modified. The commissioner will issue a form listing the required activities to simplify the agency's tracking process as well as enable the commissioner to monitor compliance with rule requirements. This change will result in lower costs to the counties than those initially identified.

In two rule parts high cost estimates were a result of misinterpretation of the rule requirements. The two rule parts were 9543.0060, subpart 5, item E and 9543.0090, subpart 4. Part 9543.0060, subpart 5, item E requires foster care providers have a means of contacting the agency 24 hours per day. Part 9543.0090, subpart 4 addresses compliance with correction orders. The department has subsequently modified the proposed rule language to clarify these two rule requirements. Clarification of the two rule parts will result in lower costs to the county than those initially identified.

Some counties identified current statutory or rule requirements as additional costs under Rule 13. Where an identified cost is clearly a statutory or existing rule requirement, that cost has not been included in this fiscal note as a Rule 13 cost.

To adjust total costs to account for counties that did not respond to the survey, the department used the ratio of the number of programs licensed by the reporting counties to the total number of programs licensed by all counties. The 41 reporting counties (excludes the 7 counties that did not provide cost breakdowns plus foster care in Dakota County) license approximately 75 percent of all Family Systems programs. Specifically, these counties license: 9,039 family day care programs; 2,186 child foster care programs; and 697 adult foster care programs.

Reported costs were adjusted to provide an estimate of 100 percent of the costs had all counties responded to the survey, by dividing the total reported cost for each item by 75 percent.

Finally, there was considerable variation in rule parts that counties identified as new cost areas. Unless at least 10 percent of the counties responding (5 or more) identified a requirement as a new cost, the cost was not treated as a new cost. Notwithstanding differences which may exist between counties, if 9 out of 10 counties are currently performing a licensing function and have not identified the requirement as a new cost, it is reasonable to assume the requirement is not a new cost.

TREATMENT OF INDIVIDUAL COST ITEMS.

1. Part 9543.0040 LICENSE APPLICATION PROCEDURES.

1. Subpart 1. LICENSE APPLICATION PROCEDURES. $35,068

24 counties identified additional costs totalling $26,301. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $35,068.

2. Subp. 2. LICENSING STUDY. $23,683

17 counties identified additional costs totalling $124,212. Hennepin County's estimate of $50,000 for systems automation was deleted since that cost is not directly related to any Rule 13 requirement. Ramsey County's estimate of $56,450 was deleted since costs identified are statutory requirements (background study—245A.04, subd. 3; and evaluation of a program—245A.04, subd. 4). The adjusted cost estimate is $17,762. If the adjusted costs represent 75 percent of the total costs to all counties, 100 percent equals $23,683.

3. Subp. 5. LICENSE RENEWAL. $21,565

8 counties identified additional costs totalling $16,174. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $21,565.

4. Subp. 6. TRACKING LICENSING PROCESS. $8,797

30 counties identified additional costs totalling $87,967. Due to the number of counties identifying this subpart as an additional cost and the estimates reported, the proposed rule was modified. The modification requires the use of a checklist issued by the department to track licensing progress. Presumably, agencies currently track license applications by manually checking the file's content. The use of a checklist will provide a quick and simple means of providing an inventory of what is in a license file. The use of a checklist should have a minimal fiscal impact on county agencies. The cost figure above represents approximately 10 percent of the costs originally reported.

2. Part 9543.0050 VARIANCE REQUESTS.

Subpart 1. Variance information. $0

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.

Less than 10 percent of the responding counties identified subpart 1 as new a cost.

Subp. 2. Variance procedures. $3,812

7 counties identified additional costs totalling $2,859. If the cost estimates represent 75 percent of the total costs of all counties, 100 percent equals $3,812.

Subp. 3. Foster care capacity variance at request of agency. $4,340

8 counties identified additional costs totalling $3,255. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $4,340.

3. Part 9543.0060 LICENSING FOSTER CARE PROGRAMS.

1. Subp. 2. Program information. $5,363

10 counties identified additional costs totalling $4,022. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $5,363.

2. Subp. 3. Orientation and preplacement training. $11,776

7 counties identified additional costs totalling $8,832. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $11,776.

3. Subp. 4. Licensing study. $45,928

13 counties identified additional costs totalling $34,446. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $45,928.

4. Subp. 5. General requirements. $39,520

18 counties identified additional costs totalling $397,999. However, estimates for Hennepin, Ramsey, Dakota, and Anoka counties identified costs for conducting 6 licensing or placement visits to the foster home during the first six months after the first placement. This is a current rule requirement (*Minnesota Rules*, part 9545.0100, item B). Therefore, those cost estimates were excluded since they are not a new cost attributable to Rule 13. The adjusted cost estimate is $29,640. If the adjusted cost represents 75 percent of the total costs to all counties, 100 percent equals $39,520.

4. Part 9543.0070 INVESTIGATION OF LICENSED PROGRAMS.

1. Subp. 2. Timelines. $32,640

10 counties identified additional costs totalling $24,480. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $32,640.

2. Subp. 5. Recording complaints and investigations. $27,591

19 counties identified additional costs totalling $20,693. If the additional costs represent 75 percent of the total costs to all counties, 100 percent equals $27,591.

5. Part 9543.0080 COUNTY INVESTIGATION OF UNLICENSED PROGRAMS.

1. Subpart 1. Unlicensed family day care and adult foster care. $0

9 counties identified additional costs totalling $43,275. Ramsey County's estimate of $40,050 was 93 percent of the costs reported. The requirement in subpart 1 is consistent with current family day care rule requirements under *Minnesota Rules*, part 9502.0335, subpart 16 and adult foster care rule requirements under *Minnesota Rules*, part 9555.5415 subpart 2. No effort has been made to reconcile Ramsey County's unusually high estimate. The identified costs estimates have not been treated as "new" costs under Rule 13.

2. Subp. 2. Unlicensed child foster care. $0

Less than 10 percent of the responding counties identified subpart 2 as a new cost.

6. Part 9543.0090 CORRECTION ORDERS.

1. Subpart 1. Correction orders; training. $26,931

24 counties identified additional costs totalling $20,198. If the estimates represent 75 percent of the total costs to all counties, 100 percent is $26,931.

2. Subp. 4. Compliance with correction order. $28,549

17 counties identified additional costs totalling $114,194. A number of counties identified very high costs because they interpreted the rule to require on-site visits after every correction order issued. The rule has been clarified to require the license holder to provide verification of compliance with a correction order. Currently, license holders return a signed copy of the correction order when the

correction has been made. This practice can continue. Requiring the license holder to submit verification of correction will reduce the fiscal impact on the counties. The estimated cost above is 25 percent of the costs originally reported.

7. Part 9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.

1. Subp. 2. Immediate suspension of license. $0

Less than 10 percent of the responding counties identified subpart 2 as a new cost.

2. Subp. 5. License probation. $3,351

5 counties identified additional costs totalling $2,513. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $3,351.

3. Subp. 6. Notice to parents of negative licensing actions. $0

Less than 10 percent of the responding counties identified subpart 6 as a new cost.

8. Part 9543.0110 ENFORCING ORDERS OF THE COMMISSIONER.

1. Subpart 1. Agency enforcement of commissioners orders. $0

Less than 10 percent of the responding counties identified subpart 1 as a new cost.

2. Subp. 2. Sanctioned programs. $3,652

5 counties identified additional costs totalling $2,739. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $3,652.

3. Subp. 3. Programs on probation. $21,024

9 counties identified additional costs totalling $15,768. If the cost estimates represent 75 percent of the total costs to all counties, 100 percent equals $21,024.

9. Part 9543.0120 REPRESENTING THE COMMISSIONER IN CONTESTED CASE PROCEEDINGS.

12 counties identified additional costs for "Representing the commissioner in contested case proceedings" and "Informal dispositions". *Minnesota Statutes*, section 388.051, subdivision 1 requires the county attorney to appear in all cases in which the county is a party. Part 9543.0120 will not result in new costs for the county beyond requirements already in statute.

10. Part 9543.0130 ADMINISTRATIVE REQUIREMENTS.

1. Subpart 1. Maintaining records. $9,940

5 counties identified additional costs totalling $7,455. If the cost estimates represent 75 percent of the costs to all the counties, 100 percent equals $9,940.

2. Subp. 3. Training requirements. $15,269

17 counties identified additional costs totalling $11,452. If the costs represent 75 percent of the total costs to all counties, 100 percent equals $15,269.

Estimated additional local costs are $368,799 for each of the two years following adoption of this rule.

Dated: 8 August 1990

Ann Wynia
Commissioner of Human Services

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.

HOME AND COMMUNITY OPTIONS, INC.

252 WEST WABASHA STREET • WINONA, MINNESOTA 55987
(507) 452-1021

Residential Services
Office (507) 454-2343
377 Main Street
(507) 452-5909
252 West Wabasha Street
(507) 454-5377
507 Wall Street
(507) 452-8548
1165 West 5th Street
(507) 452-4370
Three Quarter Program
(507) 452-5857

Support Services
Office (507) 452-1048
Community Living Services
Respite Care
Waivered Services
58 East 5th Street
(507) 452-1048
Iverson Court
271-273 Orrin Street
(507) 454-5492

AUG 1990
RULES UNIT

August 24, 1990

Jim Schmidt
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Dear Mr. Schmidt:

I am writing to request a public hearing on proposed rules relating to Family Day Care, Adult Foster Care and Child Foster Care Licensing Functions of Counties and Private Agencies, Minnesota Rules, parts 9543.0010-9543.0150.

I also request a copy of the rule as proposed. Please mail it to:

Sharon Kannenberg
Executive Director
Home and Community Options
252 W. Wabasha Street
Winona, MN 55987

Sincerely,

Sharon Kannenberg

Sharon Kannenberg
Executive Director

SK/ems

Commissioners
District 1 - Colleen Landkamer
District 2 - Leon Tacheny
District 3 - Linley Barnes
District 4 - Luverne Bergemann
District 5 - Alvis More

BLUE EARTH COUNTY

Offices in Mankato, Minnesota 56002

September 7, 1990

Mr. Jim Schmidt
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Dear Mr. Schmidt:

This letter is to request that a public hearing be held regarding the adoption of Rule 13.

It is our understanding that such a hearing is scheduled for October 4, 1990.

Sincerely,

Darlene Lee

Darlene Lee
Social Worker
Blue Earth County Human Services

David L. Dierenfeld

David L. Dierenfeld, M.S.W.
Social Services Supervisor
Blue Earth County Human Services

DL/amh

LET.S7(2)

COURTHOUSE
204 South Fifth Street
P.O. Box 8608
Phone (507) 625-3031
TTY (Hearing Impaired) 388-1214
FAX (507) 387-8344

COUNTY GOVERNMENT CENTER
410 South Fifth Street
P.O. Box 8608
Phone (507) 625-3031
TTY (Hearing Impaired) 388-1214

HIGHWAY BUILDING
35 Map Drive
P.O. Box 3083
Phone (507) 625-3281

LAW ENFORCEMENT CENTER
710 South Front Street
P.O. Box 228
Phone (507) 387-8710
TTY (Hearing Impaired) 387-5601
Emergency 911
FAX (507) 387-4929

BLUE EARTH COUNTY DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, RELIGION, AGE AND HANDICAPPED STATUS IN EMPLOYMENT OR THE PROVISION OF SERVICES
Printed on Recycled Paper

Sept. 21, 1990

Mr. Jim Schmidt
DHS
444 Lafayette Rd.
St. Paul, MN. 55155-3816

Re: The matter of the Proposed Adoption of MN. Rules , parts 9543.0010 - 9543.0150.

Dear Mr. Schmidt,

I request a public hearing on the above stated proposed Rules.

I am making this request as a private citizen. But as a licensed social worker, and in my job as a Family Day Care licensing worker for Ramsey Co. CHSD, I have direct knowledge of the impact of this proposed Rule on licensing agencies, licensing workers, license holders and parent/users of day care.

My specific concerns are:

1. 9543.0040 Subp. 2B(3) and 9543.0040 Subp. 5B (page 5 lines 33-35- page 6 line 1 and page 8 lines 22 &23, respectively) require an observation of the program as part of the licensing and renewal studies when the person has ben operating a program. However, "observation" is not defined. Is this the same as the routine home visit? Or, is this something more/different? If it is something more/different than the routine home visit; this extra time for the observation will have a great financial impact on the licensing agency. In Ramsey Co., for instance, with its 1300+ licensed FDC homes and 250-300 new homestudies a year, even an extra 15 minute observation could mean an additional 1 to 2 new licensing workers.

2. 9543.0040 Subp. 1C (page 5 lines 22-24) require the licensing agency to provide the applicant a copy of the program Rules upon receiving a completed and signed application. First of all, since it is a State Rule, I believe the State and not the licensing agency should provide the Rule (just as the State provides a Driver's Manual for those wanting a driver's license). Secondly, if the State refuses to provide the Rule, it should not require the licensing agency to do so, but rather give the option to the licensing agency of providing the applicant with the locations the Rule can be obtained, and giving the applicant the responsibility of obtaining the Rule. The cost of printing and distributing the Rule, particularly in large counties (like Ramsey) is costly. Ramsey Co. provides applicants with information on when to obtain the Rule rather than providing the Rule itself (because of the cost factor). This works well for applicants and the licensing agency.

3. 9543.0050 Subp. 2 (page 9 lines 31-33) requires the Commissioner to sent a written decision to grant or deny a variance request, but does not provide a time frame for that to happen. It is not unreasonable to give the Commissioner 10 working days to respond, just as the licensing agency has 10 working days to forward a variance request to the Commissioner. Currently, the response time on variance I have sent to DHS ranges from 14 days to still waiting after 2 months. A licensing worker I know from a southeastern MN. county has never received a response to variance requests sent to DHS. On more than one occasion for me the written decision has been recieved after the dates requested for (and Ramsey Co. does its own variances for requests of less than 30 days).

9543.0100 Subp. 6 (page 16 lines 27-35) requires the licensing agency to immediately notify parent/users when it recommends a negative licensing action. While I have no objections to that notification, there is no similar notification to the licensee. Therefore, the licensee will learn of the recommendation from those using his/her services. This is rude and unfair. Licensors have been instructed up to now to not tell/notify the licensee of negative licening recommendations as DHS may not agree with the recommendation. This section should be changed to include notifying the licensee at the same time as the notification to parent/users.

Also, the letter to parents is to tell them they will be notified of the Commissioner's action on the recommendation. Currently, it takes 1½ months to never for the Commissioner to respond to a negative licensing recommendation. The longer the time span between the two required letters to parent/users, the poorer the State and DHS look to the parent/users (taxpayers). If the situation was serious enough to warrant a negative licensing recommendation, it is serious enough for a much prompter action by the commissioner. I think the State can consider itself extremely lucky that something bad hasn't happened to a child in the time it takes to respond to a negative licensing action. The State and DHS have left themselves wide open for lawsuits because of the delay in responding to negative licensing recommendations.

For these reasons, I request a hearing on the proposed MN. Rules, parts 9543.0010 - 9543.0150.

Sincerely,

Diane M. Phillippi

Diane M. Phillippi, LSW
1442 Arden View Dr.
Arden Hills, MN. 55112
612-636-7030

HENNEPIN

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

September 25, 1990

Mr. Jim Schmidt
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155-3816

Re: Proposed Rule 13 (Parts 9543.0010 to 9543.0150)

Dear Mr. Schmidt:

The following are Hennepin County's comments on the above-cited proposed rule.

Taken in its entirety, we find the proposed rule acceptable. There are a few parts that we feel are important enough on which to comment; and, in addition, again want to bring up for discussion our growing concern about increased costs to the counties.

Our specific comments on the proposed rule parts are few and brief:

9543.0120, Subpart 1C:

"Within 30 days, arrange with the Office of Administrative Hearings." It is not clear 30 days from what point. In talking to M. O'Toole, the attorney at the state coordinating this rule writing, she proposed adding "30 days from receipt of the appeal packet to the county". We feel this is acceptable.

9543.0140, Subpart 9:

We propose that the last line read, "This subpart does not apply to P.O.S. contracts which have as their primary purpose to provide foster care services to clients". The reason being if this is left vague, we, as a county, could be held responsible for monitoring compliance with Rule 13 for the four private agencies with which we contract.

On the cost issue, earlier this year DHS sent a survey to the counties requesting fiscal information concerning this rule. We replied by including current and new costs. Our estimate at that time was that current costs to Hennepin County to do family systems licensing is over $2.7 million and new costs attributable to the proposed rule about $270,000. The state estimates that additional local costs are to be $368,799.00 per year statewide. Even if the new costs to Hennepin County are $100,000 per year, this constitutes additional tax dollars to the Hennepin County taxpayer that he did not previously have to sustain. We again restate our position that the state appropriate monies to the counties for services performed by the counties.

We feel the significant cost implications of the proposed rule, in addition to current costs to administer these programs, merits further discussion; and we request a public hearing.

Thank you for allowing us to comment.

Sincerely,

Kevin P. Kenney
Associate County Administrator

SCHMIDT10:mf

ATTACHMENT ONE

COST SURVEY FOR RULE 13 DRAFT

Please compare your current licensing practices with licensing requirements in Rule 13. If there are additional costs directly attributable to the rule. please identify:

1. the licensing requirement by rule part and subpart;
2. current costs; and
3. additional costs attributable to the rule. Where possible, provide the rationale for the new costs.

For example: Part 9543.0040, subpart 6. Tracking license progress. Current costs $1,000 -- additional costs estimated at $1,000 per year. Reason -- not all licensing activities are currently tracked. Cost estimate based on additional recordkeeping by staff. $1,000 arrived at by multiplying staff time, estimated at $20 per hour, by 50 additional hours.

Rule parts which may have a fiscal impact are identified below. If you believe other rule parts have a fiscal impact on your agency, simply identify the rule part and the additional costs as shown in the example above.

RULE PARTS WHICH MAY HAVE A FISCAL IMPACT

1. Part 9543.0040 LICENSE APPLICATION PROCEDURES.

Subpart 1. Licensure information.

Additional costs under Rule 13: Yes ✓. No ____. If yes,
Current costs $ _____. Costs under Rule 13 $ 800.00. (design new form, postage, print

Subp. 2. Licensing study.

Additional costs under Rule 13: Yes ✓. No ____. If yes,
Current costs $ 2,732,772.00*. Costs under Rule 13 $ 50,000.00 (systems work to automate a current manual funct

* * *

Subp. 5. License renewal.

Additional costs under Rule 13: Yes ____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

Subp. 6. Tracking licensing progress.

Additional costs under Rule 13: Yes ✓. No ____. If yes,
Current costs $ _____. Costs under Rule 13 $ 10,750.00 (600 hrs. of staff tim year and some clerica staff computer time. 600 x $17.92 mid-rep for senior social worke

[* * *] INDICATES A BREAK IN RULE PARTS

* Annual cost for 53.1 staff plus proportional overhead and indirect costs. Not possible given time frame to break down into sub-parts.

2. Part 9543.0050 VARIANCE REQUESTS.

Subpart 1. Variance information.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

Subp. 2. Variance procedures.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

Subp. 3. Capacity variance at request of agency.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

3. Part 9543.0060 LICENSING FOSTER CARE PROGRAMS.

* * *

Subp. 2. Program information.

Additional costs under Rule 13: Yes ✓. No _____. If yes,
Current costs $ _____. Costs under Rule 13 $ 700.00. (printing, postage?)

Subp. 3. Orientation and preplacement training.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

Subp. 4. Licensing study.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

Subp. 5. General requirements.

Additional costs under Rule 13: Yes ✓. No _____. If yes,
Current costs $ _____. Costs under Rule 13 $ 270,854.00 (4 additional senior social workers and 1 unit supervisor)

4. Part 9543.0070 INVESTIGATION OF LICENSED PROGRAMS.

* * *

Subp. 2. Timelines.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

* * *

Subp. 5. Recording complaints and investigations.

Additional costs under Rule 13: Yes ✓. No _____. If yes,
Current costs $ _____. Costs under Rule 13 $ 900.00. (50 hrs/year staff time at $17.92/hr.)

5. Part 9543.0080 COUNTY INVESTIGATION OF UNLICENSED PROGRAMS.

Subpart 1. Unlicensed family day care and adult foster care.

Additional costs under Rule 13: Yes ✓. No _____. If yes,
Current costs $ _____. Costs under Rule 13 $ 650.00 (50 hrs./yr. case aide staff time at $12.85/

Subp. 2. Unlicensed child foster care.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

6. Part 9543.0090 CORRECTION ORDERS.

Subp. 1. Correction orders; training.

Additional costs under Rule 13: Yes ✓. No _____. If yes,
Current costs $ _____. Costs under Rule 13 $ 2500.00. (training of 10 staff - salaries and benefits for one day)

* * *

Subp. 4. Compliance with correction order.

Additional costs under Rule 13: Yes ✓. No _____. If yes,
Current costs $ _____. Costs under Rule 13 $ 1100.00. (60 hrs./year staff time at $17.92/hr.)

7. Part 9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.

* * *

Subp. 2. Immediate suspension of license.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

* * *

Subp. 5. License probation.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

Subp. 6. Notice to parents of negative licensing actions.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

* * *

8. **Part 9543.0110 ENFORCING ORDERS OF THE COMMISSIONER.**

Subpart 1. Agency enforcement of commissioners orders.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

Subp. 2. Sanctioned programs.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

Subp. 3. Programs on probation. (Also see part 9543.0100, subpart 5).

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

9. **Part 9543.0120 REPRESENTING THE COMMISSIONER IN CONTESTED CASE PROCEEDINGS.**

Subpart 1. Contested case proceedings.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

* * *

Subp. 3. Informal dispositions; stipulated agreements.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

10. **Part 9543.0130 ADMINISTRATIVE REQUIREMENTS.**

Subpart 1. Maintaining records. (If fiscal impact of recordkeeping requirements were identified earlier, do not include costs here).

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

* * *

Subp. 3. Training requirements.

Additional costs under Rule 13: Yes _____. No ✓. If yes,
Current costs $ _____. Costs under Rule 13 $ _____.

* * *

END OF SURVEY

RULE 13 DELEGATION OF LICENSING FUNCTIONS

COST SURVEY

NAME OF COUNTY Hennepin

PERSON ESTIMATING COSTS Roger L. Engstrom

TELEPHONE NUMBER 348-3850

1. Will Rule 13 have a fiscal impact on your agency? Yes ✓. No ___.

2. If the answer is yes, fiscal impact $ 3,070,576.00

3. Identify any additional costs not identified in the preceding outline by the rule part and subpart. Use second page if necessary.

4. Question on background study. From what sources do you uncover applicant disqualification information? Please circle appropriate letters. Identify other sources under letter D. Approximately how many applicants were disqualified based on information from that source in 1988?

(A.) Bureau of Criminal Apprehension 2.

(B.) County Abuse, neglect, maltreatment reports 19.

(C.) Municipal Court and police records 36 (c+d combined)

(D.) Other (specify) ___.
District Ct., Juvenile Ct., we follow-up on any info on applicants from other states.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-3816

September 27, 1990

Jon L. Lunde
Administrative Law Judge
Office of Administrative Hearings
500 Flour Exchange Building
310 Fourth Avenue South
Minneapolis, MN 55415

RE: Rule 13; Licensing Functions of County and Private Agencies

Dear Judge Lunde:

On August 27, 1990, the Department of Human Services published a dual notice in the State Register governing proposed rules relating to Family Day Care, Adult Foster Care, and Child Foster Care Licensing Functions of County and Private Agencies, Minnesota Rules, parts 9543.0010 to 9543.0150.

The dual notice included a Notice of Intent to Adopt a Rule Without a Public Hearing and Notice of Intent to Adopt a Rule With a Public Hearing If Twenty-Five or More Persons Request a Hearing; and a Notice of Hearing and Notice of Intent to Cancel Hearing If Fewer Than Twenty-Five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Public Hearing.

The comment period for this rule closed at 4:30 p.m. on September 26, 1990. Five (5) requests for a hearing were received. Individuals requesting a hearing were: Sharon Kannenberg, Home and Community Options; Darlene Lee, Blue Earth County; David L. Dierenfeld, Blue Earth County; Diane M. Phippippi, Arden Hills; and Kevin P. Kenney, Hennepin County.

Since the Department did not receive 25 requests for a hearing, please close the record on the rule. The Department will proceed with noncontroversial rulemaking and will submit the rule with the necessary supporting documentation to the Attorney General for Administration.

Sincerely,

Jim Schmidt

Jim Schmidt, DHS
Rulemaker

Celebrate MINNESOTA 1990

AN EQUAL OPPORTUNITY EMPLOYER

ROBERT G. GOUDGE, DIRECTOR

PHONE 218-634-2642

LAKE OF THE WOODS COUNTY

SOCIAL SERVICE DEPARTMENT
Box G-0200
BAUDETTE, MINNESOTA 56623

RECEIVED
90 SEP 10 AM 9:47
ADMINISTRATIVE
HEARINGS

06 September 1990

Jon L. Lunde
Administrative Law Judge
Office of Administrative Hearings
500 Flour Exchange Building
310 Fourth Ave. South
Minneapolis, MN 55415

RE: Proposed DHS Rules, Parts
9502.0335 - 9543.0150;
Licensing of Day Care, Foster Care Homes

The above referenced proposed rule delegates to counties several functions which are currently the responsibility of the Department of Human Services (DHS). Lake of the Woods County objects to that proposed transfer of responsibility.

It is not appropriate for counties to act for the state in hearing appeals on licensing actions when, (1) the rule is a state rule and not county policy and, (2) the county may very well be at odds with the rule (being appealed) itself. Counties should not be placed in a position of having to arrange for a state hearings officer and do the necessary paperwork involved in the appeals process - that is a state function. The county's duty on appeals is to assist the client in making his/her appeal (if they want help) and to present, if necessary, our side of the issue. We must defend ourselves in appeal actions (and/or in court) for the state will not defend us (or, at least, they never have). Further, counties, especially small counties, do not have either the staff or staff time available to do DHS administrative work.

We also object to the "mandates" that counties "shall defend" all orders of the commissioner (p. 17, line 21, of the proposal). I have no problem "enforcing" an order or rule, but I have strong objections to the idea that I will automatically "defend" an order. I am not in a position to "defend" either the commissioner or her orders or rules. Depending upon one's definition of "defend" (as used in the proposed rule), it is my opinion that in order for me to defend something (as opposed to enforcing something), I must understand the intent of the order, agree with that intent and then to its application to the problem at hand. I don't believe that that will happen since I have yet to find a state rule or order in which I did not have some criticism or objection. Thus, there is no way I can be expected to blanket defend any order or rule the commissioner happens to give - nor does my position call for me to do so.

Another point of disagreement on the issue of the state passing responsibilities to counties has to do with the involvement of the county attorney (p. 18, line 4 and, also, in general, as noted above). Since our county attorney represents my agency in all legal matters and since the proposed rule attempts to mandate my defending commissioner's orders/rules, the commissioner would, in fact, have my county attorney not only "defending" such orders but be responsible for legal advice to us on how to handle hearings for the state. It would appear that DHS would have the Attorney General's Office plus the county attorneys do their legal work - and, meanwhile, having county social service agencies pick up their administrative responsibilities in licensing. That, I believe, is not appropriate.

In summary, I ask that you find that Proposed Rule Parts 9502.0335 - 9543.0150, is administratively inappropriate and that it be rejected in its entirety.

Thank you.

Robert G. Goudge
Director

cc: Mr. John Krouss, LOW County Attorney
Other Directors

MEMORANDUM FOR THE RECORD

FROM: Jim Schmidt

SUBJECT: Rule 13; Hennepin County Concern

==========

On Friday September 7, 1990, Marty Coyne from Hennepin County Family Day Care called Barb Eggiman extremely concerned over a change in Rule 13. He indicated that Hennepin County's concern is shared by the other metro counties.

I returned Mr. Coyne call. Mr. Coyne's concern is we deleted the proposed requirement that counties conduct informational meetings at least once every two months. The earlier rule drafts contained a requirement under license application procedures that:

> "An agency that requires prospective applicants to attend an informational meeting before receiving a license application form must ensure that meetings take place at least every two months on either a group or individual basis."

The purpose of this paragraph was to ensure the timely processing of license applications. At one time, we proposed that an information meeting be held monthly. Then we changed it to every two months due differences between rural and metro counties. Neither time period seemed an appropriate statewide standard. Finally, instead of mandating a statewide standard for processing applications, we felt this issue could be addressed more appropriately at the local level, i.e., applicants could express dissatisfaction to local officials over the time it takes to obtain a license and local officials could take any necessary or appropriate action. Therefore, we deleted the requirement.

Hennepin County indicated that the information meetings are absolutely imperative if they are to manage their licensing caseloads. In Hennepin County, a large number of prospective applicants do not pursue licensing. As a result, the information meetings often serve as a screening mechanism. If the county is required to immediately provide a license application form to every prospective applicant who requests an application, they will spend a lot of time processing applications on individuals who will ultimately decide not to seek licensure. This is an inefficient use of already strained county resources. Each application that is processed where the applicant later decides not to pursue licensing will add delays in Family Day Care licensing in Hennepin County.

Mr. Coyne requested that we modify rule 13 by reinstating our earlier draft language. I requested that he send me a letter stating his concerns so that any changes in the rule that are proposed to the

Administrative Law Judge or the Attorney General for Administration would represent a response to a concern raised by the public rather than an arbitrary change by the Department.

I gave Mr. Coyne my mailing address and I expect to receive comments from him requesting reinstatement of a provision for monthly informational meetings.

BARBARA EGGIMAN-D
INFO COPY

HENNEPIN

DATE: September 13, 1990

TO: Roger Engstrom, Division Manager

FROM: Marty Coyne, Family Day Care Licensing

SUBJECT: Rule 13 Impact on Family Day Care Licensing

In response to your E-Mail memo of 9/12/90, we have reviewed the proposed Rule 13 changes and are confident we can make the necessary adjustments in our policies and procedures to be in compliance. There are, however, two areas of major concern and which cause us much difficulty if not resolved.

They are the proposals that the application form be immediately provided upon request and the elimination of 9543.0040, subp 1c, which states:

> An agency that requires prospective applicants to attend an informational meeting prior to receiving a license application form must ensure meetings take place at least monthly on either a group or individual basis.

One must remember that Family Day Care receives 400+ application requests a month. To send out and receive back 400± applications monthly would be overwhelming. This procedure would only generate a tremendous paper mill and further negatively impact the fiscal shortcomings of the day care licensing program.

It should be pointed out that an application, like a book cover, itself is useless. It is the supporting documents, such as the consent form, that allow us to begin the story of the home study and background checks. The disembodied application form will create more confusion and take more clerical time to process. The applicant would not be licensed any faster.

Family Day Care's current system allows for applications to be distributed only at monthly orientation meetings and returned only with supporting documents. The importance of the orientation meeting is that we provide, in one two-hour session, the information needed to understand the licensing process and to make decisions. This single monthly session reaches 150 people simultaneously rather than reaching 150 people 150 times. Historically, approximately one-third of the people attending the orientation meeting will decide for themselves that family day care is not what they want and will not submit an application for licensure. This self elimination process saves our staff a great amount of time to process serious applications and carry out other duties.

If these same people had been sent an application rather than attending an orientation meeting, they would be further along in the licensing process before ruling themselves out. Consequently, staff would needlessly have spent many hours per applicant.

We therefore request that the above-quoted language (9543.0040, 1c) be retained in the Rule as it provides the foundation for the orderly handling of the large day care application flow within our County and other large counties within the State.

MC:dj

ASSOCIATION
OF MINNESOTA FAMILY
CHILD CARE LICENSORS
P.O. BOX 65033/St. Paul, MN 55165

September 17, 1990

Mr. Jim Schmidt
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road, Second Floor
St. Paul, MN 55155-3816

Dear Mr. Schmidt:

The Association of Minnesota Family Child Care Licensors which represents licensors throughout Minnesota has some concerns about certain sections of the proposed Rule 13. In order to meet the needs of providers throughout Minnesota and to accommodate the procedures established by rural and urban county agencies, we submit the following concerns and recommendations:

9543.0040 Subp. 1 B. requiring that application forms be sent immediately to all prospective applicants is problematic for many agencies. Larger agencies hold orientation meetings on a regular basis and distribute licensing application and supportive documents in a timely manner that varies from one agency to another.

In the June 1990 version of the draft it stated "An agency that requires prospective applicants to attend an informational meeting prior to receiving a license application form must ensure meetings take place at least every two months on either a group or individual basis." Re-inserting this section would accommodate procedures currently in place in larger counties.

Other counties prefer to send out applications as inquires come in. Incorporating both options would alleviate many problems.

Statistically, a large percentage of people who make an initial contact with the agency do not complete the process. This is due to the fact that additional steps of attending an orientation meeting coupled with an explanation of the requirements of licensing create a self-elimination factor. If these same people had been sent an application form rather than attending an orientation meeting, they would be further along in the licensing process before ruling themselves out. Consequently, staff would have spent many hours needlessly, per applicant, because there was no self-elimination factor.

County staff limitations will determine the speed that licenses are processed rather than when the application form is received by the applicant. The impact of the additional paper and management will further delay the licensing of providers.

> A requirement that agencies document a prompt response to applicant inquires would ensure that agencies respond to community needs. This would accommodate the diversity of agencies.

Thank you very much for your consideration.

Very truly yours,

Carol DuClos

Carol DuClos
Secretary

CD:srp

cc: Barb Eggiman, DHS Supervisor

ASSOCIATION
OF MINNESOTA FAMILY
CHILD CARE LICENSORS
P.O. BOX 65033/St. Paul, MN 55165

September 17, 1990

Mr. Jim Schmidt
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road, Second Floor
St. Paul, MN 55155-3816

Dear Mr. Schmidt:

Please find enclosed a letter in response to the Proposed Rule 13. We are asking that you will please send a response by September 21, 1990 regarding whether you have re-inserted the requested items referred to in this letter. If not, we will be contacting our Board Members to write letters of request for a hearing. Please respond to President Lil Lindsey at 348-4406 or President-Elect, Jan Rudich at 779-5050.

Thank you very much for your efforts and for your consideration in this important matter.

Very truly yours,

Carol DuClos

Carol DuClos
Secretary

CD:srp

cc: Barb Eggiman, Supervisor

Called 9/19/90 – Indicated we would modify rule

1) P. 5 line 11, change "C" to "D"
2) P. 5 line 19, overstrike "immediately"
3) P. 5 between lines 21 + 22, insert "C. An Agency that requires prospective applicants to attend an informational meeting before receiving a license application form must ensure that meetings take place at least every two months on either a group or individual basis."

DAKOTA COUNTY

Telephone: (612) 450-2611
Fax (612) 450-2948

HUMAN SERVICES DIVISION 33 EAST WENTWORTH, WEST ST. PAUL, MINNESOTA 55118

REPLY TO:

- ☐ Human Services Director, (612) 450-2742
- ☐ Planning (612) 450-2742
- ☐ Employment & Economic Assistance, (612) 450-2611
- ☐ Public Health, (612) 450-2614
- ☐ Social Services, (612) 450-2677
- ☐ Veteran's Services, (612) 450-2601
  33 East Wentworth
  West St. Paul, MN 55118

☐ Public Health (Nursing Service)
1101 West County Road 42
Burnsville, MN 55337
(612) 435-8055

☐ Social Services
900 West 128th Street
Burnsville, MN 55337
(612) 895-3577
Fax: (612) 895-5895

September 17, 1990

Jim Schmidt
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Dear Mr. Schmidt:

This letter is to respectfully recommend a change to proposed Minnesota Rules, parts 9543.0010 to 9543.0150. Specifically, I address your attention to part 9543.0040, Subpart 1.B. The current proposed rule directs agencies to "immediately provide the license application form prescribed by the commissioner to every prospective applicant who requests an application."

This requirement would pose an undue hardship on Dakota County and other large metropolitan counties due to the enormous volume of prospective applicants we deal with. Currently, we invite prospective applicants to attend an orientation meeting and provide them with an application at that time. We also provide them with instructions regarding the completion of the application as well as other pertinent information.

This procedure allows for a more orderly and efficient processing of the application as we can answer questions and provide information to a large group rather than individually. We hold these meetings monthly so this procedure does not impede a prospective applicant's progress toward licensure.

Former drafts of this rule contained language that would allow agencies to provide applications in this manner. Specifically, a former draft stated: "An agency that requires applicants to attend an informational meeting prior to receiving a license application form must ensure meetings take place at least monthly on either a group or individual basis." Dakota County requests that this provision be re-instated as a part of rule 9543.0040.

Sincerely,

David Homorody

David Homorody, Supervisor
Child Care Unit

DH/fr

ITASCA COUNTY HUMAN SERVICES

Courthouse, Grand Rapids, Minnesota 55744 218-327-2941
Thomas Papin, Human Services Director

September 20, 1990

Child Support
327-2868

Coord. on Aging
327-1161

Developmentally Disabled
326-6601

Family & Children Servs.
327-2981

Public Health
327-2851

Senior Community Servs.
327-2981

Jim Schmidt
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

RE: Minnesota Rules, 9543.0010 to 9543.0150

Dear Mr. Schmidt:

I am not requesting a public hearing on the above rule, but do have information for your consideration.

My first concern relates to License Application Procedures 9543.0040 Subp. 1. I actually am comfortable with the rule as the current draft is written. However, I understand that concern has been raised over the elimination of the section relating to orientation and that the section may be reinstated. For a large agency, monthly or semi-monthly orientation programs may be sensible. However, for a small, rural county this requirement would pose an undue hardship.

We do not do an orientation program for family day care, but do run an orientation/training program for foster parents. We have generally been doing our orientation programs two or three times per year and find that the education process works well. Upon inquiring about a program, either foster care or day care, an individual is given a complete copy of the licensing standards with a cover letter explaining the process and inviting them to contact the agency for additional information or to apply. By having a complete copy of the rule, the potential applicant is able to begin the self-screening process. In the foster care program, each potential applicant is invited to two orientation programs. If there is no response, it is then assumed that there is no interest in the program. For those folks attending the orientation sessions this also serves as a self-screening process. Families are given a lot of specific information on fostering, the agency needs, and the licensing process. Following this, they can decide if they want to proceed with licensure. No one is denied the opportunity to apply. We feel that this process has been beneficial to both the potential applicant and the agency. The licensing process itself is time consuming, especially if it had to include, on an individual basis, the six hours of orientation prior to receiving the first child in placement as required by the licensing rule. I believe that our program of providing much of this information through the group process is more beneficial to the potential applicant.

It is unrealistic for us to think about conducting these orientation programs on a semi-montly basis. We do not have enough potential applicants to warrant this nor do we have staff time available to conduct sessions that frequently. Therefore, I hope that if you reinstate the reference to orientations that there be some alternative for smaller counties, perhaps that of providing a complete copy of the licensing rule upon request. I know that larger counties with their vast number of applicants prefer not to do this. However, in our case this is the preferred way of initially dealing with a potential applicant.

I find it interesting that the draft rule calls for giving a prospective applicant a copy of the application immediately upon request and then only providing a copy of the program rules upon receipt of the application forms. By doing this you seem to be creating a lot of unnecessary work for agencies. People may be applying for programs about which they know almost nothing. Fewer than one third of the people who inquire about either foster care or day care ever follow through with an application. If receipt of the application is what is required to trigger program information, then agencies will be forced to take action and track many applications from people who really had no intent of applying for the program. It seems more appropriate that applications be provided to people who either have gone through an orientation process or who have received a complete copy of the standards so that they understand the program for which they are applying.

My second concern relates to Variance Requests 9543.0050 Subp. 2. This subpart provides that requests for variance must be submitted in writing by the applicant or license holder and shall include the recommendation to approve or deny by the agency. It then states that the commissioner shall send a written decision to grant or deny the variance request to the applicant or license holder and to the agency. The agency has 10 days to act on variance request from the provider. There is no time line on the part of the commissioner. I believe this is unacceptable. Although our agency handles very few variance requests, I have never received written response. A telephone call to the department will give verbal approval. However, when the language clearly states that there is to be a written response I believe that this should be adhered to and within a reasonable period of time. I submitted a request on January 18, 1990 and a follow-up letter on April 5, 1990.

There was no response to either. This same provider was then due for re-licensing and submitted another request which was submitted on August 7, 1990. There has been no response to this request either. I understand the difficulty that the Department has with paperwork, but if it is unable to deal with the variance requests it should either delegate the responsibility or develop a form or some system that would facilitate quick response.

Thank you for your attention to these matters. Please feel free to call me at (218) 327-2981 if you have any questions.

Yours truly,

Karen Karls

Karen Karls
Family Day Care/Foster Care
Licensor

KK:sg

WASHINGTON COUNTY

COMMUNITY SOCIAL SERVICES

GOVERNMENT CENTER

14900 61ST STREET NORTH, P.O. BOX 30 • STILLWATER, MINNESOTA 55082-0030

612/439-6901

James R. Schug
Director

Richard C. Backman
Social Service
Division Manager

Charlotte Farnum
Economic Assistance
Division Manager

Evelyn T. Rusch
Office Manager

September 21, 1990

Jim Schmidt
Dept. of Human Services
444 Lafayette Rd.
St. Paul, MN 55155-3816

Dear Mr. Schmidt:

I am writing to comment on the most recent draft of Rule 13. As a county day care licensor, I find some portions of the rule problematic.

9543.0040 Subpart 1,B states "The agency shall immediately provide the license application form prescribed by the commissioner to every prospective applicant who requests an application."

I propose that the language that was in the previous draft which stated "An agency that requires prospective applicants to attend an informational meeting prior to receiving a license application form must ensure meetings take place at least every two months on either a group or individual basis." be reinstated as an option.

The system that is currently in place in Washington County is as follows: A prospective applicant calls requesting information about licensing. They are immediately mailed a brief explanation of the program and a questionnaire to complete and return. If they return the questionnaire, they are invited to an orientation. At this meeting they receive the application, the licensing rule, and all the supplementary documents needed to complete the licensing process. Home visits are made as quickly as possible after the meeting. Currently meetings are held every 8-10 weeks. I believe this process is responsive to provider and community needs. The volume of prospective providers attending meetings and the staff available to license providers dictates the time required to complete the licensing process.

I believe that mailing out application forms to all prospective providers who call for information in our county would hinder rather than aide the licensing process. Our experience has been that about half of the people who inquire by phone return the questionnaire. Of the people invited to orientation, about 2/3 attend. Of the people attending orientation about 60% complete the licensing process.

If an application form were mailed when the provider first inquired, the agency would need to contact and track a large number of people who would not be following through with licensing. The paper management and additional time investment would severely tax licensors and further delay the licensing of providers interested in completing the process.

Washington County does not discriminate on the basis of race, color, national origin, sex, religion, age or handicapped status in employment or the provision of services.

I am also concerned about the idea of mailing out licensing rules to prospective providers (page 5 line 22). I believe the rules can be difficult to read and intimidating to many providers if they are not accompanied by an explanation. Washington County provides that explanation through the orientation process. Sending rules to people who will not be completing the licensing process would be very expensive with little positive return.

I believe the current system of licensing providers in Washington County is working well and is as efficient and timely as p ossible with existing staff. Adding the informational meeting option would allow us to continue our current process.

Thank you for considering this option.

Sincerely,

Kathleen M Smith

Kathleen M. Smith, Supervisor

JeAnne Rudich

JeAnne Rudich, Licensor

KS/JR/ah

WASHINGTON COUNTY

COMMUNITY SOCIAL SERVICES

GOVERNMENT CENTER

14900 61ST STREET NORTH, P.O. BOX 30 • STILLWATER, MINNESOTA 55082-0030

612/439-6901

James R. Schug
Director

Richard C. Backman
Social Service
Division Manager

Charlotte Farnum
Economic Assistance
Division Manager

Evelyn T. Rusch
Office Manager

September 26, 1990

Jim Schmidt
Department of Human Services
444 Lafayette Rd.
St. Paul, MN 55155-3816

Subject: **Draft Rule 13**

Dear Mr. Schmidt:

Enclosed are two letters prepared by our foster care and day care licensing unit in response to the proposed draft of Rule 13.

After reviewing their comments, I would like to ask that their recommendations be considered in the development of the final rule.

If you have any questions about the comments, please contact Kathy Smith, Social Service Supervisor at 779-5028.

Sincerely,

James R. Schug

James R. Schug, Director
Community Social Services

JRS:ep
Encls.

Washington County does not discriminate on the basis of race, color, national origin, sex, religion, age or handicapped status in employment or the provision of services.

WASHINGTON COUNTY

COMMUNITY SOCIAL SERVICES

GOVERNMENT CENTER

14900 61ST STREET NORTH, P.O. BOX 30 • STILLWATER, MINNESOTA 55082-0030

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James R. Schug
Director

Richard C. Backman
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Charlotte Farnum
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Division Manager

Evelyn T. Rusch
Office Manager

September 21, 1990

Jim Schmidt
Dept. of Human Services
444 Lafayette Rd.
St. Paul, MN 55155-3816

Dear Mr. Schmidt:

I am writing to comment on the most recent draft of Rule 13. As a county day care licensor, I find some portions of the rule problematic.

9543.0040 Subpart 1,B states "The agency shall immediately provide the license application form prescribed by the commissioner to every prospective applicant who requests an application."

I propose that the language that was in the previous draft which stated "An agency that requires prospective applicants to attend an informational meeting prior to receiving a license application form must ensure meetings take place at least every two months on either a group or individual basis." be reinstated as an option.

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I believe that mailing out application forms to all prospective providers who call for information in our county would hinder rather than aide the licensing process. Our experience has been that about half of the people who inquire by phone return the questionnaire. Of the people invited to orientation, about 2/3 attend. Of the people attending orientation about 60% complete the licensing process.

If an application form were mailed when the provider first inquired, the agency would need to contact and track a large number of people who would not be following through with licensing. The paper management and additional time investment would severely tax licensors and further delay the licensing of providers interested in completing the process.

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I believe the current system of licensing providers in Washington County is working well and is as efficient and timely as prossible with existing staff. Adding the informational meeting option would allow us to continue our current process.

Thank you for considering this option.

Sincerely,

Kathleen M. Smith

Kathleen M. Smith, Supervisor

JeAnne Rudich

JeAnne Rudich, Licensor

KS/JR/ah

WASHINGTON COUNTY

COMMUNITY SOCIAL SERVICES

GOVERNMENT CENTER

14900 61ST STREET NORTH, P.O. BOX 30 • STILLWATER, MINNESOTA 55082-0030
612/439-6901

James R. Schug
Director

Richard C. Backman
Social Service
Division Manager

Charlotte Farnum
Economic Assistance
Division Manager

Evelyn T. Rusch
Office Manager

September 25, 1990

Mr. James Schmidt
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Dear Mr. Schmidt:

I am writing on behalf of the Washington County Foster Care licensers to express our concerns about the most recent draft of Rule 13.

In 9543.0040, subpart 1B, it states that "the agency shall immediately provide the license application...to every perspective applicant who requests an application.

The system we currently use is as follows:

The prospective applicant calls in and gets basic foster care information. Initial screening is done by the worker at this time.

The applicant is invited to a recruitment meeting, held every four to six weeks.

At the recruitment meeting, more specific information is given, several handouts are distributed, and questions are answered. An application is given to each prospective foster family.

When the completed application is returned, the family is assigned a licensing worker who contacts them and begins the actual licensing process.

We believe that this process is the most efficient for the agency and is responsive to the community.

Our most recent statistics show that of the number of inquiry calls received, 37 percent attended the recruitment meetings and only 11 percent of the original calls were actually licensed. If we were required to send applications to everyone who inquired about foster care, we would be processing a great deal of paperwork. This would benefit neither our agency nor the community and would make our social workers less available to deal with the homes they are already supervising.

Washington County does not discriminate on the basis of race, color, national origin, sex, religion, age or handicapped status in employment or the provision of services.

We also find that by allowing several levels of the licensing process, a self screening phenomenon takes place.

In 9543.0060, subpart 5B, we see a need for clarification of roles between the licensing worker and the placement worker. This action states that "the agency shall coordinate with placement workers to ensure that the license holder is visited by a placement worker or the licensor at least monthly for the first six months after the first placement is child foster care."

Does this section put the licensing worker in a supervisory position over the placement worker? What is the purpose of the visit? It is to deal with the child's direct services needs? If so, the placement worker should be present. Is it to deal with foster parenting issues? If so, the licensing worker needs to be present.

Our current practice includes monthly contact by the placement worker with any child in foster care. However, these contacts could include school visits and may or may not include the license holder. Our licensing workers generally follow a policy of contacting a new foster home on a monthly basis for the first three months of their first placement.

Since placement workers are already functioning under a rule requiring monthly contact, we would recommend deleting that reference. We would agree with required monthly contact by the licensing worker for the first to three months.

We believe that our current system meets the needs of our staff, clients, and community to the best level possible given existing staff ratios.

Thank you for considering our comments.

Sincerely,

Kathleen M. Smith

Kathleen M. Smith
Supervisor
Resource Unit

Kristen A Harvieux K.S

Kristen A. Harvieux
Licensed Social Worker
Resource Unit

kkh

COUNTY OF Olmsted

COMMUNITY SERVICES

2116 Campus Drive SE
Rochester, Minnesota
55904

September 26, 1990

Mr. Jim Schmidt
Department of Human Services
444 Lafayette Road
St. Paul MN 55155-3816

RE: Adoption of Minnesota Rules
Parts 9543.0010 to 9543.0150

Dear Mr. Schmidt:

In response to the notice dated August 8, 1990 concerning adoption of the above rule, please note the following comments:

9543.0040 Subpart 1. B. It is unrealistic for the agency to "immediately provide the license application form...to every prospective applicant who requests an application". This County's Day Care program conducts orientation meetings two times per month at which application forms are made available. This option provides opportunity for interested potential providers to have access to the application process in a timely manner, while leaving agency time to deal with its many other responsibilities.

9543.0040 Subpart 2. B. (3) (a): "An observation of the program in operation". What constitutes an "observation"? What type of documentation is required? Does this mean a summary of the provider's quality of care?

9543.0040 Subpart 3. B. (2) - (4): Does "County" refer only to our County? or does it apply to Counties in which the applicant had previously lived?

9543.0040 Subpart 5. B. "Licensing renewal study that includes information under Subpart 2, items A, B, E, and F". Does this mean that the provider sites must be inspected by the Fire Marshal on an annual basis? It is unlikely that the Fire Marshal will be able to process this number of inspection requests and in a timely manner.

9543.0050 Subpart 2. "Commissioner shall send a written decision...to the applicant or license holder and to the agency". This rule does not provide for any timelines for agencies to receive guidelines on a variance. The long delays in the Department of Human Services response to county agencies has become a major problem.

9543.0060 Subpart 3. "Agency shall provide applicants the orientation and preplacement training...". Is there a required number of training orientation hours the applicants are to receive?

9543.0070 Subpart 2. B. "Investigation...must begin within three working days after the agency receives the complaint. This timeline is unrealistic considering the possibility of a worker not being available due to sick leave, training, vacation, et cetera. It would be difficult for a co-worker to begin or conduct an investigation of another worker's client. A five day timeline may be more realistic than a three day timeline.

9543.0080 Subpart 1. A. "If the operator discontinues the unlicensed operation, no further action is required". Is it the agency's responsibility to go to the provider's home to verify if they are continuing unlicensed care?

9543.0010 Subpart 2. "The agency shall immediately report the operation to the County Attorney..." It is unlikely that the County Attorney will have time available to deal with these situations.

9543.0130 Subpart 3. "...six hours of training each calendar year..." Is this changing the training requirement from 12 hours to 6 hours per year?

Respectfully submitted,

Jane E. Merritt

Jane E. Merritt
Community Services Supervisor I

JEM:bh

Children's Home Society of Minnesota

A family of social services

- Child Care Services
- School-Age Day Shelter
- Family Life Education
- Children's Home Young Parents
- Crisis Nurseries
- Adoption
- Waiting American Children
- Life Planning for Older Children
- Post-Legal Adoption
- Infant Foster Care
- Health Services
- Unplanned Pregnancy Services
- Teen Pregnancy Prevention

SCOTT MEYER
President

ROGER W. TOOGOOD
Executive Director

2230 Como Avenue
Saint Paul, MN 55108
(612) 646-6393
Fax (612) 646-0436

1605 Eustis Street
Saint Paul, MN 55108
(612) 646-7771
Fax (612) 646-8676

October 2, 1990

Mr. Jim Schmidt
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

RE: Proposed Rule 9543.0010 to 9543.0150

Dear Mr. Schmidt:

I understand there will not be a hearing on the Proposed Rules, and we did want to share comments on several aspects which could pose an extreme hardship on a small program such as our Infant Foster Care Program, which only needs 2-3 new homes a year.

9543.0040, Subp. 1, B.

It would be extremely difficult for us to "immediately" give an application to everyone "requesting" this, as we have a very large number of inquiries but only need 2-3 new homes a year. For us to proceed to do a licensing study on all such "applicants" (whom we do not need in order to serve the children) would be prohibitive, and would require hiring additional staff.

1543.0040, Subp. 8.

Tracking all these unneeded applicants would also be costly, and could require hiring additional staff, which would make no sense at all from a program size standpoint.

We recommend that a statement be made that applicants should be recruited and processed according to the needs of the program (the number of children served).

Sincerely,

Marjorie Mereen jp

Marjorie Mereen, MSW/ACSW
Division Director
Child and Family Services

MM:jp

THE MINNESOTA

COUNTY ATTORNEYS

ASSOCIATION

40 North Milton Street
Suite 200
St. Paul, Minnesota 55104

612/227-7493

October 23, 1990

Julie Brunner
Assistant Commissioner
Department of Human Services
Legal & Inter-Governmental Programs
444 Lafayette Rd.
St. Paul, MN 55155 - 3818

OFFICERS

[illegible], President
[illegible] County Attorney

[illegible], Past President
Ramsey County Attorney

[illegible], President-Elect
Martin County Attorney

[illegible], Secretary
[illegible] County Attorney

[illegible], Treasurer
[illegible] County Attorney

STAFF

[illegible]
Executive Director

[illegible]
Staff Attorney

[illegible]
Legal Assistant

[illegible]
Office Manager, Bookkeeper

[illegible]
Legal Secretary
Newsletter, Publications

Judgment Recovery Project
(612) 227-6228

[illegible]
Controller and Financial Officer

[illegible]
Finance and File Manager

[illegible]
Word Processor

[illegible]
Secretary

[illegible]
Secretary

RE: In The Matter of the Proposed Adoption of the Rules of the State Department of Human Services, Parts 9543.3000 to 9543.3090; and Parts 9543.0010 to 9543.0150

Dear Julie:

The purpose of this letter is to express our concern regarding the lack of notification of hearing to county attorneys on the proposed rules noted above, and to suggest revisions of portions of the proposed rules. In addition, we would like to register some concerns about our belief that we had negotiated the county attorney conflicts issue to everyone's satisfaction during the last legislative session.

1. Notice

The county attorneys who provide representation to the county licensing unit and are directly affected by some of the proposals did not receive notice of the proposed adoption of these rules. In the future we would request that your procedures be changed to provide timely notice to the county attorney as well as the licensing unit.

2. Suggested Additions or Modifications to Proposed Rules

We have substantial concerns with respect to two areas and believe that the additions or modifications suggested below merit your consideration.

a. 9543.0080, Reference for Prosecution.

Proposed Rule 9543.0080, County Investigation of Unlicensed Programs, Subp. 1(b) at page 13 has omitted the provision previously contained in Rule 9502.0335, Subp. (b) which required notification of the attorney with the authority to prosecute misdemeanor violations. Misdemeanor prosecutions represent a useful alternative in obtaining compliance with the law requiring the licensing of providers. We suggest this rule be modified as follows:

1. Shall notify the attorney with responsibility for misdemeanor prosecution so that appropriate action may be pursued; and
2. May ask the county attorney to take legal action to halt or

continue the operation of the program; and

3. Shall inform the commissioner of the unlicensed program.

b. Proposed Rule 9543.0120, Representing the Commissioner in Contested Case Proceedings

We recommend that paragraph A of this rule be revised to conform to the provisions of Minn. Stat. Section 245A.16, Subd. 4 which provides "...The county attorney shall assist the county agency in the enforcement and defense of commissioner's orders under Section 245A.07 and 245A.08 according to the instructions of the commissioner, unless a conflict of interest exists between the county attorney and the commissioner." (emphasis added)

The rule should contain language consistent with the statute. We suggest it be revised as follows:

a) Arrange for legal consultation and representation by the county attorney, unless a conflict of interest exists between the county attorney and the commissioner.

The rule as proposed could be read to require that the county agency procure representation by the county attorney in a situation where the county attorney was unable to afford that representation under the Minnesota Rules of Professional Conduct. The state statute was drafted in a manner to reflect that concern and the rule should be consistent with the statute.

The Minnesota Rules of Professional Conduct require that a lawyer maintain professional independence in the representation of clients and that the lawyer's professional judgment in rendering such service not be directed or controlled by a third party, MRPC 5.4. These rules also provide that lawyers must refrain from engaging in representations in which there is a conflict of interest, or when they determine that one has developed, withdraw from such representation. MRPC 1.7 and MRPC 1.16

With respect to Subp. 3(c) of this same provision (9543.0120) we suggest that a provision be added requiring the commissioner to act to accept or reject signed settlement agreements submitted within ten days of receipt of the agreement by the Department of Human Services. In these instances, the terms of the agreement have been approved by the appropriate representative of the commissioner. It would be most helpful if a requirement were imposed which would require the commissioner's prompt action on these agreements.

Thank you for your consideration.

Gina Washburn
Executive Director

William Jeronimus
Staff Attorney

CC: Jim Loving, Jim Schmidt

Winona County

171 West Third Street — Courthouse
Winona, Minnesota 55987
(507) 457-6350

September 26, 1990

Jim Schmidt
Department of Human Services
444 Lafayette Rd
St. Paul, MN 55155-5816

RE: DHS Licensing Rule - 9543.0010 to 9543.0150

Dear Mr. Schmidt:

We are requesting that a public hearing be held on this proposed Rule change in the DHS Licensing Rules. The proposed changes will require our County to add an least a one half staff position in order to comply at an estimated cost of $21,000. Increases in state requirements should be funded by the State or have legislation requiring a specific special property tax levy. State Law provides that the State is responsible for Human Service Licensing. We contend that no part of that responsibility should be delegated to Counties without providing for its funding. The lack of uniformity mentioned in the Fiscal Note will only be made worse by this Rule change without accompanying funding.

Sincerely,

M. J. McCauley

M. J. McCauley, County Commissioner, District #1

Donald O. Peterson

Donald O. Peterson, County Commissioner, District #2

John Brand

John Brand, County Commissioner, District #3

Lee Luebbe

Lee Luebbe , County Commissioner, District #4

Lester Ladewig

Lester Ladewig, County Commissioner, District #5

BOARD OF COMMISSIONERS

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AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Winona County

COURTHOUSE 171 W. THIRD ST.
WINONA, MINNESOTA 55987

PRESORTED
FIRST-CLASS

WINONA SEP 29 '80 MN U.S.POSTAGE 0.21

Jim Schmidt
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155

Subd. 5. WAIVER OR MODIFICATION. If all parties to the proceeding agree, any of the requirements of this section may be waived or modified.

Subd. 6. CASE PRESENTATION. The department of commerce, upon request by small businesses as defined by section 14.115, subdivision 1, shall assist small businesses in any specific class requesting continuation of coverage beyond the 180-day period, in coordinating the class and presenting the case in the contested hearing.

Department of Health

Office of Health Systems Development

Notice of Intent to Solicit Outside Opinions Concerning a Request for a Waiver of HMO Statutes and Rules by Group Health, Inc.

Dated: 13 December 1988

NOTICE IS HEREBY GIVEN that the Department of Health is seeking opinions and comments pertaining to a request by Group Health, Inc. for a waiver of HMO statutes and rules relating to prescription drug coverage for Group Health Seniors who receive their primary health care services at private clinics which are affiliated with Group Health, Inc. Such waivers are authorized for demonstration projects by *Minnesota Statutes*, § 62D.30.

The request submitted by Group Health, Inc. is available for inspection during normal business hours at the following location:

Alternative Delivery Systems
Room 450
Minnesota Department of Health
717 Delaware Street S.E.
Minneapolis, Minnesota 55440
(612) 623-5365

Comments on the request must be received by December 12, 1988.

Department of Health

Volunteers Sought for Exception to the Moratorium Advisory Review Panel

The Interagency Board for Quality Assurance is now taking nominations to form the Exception to the Moratorium Advisory Review panel as prescribed in *Minnesota Statutes* 144A.073, subdivision 3. The Interagency Board is looking for five members who meet the following qualifications: Two members from organizations that represent consumers of nursing home services; two representatives from organizations representing providers of nursing home services, and one member who has a background in long-term care and either accounting, engineering or building construction. Members volunteer their time and talent, but are reimbursed for miscellaneous expenses, such as travel and parking. Nominations will be accepted through January 10, 1989. A nomination must be written, must state the name and address on the nominee, must include a description of the nominee's professional experience and training, and must state the position for which the person is being nominated. Send nominations to Anne Kane, Executive Director, Interagency Board for Quality Assurance, 393 North Dunlap Street, 5th Floor, St. Paul, MN 55164-0938.

Department of Human Services

Licensing Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Requirements County and Private Agencies Must Comply with in Performing Licensing Functions Delegated by the Commissioner of Human Services Related to Family Day Care, Adult Foster Care, and Child Foster Care

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 the rule governing certification of county and private agencies delegated

licensing functions by the Commissioner of Human Services. The adoption of the rule is authorized by *Minnesota Statutes*, section 245A.16, which permits the Commissioner to delegate licensing functions, to adopt rules governing those functions, and to certify county and private agencies that comply with the licensing requirements.

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: Barbara Eggiman, Department of Human Services, Licensing Division, 444 Lafayette Road, St. Paul, Minnesota 55155-3842. Oral statements will be received during regular business hours over the telephone at (612) 296-3024 and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or adminstrative law judge in the event that the rule is adopted.

Date: 9 December 1988

Jim Schmidt
Department of Human Services
Rulemaker

Metropolitan Council

Public Hearing on a Revised Capital Improvement Program for Regional Recreation Open Space (Regional Parks) for 1990 and Beyond

The Metropolitan Council will hold a public hearing on a proposed revised Capital Improvement Program (CIP) for the Regional Recreation Open Space System, the "regional parks," on Tuesday, Jan. 24, 1989 at 7:45 p.m., in the Council Chambers, Mears Park Centre, 230 E. Fifth St., St. Paul.

All interested persons are encouraged to attend the hearing and offer comments. People may register in advance to speak by calling Jane Larson at 291-6500. Copies of the revised CIP are available for public inspection at designated libraries throughout the region. For information on the location of these libraries or a free copy of the document, call 291-8140.

Metropolitan Council

Public Hearing on a Proposed Amendment to the Metropolitan Development Guide Recreation Open Space Policy Plan Designating a Railroad Corridor as a Regional Trail, Exploring Its Use for Light Rail Transit, and Determining the Need for I-94 Bridge Extensions

The Metropolitan Council is considering designating the northeast Burlington Northern Railroad corridor (from Kellogg Blvd. to Beam Av., St. Paul) a regional trail, with potential shared use for light rail transit, and potential need for bridge extensions on Interstate Hwy. 94 over a portion of the trail.

The Council will hold a public hearing on the proposed amendment to its Metropolitan Development Guide Recreation Open Space Policy Plan on Tuesday, Jan. 24, 1989 at 7 p.m. in the Council Chambers, Mears Park Centre, 230 E. Fifth St., St. Paul.

All interested persons are encouraged to attend the hearing and offer comments. People may register in advance to speak by calling Jane Larson at 291-6500. Copies of the proposed amendment are available for public inspection at designated libraries throughout the region. For information on the location of these libraries or a free copy of the document, call 291-8140.

Minnesota Pollution Control Agency

Division of Air Quality

Notice of Public Meeting Regarding Proposed Revision of Minnesota's State Implementation Plan for Air Quality to Include Revised Permanent Rules Relating to Air Quality Definitions, Emissions Offsets, and Air Quality Permitting

NOTICE IS HEREBY GIVEN that, on January 24, 1989, the Minnesota Pollution Control Agency (hereinafter referred to as