

State of Minnesota
Department of Human Services

In the Matter of the Proposed Rules
Governing Licensing Fees for Day
Care and Residential Facilities
and Agencies, Minnesota Rules, Parts
9545.2000 to 9545.2040

STATEMENT OF NEED
AND REASONABLENESS

Introduction and Background

The proposed Parts 9525.2000 to 9545.2040 establish procedures for the Minnesota Department of Human Services to determine and collect fees from operators of day care and residential facilities and agencies required to be licensed under Minnesota Statutes, Sections 245.781 to 245.812 and 252.28, Subdivision 2, known as the Public Welfare Licensing Act.

Traditionally, licenses issued by the department were free, unlike many other types of licenses. In 1971, the department was given the authority to charge fees to offset the costs of the licensing program. Minnesota Statutes, section 245.811 (1984) (original version at Minnesota Statutes, Section 257.101 (repealed 1976)). On August 22, 1974, the Commissioner issued Policy Bulletins #s 79 and 80, amended by Policy Bulletin #99 on November 15, 1974, which developed a licensing fee schedule for new and renewal licenses for group day care programs and child-caring institutions (and exempting family day care homes and family foster homes from licensing fees). The 1974 fee schedule, together with the establishment of licensing fees during 1975 for group homes, residential programs for chemically dependent, adult mentally ill, and physically handicapped persons, and outpatient programs for chemically dependent persons resulted in the establishment of the current licensing fee schedule:

Current Licensing Fee Schedule

	<u>Fee</u>
Group Day Care Programs (All Day and Half Day):	
Headstart Programs and Parent Cooperatives (Regardless of Size)	\$ 5.00
Day Care and Nursery Schools	
6 to 25 Children	10.00
26 to 50 Children	15.00
51 to 100 Children	25.00
101 to 150 Children	50.00
151 or more Children	75.00
Child Caring Institutions (11 or more Children)	25.00
Group Homes	10.00

Current Licensing Fee Schedule
(Continued)

	<u>Fee</u>
Residential Programs for the Chemically Dependent, Adult Mentally Ill and Physically Handicapped:	
Up to 10	\$ 25.00
11 to 20 Beds	50.00
21 to 30 Beds	75.00
31 to 40 Beds	100.00
41 to 50 Beds	125.00
51 to More Beds	150.00
 Outpatient Programs for the Chemically Dependent	 25.00

The above fee schedule has been in effect for approximately ten years and requires revision to reflect changes in law and increases in administrative costs of the licensing program. Since 1975, the number of facilities and agencies licensed and charged fees by the department has grown from about 1,500 to over 2,100 - an increase of about 33 percent. The inflation rate (based on the Consumer Price Index for all urban consumers for the Minneapolis - St. Paul Metropolitan area) accounts for increases in costs of about 104 percent during these years. Consequently, the state budget appropriation to fund the licensing program has increased from about \$400,000 in fiscal year 1976 to \$848,500 in fiscal year 1985.

Laws of Minnesota 1984, Chapter 654, Article 5, Section 18, amending Minnesota Statutes, section 245.811, gives the department the authority to promulgate a licensing fee rule. In addition, this section removed the \$150 maximum on licensing fees, exempted family foster care and family day care homes from fees, and removed the previous exemption for day care or residential facilities or agencies for the mentally retarded.

In response to these changes in the number of facilities, costs, and law, the proposed rule increases the licensing fees charged during the past ten years, and begins charging fees to all facilities and agencies licensed under the Public Welfare Licensing Act which are not exempt from being charged fees. The proposed rule, if adopted, would change the licensing fee schedule as follows:

Proposed changes in
Licensing Fee Schedule

	<u>1975-</u> <u>Present</u>	<u>1986</u> <u>Fiscal Year</u>
Group Day Care Programs (All Day and Half Day):		
Headstart Programs and Parent Cooperatives (Regardless of Size)	5.00	\$12.50 + 2.50 x licensed capacity
Day Care Facilities		
6 to 25 Children	10.00	27.50 - 75.00
26 to 50 Children	15.00	77.50 - 137.50
51 to 100 Children	25.00	140.00 - 262.50
101 to 150 Children	50.00	265.00 - 387.50
151 or more Children	75.00	390.00 + 2.50 x licensed capacity over 151
Child Caring Institutions (11 or more Children)	25.00	80.00 + 5 x licensed capacity over 11
Group Homes	10.00	30.00 - 75.00
Residential Programs for the Chemically Dependent, Adult Mentally Ill and Physically Handicapped:		
Up to 10	25.00	30.00 - 75.00
11 to 20 Beds	50.00	80.00 - 125.00
21 to 30 Beds	75.00	130.00 - 175.00
31 to 40 Beds	100.00	180.00 - 225.00
41 to 50 Beds	125.00	230.00 - 275.00
51 to More Beds	150.00	280.00 + 5 x licensed capacity over 51
Outpatient Programs for the Chemically Dependent	25.00	25.00 + .50 x each person served
Semi-Independent Living Services for Mentally Retarded (SILS)	.00	25.00 + 5 x licen- sed capacity

Proposed Changes in
Licensing Fee Schedule
(continued)

Developmental Achievement Centers for Mentally Retarded (DACs)	.00	25.00 + 5 x licensed capacity
Residential Programs for Mentally Retarded	.00	same as residential program fees
Child-Caring/Child-Placing Agencies	.00	25.00 + .50 x each finalized adoption and foster home supervised

9545.2000 Definitions

This rule defines words and phrases that have a meaning specific to parts 9545.2000 to 9545.2040, that may have several possible interpretations, or that need exact definitions to be consistent with statute. Terms used in a manner consistent with common use in the licensing or human services fields are not defined unless a definition is necessary to clarify the rule.

Subpart 1. Scope. This provision is needed to clarify that the definitions apply to the entire sequence of parts 9545.2000 to 9545.2040.

Subpart 2. Agency. The term "agency" is used throughout parts 9545.2000 to 9545.2040. The definition is necessary to clarify the meaning of a term that may be subject to several possible interpretations. The definition is reasonable in that it is the same definition of "agency" found in Minnesota Statutes, section 245.782, subdivision 4, except that it specifically includes semi-independent living services (SILS) in the definition. It is necessary to include SILS in the definition of "agency" to clarify that SILS are agencies for purposes of these rule parts. It is reasonable to include SILS as agencies since SILS regularly provide needed social or counseling services for persons living in their own homes.

Subpart 3. Base Fee. The term "base fee" is used throughout parts 9545.2000 to 9545.2040. The definition is necessary to establish a general term for purposes of the licensing fee formula and to shorten the rule by decreasing the number of words used to refer to a term relating to licensing fees. The definition is reasonable in that it clarifies the meaning of the term in relation to the total licensing fee formula.

Subpart 4. Commissioner. The term "commissioner" is used throughout parts 9545.2000 to 9545.2040 as an abbreviation for the commissioner of the Minnesota Department of Human Services. It is necessary and reasonable to use an abbreviation to delete unnecessary words in a reference frequently

repeated in the rule. Since it would be physically impossible for the commissioner to perform all tasks assigned to the position, it is also necessary and reasonable to permit a person under the commissioner's authorization to perform these tasks.

Subpart 5. Day Care Facility. The term "day care facility" is used throughout parts 9545.2000 to 9545.2040. The definition is necessary to clarify the meaning of a term that may be subject to several possible interpretations. The definition is reasonable in that it is the same definition of "day care facility" found in Minnesota Statutes, section 245.782, subdivision 5 (except it does not list examples of day care facilities), except that it specifically includes outpatient treatment programs for chemically dependent persons in the definition. It is necessary to include outpatient treatment programs for chemically dependent persons in the definition of "day care facility" to clarify that these programs are day care facilities for purposes of these rule parts, although they may not be commonly thought of as providing "day care" in the traditional sense of the term. It is reasonable to include these programs as day care facilities since they regularly provide persons with care, rehabilitation, etc., on a regular basis for periods of less than 24 hours per day in a place other than the person's own home.

Subpart 6. Department. The Minnesota Department of Human Services is designated in the Public Welfare Licensing Act through references to the commissioner as having certain responsibilities in carrying out these rule parts. The term "department" is used throughout parts 9545.2000 to 9545.2040 as an abbreviation for the Minnesota Department of Human Services. It is necessary and reasonable to use an abbreviation to delete unnecessary words in a reference frequently repeated in the rule.

Subpart 7. License. The term "license" is used throughout parts 9545.2000 to 9545.2040. The definition is necessary to have the meaning clearly specified within the rule so those seeking licensure and applying these rule provisions have a clear and consistent understanding of its meaning. The definition is reasonable in that it is the same definition of "license" found in Minnesota Statutes, section 245.782, subdivision 11 except that it expands the definition to include provisional licenses as defined in Minnesota Statutes, Section 245.782, Subdivision 12. It is necessary and reasonable to include provisional licenses within the meaning of the term "license" for purposes of the rule to assure that all operators authorized to provide specified services for a specified period of time are treated equally regarding the determination and charging of licensing fees. The term "license" is, in effect, an abbreviation for "license or provisional license." It is necessary and reasonable to use an abbreviation to delete unnecessary words in a reference frequently repeated in the rule.

Subpart 8. Licensed Capacity. Minnesota Statutes, section 245.783, subdivision 5 requires every license of a day care or residential facility to prescribe the number of persons who may receive care at any one time. The term "licensed capacity" is used throughout parts 9545.2000 to 9545.2040 to identify the number of persons that may be present at any one time in a day care or residential facility. The definition is necessary to establish a general term which is consistent with statute. The definition is necessary to shorten the rule by decreasing the number of words used to refer to a term of licensure. The definition is reasonable in that it is consistent with the statutory reference.

Subpart 9. Licensed Capacity Fee. The term "licensed capacity fee" is used throughout parts 9545.2000 to 9545.2040. The definition is necessary to establish a general term for purposes of the licensing fee formula, to shorten the rule by decreasing the number of words used to refer to a term relating to licensing fees, and to clarify the meaning of the term in relation to the total licensing fee formula. The definition is reasonable in that it describes what a licensed capacity fee is in simple, concise terms in a manner consistent with the formula.

Subpart 10. Licensing Fee. The term "licensing fee" is used throughout parts 9545.2000 to 9545.2040. The definition is necessary to give exact meaning to the term for purposes of the rule in a manner consistent with the Public Welfare Licensing Act. The definition is necessary in that it is the subject of the rule and is not defined in the Public Welfare Licensing Act. The definition is reasonable in that it describes what a licensing fee is in simple, concise terms and in a manner consistent with Minnesota Statutes, section 245.811 (statutory authority to promulgate a licensing fee rule).

Subpart 11. Licensing Fee Formula. The term "licensing fee formula" is used in parts 9545.2000 to 9545.2040 as the general term to identify the method used to calculate licensing fees. The definition is necessary to give exact meaning to the term for purposes of the rule. The definition is reasonable in that it clarifies that the licensing fee formula is the mathematical formula or procedure used by the department to determine licensing fees.

Subpart 12. Operator. The term "operator" is used throughout parts 9545.2000 to 9545.2040. The definition is necessary to clarify the meaning of a term that may be subject to several possible interpretations. The definition is reasonable in that it is the same definition of "operator" found in Minnesota Statutes, section 245.782, subdivision 13.

Subpart 13. Regularly on Regular Basis. The term "regular" or "regular basis" is used in part 9545.2000, subparts 2 and 5 (definitions of "agency" and "day care facility"). It is a term that is in common use and may have several meanings. It is necessary to have the meaning clearly specified within the rule so those seeking licensure and applying these rule parts have a clear and consistent understanding of its meaning. The definition is reasonable in that it paraphrases the definition of "regularly" or "on a regular basis" found in Minnesota Statutes, section 245.782, subdivision 9.

Subpart 14. Residential Facility. The term "residential facility" is used throughout parts 9545.2000 to 9545.2040. The definition is necessary to clarify the meaning of a term that may be subject to several possible interpretations. The definition is reasonable in that it is the same definition of "residential facility" found in Minnesota Statutes, section 245.782, subdivision 6 (except it does not list examples of residential facilities).

Subpart 15. Waiver. The term "waiver" is used throughout part 9545.2040 and is a term that has several possible interpretations. Its use in these rules has a specific meaning. A definition is necessary to clearly establish this meaning. Minnesota Statutes, section 245.811, subdivision 1,

authorizes the commissioner to waive part or all of a licensing fee as a matter of discretion. Subdivision 2 authorizes the commissioner to adopt reasonable rules that may be necessary to carry into effect the provisions of subdivision 1. Therefore, defining a waiver as the permission of the commissioner to depart from the rule parts that establish licensing fees and payment is a reasonable interpretation of the statute. It is also reasonable to define the permission as written permission so that there is evidence of the action.

9545.2010 Applicability

Subpart 1. Applicability. This provision states the applicability of the licensing fee rule. It is necessary to state the applicability of the rule in this subpart to assist the public in determining the relevance of and interest in the rule parts. The provision is reasonable in that it states what is accomplished by the rule and that the rule applies to operators of day care and residential facilities and agencies required to be licensed under the Public Welfare Licensing Act and identifies those facilities or agencies required to be licensed under the Public Welfare Licensing Act and licensed under specific Minnesota Rules parts which are exempt from paying licensing fees. It is necessary to state the exemptions in this subpart to assist the public in determining the relevance of and interest in the rule parts. The provision is reasonable in that Minnesota Statutes, section 245.811, subdivision 1, specifically states that no fee may be charged for a family foster care or family day care home license.

9545.2020 Licensing Fee Formula

Subpart 1. General Formula. It is necessary for the department to establish criteria for the purpose of charging and collecting fees from an operator for the issuance or renewal of a license. Minnesota Statutes, section 16A.128 requires that fixed fees for accounts for which appropriations are made must be reviewed and adjusted so that the total fees nearly equal the sum of the appropriation.

Minnesota Statutes, section 245.811, subdivision 1, authorizes the commissioner to charge a reasonable fee for the issuance or renewal of a license. Subdivision 2 authorizes the commissioner to adopt rules for this purpose. The reasonableness of the formula provisions is described as follows:

The fee formula established in subparts 1 and 2 will result in only a 27 percent recouplement of the state appropriation for the licensing program. Although statute requires total fees to nearly equal the sum of the appropriation, this fee formula has been set intentionally low to lessen the financial burden to facilities and agencies. Current collections amount to only 3 percent of the appropriation and an increase to collect the total of the appropriation through licensing fees would present an unreasonable financial burden for many facilities and agencies.

During the 1984 legislative session, a fiscal note was prepared which developed a licensing fees formula and estimated collections of \$212,000 in licensing fees during fiscal year 1986. This original formula called for a base fee of \$50 and a licensed capacity fee of \$2. Comments received from representatives of each type of facility and agency licensed by the department at an August 30, 1984 meeting resulted in a recommendation that the licensing fee formula be revised to consist of a base fee of \$25 with a licensed capacity fee of \$4. The basis for charging a lower base fee and a higher licensed capacity fee is to charge a minimal base fee for a license to do business in the state, along with an additional licensed capacity fee related to the size of the facility or agency. This combination better reflects a facility's or agency's ability to pay based on the volume of their business. Under the \$25 base/\$4 licensed capacity formula, collections would be approximately \$179,000; therefore, the licensed capacity fee has been established at \$5 to more closely reflect the estimated amount of collections presented to the legislature. A provision to increase the base fee and licensed capacity fee every two years is necessary and reasonable to account for inflation, increased operating costs of the licensing program, and to gradually increase the percentage of state appropriation recouped through the collection of licensing fees. It is necessary to establish a specific period of time during which fees automatically increase to allow for reassessment of the fee schedule, the percentage of state appropriation recouped, and to avoid a provision establishing perpetual fee increases. It is reasonable to provide for fee increases for six years because by 1991 or 1992 the annual fees collected by the department are estimated to equal approximately 50 percent of the state appropriation. While 50 percent may not be "nearly equal to" the state appropriation as required by Minnesota Statutes, Section 16A.128, the department will be collecting substantially more in fees and fee data, and therefore be able to more accurately assess the fee schedule and future collections.

Subpart 2. Exceptions.

- A. The exception to the licensing fee criteria identified in subpart 1 is necessary in order to reduce the impact of the increased licensing fee on parents whose children receive care. The lower fee is intended to reduce the direct cost to parents as a result of increased licensing fees. Attempting to contain the cost to parents is a reasonable way to promote the development of affordable day care.
- B. Child-caring/child-placing agencies are engaged in planning for, giving direction to, or providing needed service or assistance to children and parents in their own home and placing them in foster care or adoptive homes. Some of these agencies supervise and recommend licensure of foster homes. Since these agencies have no "licensed capacity" it is necessary to use another method to determine their licensing fee. Based on comments received from representatives of each type of facility and agency licensed by the department, the licensing fee for these agencies is based on the volume of service provided, i.e., the number of finalized adoptions and the total number of foster homes under the agency's supervision. The intent of this formula is to charge operators a fee based on their annual case load. It is reasonable to base

the fee on the previous year's case load to avoid requiring an operator to make potentially inaccurate estimates of the next year's case load, which would require adjustments to the fee at the end of the year. Under his formula, newly-formed agencies (with no previous year's case load) will be charged only the base fee. Therefore, the licensing fee will not place an immediate financial burden on new agencies that may have substantial start-up costs and fewer revenues during the first year of operation.

- C. Outpatient treatment programs for chemically dependent persons are engaged in the provision of services to clients. They have no "licensed capacity" and therefore it is necessary to use another method to determine their licensing fee. Based on comments received from representatives of each type of facility and agency licensed by the department, the licensing fee for these programs is based on the volume of service provided. The intent of this formula is to charge operators a fee based on their annual case load. It is reasonable to base the fee on the previous year's case load to avoid requiring an operator to make potentially inaccurate estimates of the next year's case load, which would require adjustments to the fee at the end of the year. Under this formula, newly-formed programs (with no previous year's case load) will be charged only the base fee. Therefore, the licensing fee will not place an immediate financial burden on new programs that may have substantial start-up costs or less revenue during the first year of operation.

9545.2030 Licensing Fee Payment

Subpart 1. Payment Procedure. This procedure is unchanged from the current payment system. It is necessary and reasonable to make this fee payable at the time of application in order to recover a portion of the cost of staff time involved in licensing inspections and activities prior to the issuance or renewal of license. This fee is not refundable because the department incurs the cost of licensing staff time and resources whether the facility or agency is issued a license or the application is denied.

Subpart 2. Proration of fees. Certain facilities and agencies are issued licenses for a period of less than one year; others are licensed for as long as two years. Therefore, this provision is necessary to assure that all operators authorized to provide specified services for a specified period of time are treated equally regarding the determination and charging of licensing fees. Under the proration method, a facility or agency licensed for four months will pay one-third of the annual fee under part 9545.2020, a six-month license will cost one-half the annual fee, etc. Facilities or agencies licensed biennially will pay twice the annual fee every two years. The proration provision is reasonable because basing the licensing fee on the period of time for which a facility or agency is permitted to do business in the state is inherently fair and equitable and consistent with the rationale that licensing fees are charged, in part, for a license to do business in the state.

Subpart 3. Noncompliance. This provision is necessary to enforce compliance with subpart 1. It is reasonable for the department not to proceed with the licensing process prior to receipt of the licensing fee because the department incurs the cost of licensing staff time and resources for all application processed, and it ensures that a portion of the cost is recovered.

9545.2040 Waiver

This part is necessary to prevent the imposition of licensing fees from causing financial hardship for an operator or an operator's facility or agency, and to carry into effect the commissioner's discretion authorized in Minnesota Statutes, section 245.811, subdivision 1. This part requires an operator to meet certain conditions in order to be granted a waiver, and specifies the standard used by the department as well as response time for the determination.

Subpart 1. Written request for waiver. This provision is necessary so that there is evidence of an operator's request for a waiver. The prescribed method of requesting a waiver is reasonable because it clearly establishes a simple, uniform procedure.

Item A. This provision is necessary and reasonable to clarify and ensure that the department and operator understand the subject of the request.

Item B. This provision is necessary and reasonable to ensure that the department and operator have a clear understanding of the financial nature of the request.

Items C. and D. These provisions are necessary and reasonable to provide a basis for granting or denying a waiver. It is necessary and reasonable to require the reasons and documentation of the reasons to facilitate the waiver determination process in a manner consistent with the standard for granting a waiver identified in subpart 2.

Subpart 2. Standard for granting waiver. This provision is necessary to inform an operator of the standard or basis upon which the commissioner may grant a waiver. This section clarifies the standard. The provision is reasonable because financial hardship (i.e., unusually high overhead costs or unusually low revenues) is a reasonable standard for granting a waiver to a rule imposing financial costs or fees.

Subpart 3. Notice of decision. This provision is necessary to inform an operator whether the request for waiver is granted or denied. The provision is reasonable because it facilitates the waiver determination process by requiring department action on a request within 30 days. It is necessary and reasonable to require an explanation of the reason or reasons for denial of a waiver to assure that a denial was not made arbitrarily, and that all of the information submitted by the operator was given full consideration in the determination.

Conclusion

The foregoing statements and information demonstrate the need for and the reasonableness of proposed Parts 9545.2000 to 9545.2040.

DATE: MARCH 21, 1985



LEONARD W. LEVINE
Commissioner

BM/B