

Exhibit N

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

9/13/86

In the matter of Proposed
Rules of the Department of
Human Services governing the
Administration of Adult Foster
Care Services and Licensure of
Adult Foster Homes, parts 9555.5105
to 9555.6265

STATEMENT OF NEED
AND REASONABLENESS

INTRODUCTION AND BACKGROUND

Proposed parts 9555.5105 to 9555.5705 establish standards for county boards administering adult foster care services and assisting with the licensure of homes to ensure that each resident or each prospective resident of an adult foster home receives an assessment of need for adult foster care and is offered adult foster care services.

Proposed parts 9555.5105 and 9555.6105 to 9555.6265 establish standards for licensing adult foster homes. Licensing entitles an operator to provide care for up to four functionally impaired adults on a regular basis, 24 hours a day.

Authority to adopt the proposed licensing rules, parts 9555.5105 and 9555.6105 to 9555.6265 is contained in Minnesota Statutes 245.782, subdivisions 2, 6 and 14; 245.783, subdivision 1; and 245.802, subdivision 1.

Authority to adopt parts 9555.5105 to 9555.5705 is contained in Minnesota Statutes, sections 256.01, subdivision 4(3); 256E.03, subdivision 2(c) and (d); 256E.05, subdivision 1; Minnesota Laws 1986, chapter 413, section 3 to be codified as 256E.08, subdivision 1(1), (2), (3), (4), and (6); and 393.07, subdivision 2.

Adult Foster Care History

Much of the early history of the adult foster home movement is legendary. Most experts place the origin between 600 A.D. and 700 A.D. While the exact roots of adult foster homes are somewhat sketchy, the accepted location of the beginnings was Gheel, Belgium. Pilgrims came to Gheel to worship at the Shrine of St. Dymphna to be cured of their "possession by evil spirits" which was the definition of "mental illness" at that time. Citizens of the community took in pilgrims under the supervision of the Catholic Church. In 1867, Scotland began to compete with Gheel as a leader in the adult foster home movement. Massachusetts placed its first mentally ill patients in adult foster homes in 1882, followed by Rhode Island in 1914.

Psychiatrists began to praise the therapeutic potential of adult foster homes in the 1930s and 1940s. While not the first organization to use adult homes in the United States, the Veteran's Administration has been one of the heaviest users since officially establishing a uniform policy for adult foster homes in 1951. As far back as 1948, the St. Cloud Veterans Administration Hospital used adult foster homes. This organization has much precise data on its program which has helped bring a sense of order to the adult foster home movement.

In the 1950s professionals concerned with persons with mental retardation began to indicate that institutionalization was becoming less acceptable for those people. In 1959 Brown, Wendle, and Stewart wrote in the American Journal of Mental Deficiency that foster home placement was a logical extension of institutional care for persons with mental retardation.¹ The widespread use of tranquilizers and antidepressive drugs in the 1950s had a strong impact on communities being able to tolerate the undesirable symptoms of the mentally ill and promoted the use of adult foster homes for those persons.

In 1965, author H.H. Apetekar stated in the Encyclopedia of Social Work that adult foster homes serve essentially three groups of people -- mentally ill adults, mentally retarded adults, and the elderly.² This is one of the first references to adult foster care for the elderly in literature. By the 1970s, Schrader and Elms, in their book Guidelines for Family Care Operators, indicated their positive impressions of adult foster homes by stating: "This type of care might well be called the 'Cinderella' of the mental health field, for it has been so sadly neglected as a resource and its potential has never been fully developed."³ The authors also strongly recommended uniform licensing procedures.

Licensing

The federal government provided impetus for the proliferation of licensed adult foster homes in most states with the following policy:

Effective October 1, 1977. . . state or local authorities [will] establish, maintain, and insure the enforcement of standards for . . . foster homes . . . in which . . . a significant number of recipients of Supplemental Security Income. . . benefits residents are likely to reside. (Federal Register, January 31, 1978, p. 4020).⁴

In 1980, 12 states licensed adult foster homes. No recent figures are available on how many states currently have adult foster home licensure standards, but within the last year, the Department has had numerous inquiries from other states requesting licensing information, thus indicating activity in the area. It should be mentioned that neither the name for adult foster homes, nor the definition, are uniform across the country. Adult foster homes are variously called "personal care homes," "family care homes," "supervisory care homes," and "family life homes," to name a few. While some state standards allow no more than three residents in a home, some allow as many as 20 residents.

The Department initially drafted a rule for county certification of adult foster homes in 1969. It was adopted in 1971 and became known as Rule 51. Under part 9555.6400 county social service agencies are responsible for "approving" homes within their jurisdiction. Part 9555.6300 provides limited safeguards. County agencies soon became concerned about the need for more extensive standards to protect impaired residents in these homes. In 1983, the Department commissioned a study by the Urban Institute which recommended clearer, more specific rule standards.⁵

Federally-allowed medical assistance waivers for the elderly and mentally retarded also impacted state licensure of adult foster homes.⁶ Alter-

natives to institutionalization were needed. It followed that standards were needed to assure quality of care and provide protection for vulnerable adults placed in various program settings and living arrangements. These influences eventually resulted in amendments to the Public Welfare Licensing Act in 1984 to require state licensure of adult foster homes.

Minnesota currently has adult foster homes certified in 60 of the 87 counties. There are approximately 825 adults in these homes. The use of adult foster homes has advanced from the three traditional target population groups - mentally ill, mentally retarded, and frail elderly - to more creative configurations for adult living. They now also serve the chemically dependent, physically handicapped, and young adults with children. Adult foster homes are used as adult shelters, safe homes for battered women, and as respite care homes. (Exhibit V)

Rule Development Procedure

The Notice of Solicitation for parts 9555.5105 and 9555.6105 to 9555.6265 was published in the State Register on May 13, 1985 (Exhibit A). The Notice of Solicitation for parts 9555.5105 to 9555.5705 was published in the State Register on February 24, 1986. (Exhibit C.)

In June 1985 a task force was convened to propose licensure standards for adult foster homes. Task force composition was drawn from the 87 county agencies, the foster home provider community, a foster home provider organization, consumers, advocacy groups representing target populations using adult foster homes, experts on health and safety, and private agencies (Exhibit B). Task force members met on June 5, June 28, July 2, July 8, July 9, July 10, July 23, July 25, August 22, August 28, September 3, and September 4 or 1985. (Minutes of meetings contained in Exhibit D.)

On February 28, 1986, a task force was convened to begin review of rule parts 9555.5105 to 9555.5705 governing the administration of social services for adults in foster care. (Members of the adult foster care service task force are contained in Exhibit F. Minutes of the February 28 meeting of the adult foster care task force are contained in Exhibit E.) The Department then made the decision to combine the rule parts governing licensure and services and, thus, combined the task forces for the remaining meetings. (Minutes of the combined task force meetings are contained in Exhibit G.)

9555.5105 DEFINITIONS

This part defines words and phrases that have a meaning specific to parts 9555.5105 to 9555.6275, that may have several possible interpretations or that need exact definition to be consistent with statute and other Department rules.

Subpart 1. Scope. This provision is necessary to clarify that the definitions apply to the entire sequence of parts 9555.5105 to 9555.6265.

Subpart 2. Adult. This provision is necessary to define to differentiate an adult foster home from a child foster family home. The definition given is reasonable because it is consistent with the definition of "adult"

in Minnesota Statutes, section 645.451 and with the definition in Minnesota Statutes, section 245.782, subdivision 3, which specifies that a child is anyone who has not reached his or her 18th birthday.

Subpart 3. Adult foster care. This definition is necessary to differentiate the type and level of care provided to a functionally impaired adult within the adult foster home from other community-based care or residential living situations. It is necessary to designate the proper level of care necessary for the licensure of an operator and to assure the proper provision of service to residents.

Adult foster care is viewed as a "home" environment where basic custodial, domiciliary, or maintenance care is provided by persons who do not have, or are not required to have, professional licensure, training, or certification. This does not preclude a person with professional training, licensure or certification, such as a nurse or qualified mental retardation professional, from licensure as an operator or from employment as a caregiver. Nor does it prohibit additional licensure and overlap of supportive living services in the residence or the provision of other community-based services such as home health care services within the residence.

Adult foster care minimally means a safe, clean, protected, "home-like" place to eat, sleep and socialize with someone available for supervision. Burte, Harde, and Gornish in Services to Disabled Adults (p. 49) note that "domiciliary care" is usually defined as the long-term provision of a room or apartment, or room and board, which includes personal care, supervision, and/or oversight." "Foster care," Burt et. al. say, is perceived by counties in Minnesota as a "normal living environment without 'curative' pressures. Training for the provider involves coping technics, not counseling" (p. 119).

The definition is reasonable because it is consistent with the concept described in currently adopted part 9555.6200 which states that a foster home is one in which "regular household care is provided." It is described as a setting for persons who have "difficulty with or are unable to do household tasks and yet are not considered to be in need of nursing home care."

The definition is further reasonable because it is consistent with the general view of adult foster care in other states. Wisconsin describes "adult family homes" as:

A family living arrangement for one or two persons which provide the structure and social support needed to maximize physical and emotional functioning of adults who can no longer be maintained in their own home through community resources. It is characterized by adequate living space, cleanliness, appropriate heating, lighting, ventilation, and safety precautions, opportunity for privacy, but also for activity and socialization, and nutritious food carefully prepared and attractively served on a regular schedule of family meals. If the disabled or elderly adult is in need of personal care such as help with bathing or dressing, this is provided. But if medical care is needed, this must be

provided by a visiting nurse or other medically-trained person coming into the home. This living arrangement is not appropriate for persons in need of nursing care.

Michigan defines "foster care" in part 400.704, section 4 (5) of the Department of Social Services manual as the "provision of supervision, personal care, and protection in addition to room and board, for 24 hours a day, five or more days a week, and for two or more consecutive weeks for compensation." Georgia in 290-5-35-.01 (a) of state rules defines "personal care homes" as a "building or group of buildings, a facility, a place in which is provided two or more beds and other facilities and services, including room, meals, and personal care for nonfamily ambulatory adults."

Georgia, then further defines "personal care" as:

protective care and watchful oversight of a resident who needs a watchful environment but who does not have an illness, injury, or disability which requires chronic or convalescent care including medical or nursing services. Protective care and watchful oversight includes, but is not limited to, a daily awareness by the management of the resident's functioning, his or her whereabouts, the making and reminding a resident of appointments for medical check-ups, the ability and readiness to intervene if a crisis arises for a resident, supervision in areas of nutrition, medication, and actual provision of transient medical care, with a 24-hour responsibility for the well-being of the resident.

Nebraska defines an "adult family home" in its social service program manual (6-001.02) as a "residential living unit certified to provide full-time residence and minimal supervision and guidance to no more than three guests age 19 or older. Service includes board and room with meals, standard furnishings, equipment, household supplies, laundry service, and facilities to ensure client comfort."

Finally, in part 87000, (A) (8) governing "residential facilities for the elderly," California rules state:

care and supervision are those activities which if provided shall require the facility to be licensed. It involves assistance as needed with activities of daily living and the assumption of varying degrees of responsibility for the safety and well-being of residents. Care and supervision shall include, but not be limited to, any one or more of the following activities provided by a person or facility to meet the needs of the residents:

- (A) assistance in dressing, grooming, bathing and other personal hygiene;
- (B) assistance with taking medication, as specified in section 87610;

- (C) central storing and distribution of medications, as specified in section 87610;
- (D) arrangement of and assistance with medical and dental care. This may include transportation as specified in section 87610;
- (E) maintenance of house rules for the protection of residents;
- (F) supervision of resident schedules and activities;
- (G) maintenance and supervision of resident monies or property; and
- (H) monitoring food intake or special diets.

California specifically states in part 87000 (37) that "room and board" means a living arrangement where care and supervision is neither provided nor available.

Thus, for purposes of parts 9555.5105 to 9555.6265, those residences housing functionally impaired adults where adult foster care is not provided or where only room and board is delivered would not require foster home licensure. There would be no provision of supervision, protection and household services, personal care, living skills assistance, or training.

Not all of the elements of adult foster care would have to be present to require licensure. The provision of food, lodging, protection, supervision, and household services are basic. Personal care assistance, household and living skills assistance or training, medication assistance, and assistance with cash resources may also be present. Adult foster care must include supervision and the provision of food, lodging, and household services, at a minimum.

Adult foster care is tailored to meet the individual needs of each resident. Depending on the individual's assessed need for personal care, living skills assistance or training, medication assistance, or assistance with cash resources, those services may be provided. Additional mobility modifications to the residence may also be necessary.

Finally, the definition is reasonable because it has been reviewed by the Department's adult foster home and adult foster care services task forces and found to be consistent with the type and level of care now provided and expected in foster homes currently approved by county social and human service agencies.

Subpart 4. Adult foster care services. This definition is necessary to differentiate the general assessment and placement referral services provided by the county board to persons seeking an adult foster home from those other services provided through the Community Social Services Act (CSSA). It is a reasonable definition because adult foster care is one of the community-based social service functions that can be identified by the county board as a means to meet the needs of the various target populations in the county. Parts 9550.0010 to 9550.0092 are the means that is used by

the county board to identify and plan for the general social service needs of county residents.

Subpart 5. Adult foster home. This definition is necessary to establish the specific meaning given the term "adult foster home" within these rule parts. It is necessary to define "adult foster home" in terms of specific characteristics that make a residence subject to licensure as an adult foster home so persons affected by, and persons administering the rule may determine whether or not a residence is subject to licensure as an adult foster home.

In defining the adult foster home it is reasonable to include situations of care having a variety of motivations. Adults being cared for, whether for profit or for charitable reasons, have the same needs. The phrase "for gain or otherwise" is also part of the definition of residential facility in Minnesota Statutes, section 245.782, subdivision 6. The word "financial" has been added to clarify the kind of gain intended.

It is necessary to specify how many functionally impaired adults may live in the adult foster home to distinguish it from other licensed residential facilities.

It is reasonable to include the provision of care to functionally impaired adults as one of the characteristics that make the residence subject to licensure because serving functionally impaired adults differentiates an adult foster home that must be licensed as mandated in Minnesota Statutes, section 245.782, subdivision 6, from a home that is exempt from licensure. An adult foster home is distinguished from other types of residential facilities, or homes in general, by the services provided.

The "24-hour care" qualification is necessary to distinguish an adult foster home from other care arrangements of less than 24 hours, such as adult day care.

Stipulation that "adult foster care" be provided is necessary and reasonable because it distinguishes adult foster homes from other living arrangements such as Semi-Independent Living Services (parts 9525.0900 to 9525.1020). Food, lodging, protection, supervision, personal care, household services, and living skills training are necessary and reasonable service specifications for functionally impaired adults who may have problems with activities of daily living, thought, or mood impairments or who need support to live in the community.

Subpart 6. Applicant. This definition is necessary to specify who can take the role of the applicant referenced throughout the rule parts. It is reasonable to limit authority for applying for licensure to the same individual or body that is legally responsible for the operation of the adult foster home as specified in Minnesota Statutes, section 245.782, subdivision 13. In the interest of brevity and clarity, it is also reasonable to substitute the applicant for the several words it represents.

Subpart 7. Building official. This definition is necessary because the term "building official" has a specific meaning within the rule parts and in Minnesota Statutes. Persons governed by the rule need to know what

or who a building official is to comply with the requirements that an inspection of the residence may be conducted by a building official to determine if hazard is present. The definition used is reasonable because it is consistent with the definition in Minnesota Statutes, section 16B.65.

Subpart 8. Caregiver. This definition is necessary because the term has a meaning specific to the rule parts. Persons governed by the rule need to know this meaning because the term is used throughout the rule parts in connection with reporting requirements and other responsibilities that must be met by those who give direct care to a resident in the adult foster home. Meeting the responsibilities assigned to caregivers requires that those persons connected with and licensing the adult foster home know who caregivers are.

Subpart 9. Commissioner. This definition is necessary to establish that "the commissioner" referred to through the rule parts is the commissioner of the Department of Human Services and to indicate that the meaning of "commissioner" extends to include any authorized representative of the commissioner. The definition given is reasonable because it is consistent with the definition given in Minnesota Statutes, section 245.782. Since it is physically impossible for the commissioner to personally fulfill the many duties and responsibilities assigned it is necessary to delegate responsibility and authority. It is, therefore, reasonable for the definition to give notice to those affected by the rules that this delegation occurs. Substituting "the commissioner" for the 14 words it represents is also reasonable for clarity and brevity.

Subpart 10. County board. This definition is provided in Minnesota Statutes, section 256E.03, subd. 6. The term is defined so it is not necessary to repeat the more lengthy term "county board of commissioners" throughout the rule parts. This is a reasonable definition consistently applied to this abbreviated term by others in the field of social services. Minnesota Statutes, sections 402.01, subdivision 1, and 402.02, subdivision 2 permits a county board to designate a human services board to perform the human service functions now assigned by law to county boards. Where a county board has elected to designate a human services board, it is the human service board which is responsible for carrying out the county duties relating to community social services. It is necessary to include "human service board" within the definition of the term "county board" to avoid repetition of the more lengthy term "county board of commissioners or human service board" throughout the rule parts.

Subpart 11. County of financial responsibility. The term "county of financial responsibility" is used throughout parts 9555.5105 to 9555.6265 to identify various responsibilities of specific county boards. It is necessary to define this term so that these counties can be distinguished from each other. This definition is reasonable because it incorporates the definition found in Minnesota Statutes, section 256E.08, subdivision 7, (a) to (c) and is consistent with the definition contained in part 9550.0010, subpart 7.

Subpart 12. Department. This definition is needed to specify that "the department" referred to throughout parts 9555.5105 to 9555.6265 is the Minnesota Department of Human Services. The Department of Human Services is

designated in Minnesota Statutes, sections 245.782 to 245.811, through reference to the commissioner, as having certain responsibilities in carrying out the provisions contained in the proposed parts. Substituting "department" for the full name of the agency is reasonable because it contributes to brevity and clarity.

Subpart 13. Fire marshal. Minnesota Statutes, section 245.783, subdivision 2, allows the commissioner to request and coordinate licensing inspection assistance from the state fire marshal. Certain requirements in the rule parts specify that the adult foster home be inspected by a fire marshal. Defining "fire marshal" is necessary because the term has a specific meaning within the rule parts and in Minnesota Statutes. Persons governed by the rules need to know what or who a "fire marshal" is to comply with the requirements. The definition is consistent with Minnesota Statutes, section 299F.011 which outlines state and local authority relative to safety and enforcement of the Minnesota Uniform Fire Code.

Subpart 14. Functionally impaired adult. Under Minnesota Statutes, sections 245.781 to 245.812, licensure as an adult foster home is required for a residence serving "functionally impaired adults" and is not required for a residence not servicing functionally impaired adults. It is, therefore, necessary for persons governed by and persons administering the rule to know what is meant by the term "functionally impaired adult" to determine whether a given residence is subject to licensure as an adult foster home. It is necessary that the definition of "functionally impaired" used in the rule parts licensing adult foster homes be the same as the definition in statute. The definition used is consistent with Minnesota Statutes, section 245.782, subd. 14.

Subpart 15. Health authority. This definition is necessary because the term "health authority" has a specific meaning within the rule parts and in Minnesota Statute. Persons governed by the rule need to know who or what a health authority is to comply with the requirements that certain reporting or determination of health hazard or equivalent alternative means to ensure health be made by a health authority. The definition given is reasonable because it is consistent with Minnesota Statutes, chapter 145 that outlines local and state authority and jurisdiction and uses the term "health authority."

Subpart 16. Household member. This definition is necessary because the term has a meaning specific to the rule parts. Persons governed by the rule need to know this meaning because the term is used in connection with the qualifications of household members. Meeting those qualifications is dependent on knowing who the household members are. The specific time requirements are reasonable because they coincide with time requirements for licensure of care in facilities, Minnesota Statutes, section 245.782, subdivision 9.

Subpart 17. Household services. Adults living in an adult foster home cannot usually maintain a home themselves and must depend on the operator of the adult foster home to provide certain services. Often the adult foster home acts as a teaching setting for these activities. Basic tasks have been included in the definition which are both specific and general. If these tasks were not specified, adult foster home operators would not know what

was expected of them. This definition is, therefore, necessary and reasonable.

Subpart 18. Individual service plan. This definition is necessary to define because the term has a meaning specific to the rule parts. Persons governed by and persons administering the rule need to know the meaning to achieve or monitor compliance because the rule parts require that an "individual service plan" be part of the personal record of a functionally impaired adult placed in foster care in certain situations. The definition is necessary to differentiate the "individual service plan" developed for some residents from the "individual resident placement agreement" required for all. The definition is reasonable because it refers to the plan that is the basis for community social services provided to a client which is developed by the local agency as specified in rule parts 9550.0010 et. al. (Rule 160). It is also reasonable because it refers to the plan that is the basis for services provided to persons with mental retardation or a related condition which is developed under parts 9525.0075. The individual service plan (ISP) serves as a guide to the adult foster home operator in providing and coordinating services for a resident. Not all residents, however, will have an ISP. Those which do not apply for or accept community social services or who are not mentally retarded, may only have an individual resident placement agreement.

Subpart 19. Individual resident placement agreement. This definition is necessary to define a term which has a meaning specific to the proposed rule parts. Persons governed by, and persons administering, the rule need to know the meaning to achieve or monitor compliance. The rule parts require the development of an individual resident placement agreement for each resident. The definition is reasonable because it clarifies the subject matter of the basic agreement and the parties who must sign the agreement. It is reasonable because it specifies the function and content of the plan and, thus, provides a standard which may be uniformly applied in determining whether or not the individual resident placement agreement has been developed as required. Such an agreement is consistent with current practice in the social service field. Item A is necessary to verify that the adult needs adult foster care. Item B is necessary to specify exactly which adult foster care services the operator will provide and to what extent. This eliminates confusion and misunderstanding about what is expected of the operator. Item C is necessary to ensure that plans have been made for payment of the adult foster care. Item D is necessary to describe responsibilities related to certain services for the resident which the operator may agree to in order to assist the resident, eliminating misunderstanding about what is expected. Item E is necessary to ensure that the individual resident placement agreement and the individual habilitation plan do not conflict with each other. It is necessary for the plans to agree so the goals and objectives of the resident are supported. Item F is necessary to ensure that the individual resident placement agreement carries out the specific activities in the individual service plan that relate to adult foster care. These items are reasonable because they clarify the subject matter and content of the agreement. They also specify items directly related to the care given the resident by the operator.

Subpart 20. Legal representative. This definition is necessary because the term has a meaning specific to the rule parts and is used

throughout the rule parts. Persons governed by the rule need to know this meaning because the term is used in connection with meeting responsibilities for incompetent residents. The definition is reasonable because it is consistent with the definition given in Minnesota Statutes, sections 525.539 to 525.6198 or Minnesota Statutes, chapter 252A.

Subpart 21. License. This definition is necessary to ensure that the meaning given the term "license" in the rule parts is the same as the meaning in statute. The definition used is reasonable because it is the same as the definition given in Minnesota Statutes, section 245.782, subdivision 11.

Subpart 22. Licensed capacity. Minnesota Statutes, section 245.783, subdivision 5, requires a license to prescribe the number of persons who may receive care at one time. "Licensed capacity" is used throughout parts 9555.5105 to 9555.6265 to indicate the maximum number of functionally impaired residents who may reside in the adult foster home at any time and receive foster care. The definition is necessary to establish a general term consistent with statute. It is reasonable because it shortens the rule by decreasing the number of words used to refer to a term.

Subpart 23. Living skills assistance. This definition is necessary because the term is a part of the definition of adult foster care. Persons governed by the rule must know its specific meaning. The definition is reasonable because it outlines categories of activities and skills needed by a resident living in a community setting. It is reasonable because it allows for the activities to be performed by a caregiver on behalf of the resident or taught to the resident, thus, providing flexibility in meeting individual needs.

Subpart 24. Local agency. Minnesota Statutes, section 245.783, subdivision 3 refers to "the director of any social service agency responsible for licensing" as assisting the commissioner who "shall be responsible for processing applications for licensure." Minnesota Statutes, section 245.782, subdivision 8, defines the commissioner to include "any duly authorized representative of the commissioner." Authority for the local agency of the county board to assist the commissioner in carrying out licensing duties is also found in Minnesota Statutes, section 393.07, subdivision 2, and 256E.08, subd. 1. The definition is necessary to clarify that the term is an abbreviation. It is reasonable to delete unnecessary words in a reference frequently repeated in rule.

Subpart 25. Medication. "Medication" is a word in common use and has several possible meanings. Because requirements for the administration, storage and use of medication are used throughout the rule parts, it is necessary to clearly define the term. Because the intent is to control the administration of prescription substances, it is necessary to define medication in this manner. The definition reasonably satisfies the need and has been reviewed by Mike Tripple, assistant director of the Health Resources Division of the Minnesota Department of Health and Dr. Frederick Ferron, medical director, Department of Human Services.

Subpart 26. Minnesota Uniform Firm Code. It is necessary to define this term because the residence which is to be licensed must be safe and

free of hazard and in compliance with MUFC provisions. The operator seeking licensure and those applying it must, therefore, know what code is specified. The commissioner is mandated to ensure the safety of residents in the home. The MUFC establishes fire safety standards for homes throughout the state. The rule provides for an initial fire inspection by a fire marshal. It is necessary that the inspection be conducted by a person expert in the area of structural and fire safety standards to ensure that the home is safe.

The MUFC establishes a standard for foster homes which is consistent with the standard for family homes in general. The standard is that care be given in a residential dwelling unit occupied by someone as home. The fire safety standard established is for residential occupancies. An initial inspection is necessary to verify that the facility is in a dwelling unit - not a store front or the garage. The state building code standard is not solely adequate because it only applies to new construction or changes in occupancy. It is necessary and reasonable that a minimum standard be established that applies to all homes. The standard does not require that existing homes be brought up to current building code standards. The MUFC standard would ensure that all foster homes, regardless of location or licensed capacity, at least meet the minimum standard for a safe residential occupancy which has been adopted statewide. The Minnesota Fire Code has been adopted statewide and thus is a general standard for "safe" for the state. It is reasonable to reference the Minnesota Uniform Fire Code because this standard may be applied retroactively to all dwellings throughout the state, thus ensuring that all dwelling units, regardless of date of construction, meet some minimum fire safety standard.

Subpart 27. Operator. This definition is necessary to ensure that the term "operator" has the same meaning in the rule parts governing adult foster home licensure as it has in statute. This consistency is needed because the term, as defined in Minnesota Statutes, section 245.782, subdivision 13, assigns legal responsibility for the operation of a facility to the operator. It is necessary for the rule parts to reflect the same designation of responsibility as statute. The definition is reasonable because it is the same as the definition in statute.

Subpart 28. Personal care. This definition is necessary because the term is part of the definition of adult foster care. Persons governed by and applying the rule must know its specific meaning. The definition is reasonable because it outlines activities of care and hygiene needed daily by the resident. It is reasonable because the definition allows for the activities to be performed by a caregiver on behalf of the resident or taught to the resident.

Subpart 29. Protection. This term is necessary to define because it may have several meanings in common use. It is necessary to define so those persons enforcing the rule provisions and those licensed to operate an adult foster home have a clear understanding of their responsibilities. As used throughout the rule parts the definition means protection as defined in the Vulnerable Adults Act, Minnesota Statutes, section 626.557. This is a reasonable definition because subdivision 1, "Public Policy" states that:

the Legislature declares that the public policy of this state
is to protect adults who, because of physical or mental disability

or dependency on institutional services, are particularly vulnerable to abuse or neglect; to provide safe institutional or residential services or living environments for vulnerable adults who have been abused or neglected; and to assist persons charged with the care of vulnerable adults to provide safe environments.

It is reasonable that the operator maintain a safe environment for the adults in care, provide an environment that is free of neglect and abuse as defined in 626.557, and report any incidents of suspected abuse or neglect.

Subpart 30. Related. This term is one that is in common use and is used throughout the rule parts. It is a term that may have several meanings. It is necessary to have the meaning clearly specified so those seeking licensure and administering the rule parts, have a clear and consistent understanding of the meaning. Minnesota Statutes, section 245.782, subdivision 10 of the Public Welfare Licensing Act defines this term. The definition used is reasonable because it is the definition used in statute.

Subpart 31. Residence. This term is one that is commonly used and may have several meanings. It is necessary to define so there is a uniform and consistent application of the rule parts. The task force determined that it is necessary to clarify that adult foster home care be provided in a "home-like" setting and that it be differentiated from other residential or community-based care provided in a health care occupancy, educational, or institutional occupancy specifically designated for large group care or acute care. In the building code, the classification of a structure or building as a "residence" relates directly to the kind of construction, occupancy load, and use to which the structure is put. Construction materials, exit requirements, lighting, ventilation, wall and floor surfaces may vary. The definition of residence proposed would prohibit use of a structure, such as a warehouse, the commercial portion of a mixed-occupancy structure, garage, shed, car port, or agricultural building, for foster care. Such nonresidential occupancies may present hazards such as exposed venting, unguarded lofts, shafts, open unfinished walls, or unsuitable or nonexistent windows which are not safe for residents. The definition is further reasonable in that it differentiates a "dwelling unit" from other community-based residential occupancies such as nursing home or "residential" hotel or rooming house - where only guest rooms or dormitory rooms are provided and congregate space for living and dining may or may not be available. The residence not only must provide sleeping space, but living, dining, kitchen, and bathroom space as well as specified in the State Building Code, section 405. Thus, a "home-like" environment is specified.

Subpart 32. Resident. This definition is needed to establish a meaning for the word "resident" that is not subject to interpretation so those governed by and administering the rule may readily determine and agree on who is a resident. This need is underscored by the fact that the term "resident" plays a key role in setting forth the adult foster home operator's responsibilities with respect to key compliance areas such as the licensed capacity of the adult foster home. The definition given is reasonable because it specifies a service relationship to the operator that no other household member or roomer has.

Subpart 33. Roomer. This definition is necessary because the term has a meaning specific to the rule parts. Persons governed by the rule need to

know the meaning because the term is used in connection with qualifications of persons who may be present within the residence and in contact with functionally impaired adults and is used in connection with the capacity limit of the home. The term is reasonable because it distinguishes roomers from other household members related to the provider and caregivers who do not require adult foster home services.

Subpart 34. Service agency. This definition is necessary to clarify what agency is responsible for the provision of the adult foster care services specified in the rule parts and to differentiate this agency's responsibilities from those of the local agency. The service agency could also be the local agency. However, in some cases they are not one and the same and must be distinguished from each other.

Subpart 35. Social worker. This definition is necessary to clarify who and with what qualifications should coordinate and be responsible for the proper assessment and placement of the functionally impaired adult seeking and adult foster home. The department's foster care task force recommended that the person responsible not be a case aide but a social worker with professional qualifications in the area of social work practice and human services needs assessment, referral, and placement. The definition of social worker is reasonable because the Minnesota Merit System description contained in Exhibit H for the position of "social worker" describes a person who can perform casework management, direct service programs, interview clients, counsel families, assess problems, do referrals, and supervise foster home placements. The definition is reasonable because the merit system or county equivalent (not coded) is the system and standard currently used by counties in their current assessment of and need for foster care. The definition is reasonable because it recognizes the county practice of using the assessment and placement qualifications of social work professionals in other social service agencies.

Subpart 36. State Building Code. It is necessary to define this term to clarify the specific code referred to in the rule parts, to avoid confusion as to the "appropriate applicable" code, and to ensure consistency in application and assessment of structural hazard statewide. The definition is reasonable because it is consistent with Minnesota Statutes, section 16B.59 and Minnesota Rules, Chapter 1300.

Subpart 37. Supervision. This definition is necessary because the term is part of the definition of adult foster care. Persons governed by the rule must, therefore, know its specific meaning. The definition is reasonable because it outlines an activity and degree of responsibility essential to the concept of adult foster care - that of overseeing and being daily aware of the needs of an individual who can no longer function independently. The need for supervision is a factor which differentiates an adult who may be functionally impaired and in adult foster care from one who can live on his or her own. The definition proposed is similar to that for "personal care" from Georgia which uses the terms "watchful oversight" and "daily awareness." Functionally impaired adults in a foster home may have a range of emotional, physical, and mental impairments. They will thus have a wide range of supervisory needs. Some adults may need constant supervision. Others may be able to live fairly independently with supervision only at night or in the evening. The Department wanted to allow for

some discretion in planning to meet individual needs, yet assure that some minimum level of supervision be provided on a daily basis to achieve the concept of oversight and daily awareness. Supervision in excess of the minimum in item B may be required if the resident's individual service plan so indicates. At a minimum, however, there must be regular, ongoing supervision daily, on-site, during normal sleeping hours. Item B is reasonable because it differentiates the adult foster home from a residence where persons are living independently and receiving semi-independent living skills (SILS) training. In the latter setting the individual is capable of independent living with intermittent and less than daily on-site assistance and training. The definition and provision in item B is reasonable because it allows for the situation where an adult may function well during the day and the provider may be employed away from the residence regularly for part of the day. Conversely, the functionally impaired adult may be employed outside the residence or use adult day care or day activity center services, and require supervision only during evening hours.

Subpart 38. Variance. "Variance" is a term that has several possible meanings. Its use in these rules has a specific meaning. A definition is necessary to establish this meaning. Minnesota Statutes, section 245.802, subdivision 1, authorizes the commissioner to develop rules and regulations for granting licenses or making licenses probationary. Minnesota Statutes, section 245.783, subdivision 3, authorizes the commissioner to issue a provisional license if his study shows that an applicant cannot substantially meet all applicable laws and rules but that the deviations do not threaten the health, rights, or safety of the persons served. Minnesota Statutes, section 245.782, subdivision 11, requires the license issued by the commissioner to set the terms of licensure. Therefore, defining a variance as permission from the commissioner to depart from a rule but only if the health, safety and rights of the residents are assured by some other equivalent means is a reasonable interpretation of statute. It is also reasonable to define the permission as written permission so there is evidence of the action.

Subpart 39. Vulnerable Adults Act. It is necessary to define this term because persons governed by the rule must comply with its provisions and the term is repeated throughout the rule parts. The definition is reasonable because it is identical with statute definition.

9555.5205 APPLICABILITY

It is necessary to state the applicability of parts 9555.5105 to 9555.5705 so that county boards may ascertain their role and responsibilities with respect to the rule parts and local agencies, service agencies, residents, prospective residents, and other interested parties can determine whether or not the rule parts apply. This section is reasonable because it assists the public in determining the relevance of and their interest in the rule parts.

9555.5305 PURPOSE

It is necessary to inform the public of the purpose for promulgation of the rule parts and of the Department's policies regarding implementation of

the rule parts. It is reasonable because it is consistent with the intent of Minnesota Statutes, chapter 256E (the Community Social Services Act). Minnesota Statutes, section 256E.02, states the purpose of the Community Social Services Act: to establish a system of planning for and providing community social services administered by the boards of county commissioners of each county under the supervision of the Commissioner of Human Services. Section 256E.08, subdivision 1, restates the responsibilities of county boards for administration, planning, and funding of community social services, and authorizes county boards to contract for or directly provide "an assessment of the needs of each person applying for assistance which estimates the nature and extent of the problem to be addressed and identifies the means available to meet the person's needs." This section also states "these diagnostic and evaluation activities shall evaluate the functioning of each person with regard to an illness or disability, screen for placement, and determine the need for services."

9555.5405 FOSTER HOME DEVELOPMENT

It is necessary to address the development of adult foster homes because without licensed adult foster homes a service agency cannot provide adult foster care services to residents or prospective residents of adult foster homes. Frequently there would be no adult foster homes in a county if the local agency did not take affirmative action to solicit and develop them. The Adult Foster Care Manual (Department of Human Services) states that the "primary goal of any foster home recruitment campaign is to license within a reasonable time period a predetermined number of new foster care providers." The manual indicates that the experience of attempting to recruit quality foster homes is complex and can be frustrating. In addition, the manual recommends that certain steps be taken to enhance results as follows: Step (1) obtaining agency commitment; Step (2) knowing the program and what to look for in potential providers; Step (3) identifying clear, measurable, and realistic goals and objectives; Step (4) consideration of forming a task force or committee; Step (5) use of a variety of recruitment methods. (Exhibit J.) The standard requires only the "implementation" of a recruitment plan rather than recruiting the number of homes specified as needed in the Community Social Services Plan according to parts 9555.0010 to 9555.0092 which would be unreasonable because of all of the unknown factors in recruitment. For these reasons, this standard is reasonable.

9555.5415 LICENSING ASSISTANCE

Subpart 1. Assistance. Minnesota Statutes, section 245.783, subdivision 1, requires the commissioner to offer assistance, consultation, and information to applicants for licensure. Local agencies may be designated by the commissioner to assist in the process because Minnesota Statutes, section 245.782, subdivision 8 defines "commissioner" as the "commissioner of human services" and includes any "duly authorized representative" of the commissioner. Minnesota Statutes, section 245.783, subdivision 3 refers to "the director of any social service agency responsible for licensing" as assisting the commissioner. Minnesota Statutes 393.07, subdivision 2 mandates the county welfare board to assist the commissioner with the admi-

nistration of social welfare services. Awareness of the standards for the operation of an adult foster home is necessary to enable an applicant to meet the requirements for licensure. Parts 9555.6105 to 9555.6275 set these standards. Therefore, it is necessary and reasonable to require the local agency, as the commissioner's delegated licensing representative, to provide consultation, assistance, and information to applicants. Parts 9555.6100 and 9555.6400 currently require "county welfare departments" and the county welfare board to study and issue "approvals" for foster homes. Items A. to E. further delineate the specific duties of the local agency. It is necessary and reasonable to clarify current practice within the rule so the responsibilities between the Department and the local agency are clearly defined. Item A. is necessary and reasonable to ensure that the applicant receives the correct, official approved forms and documents so that consistent information is disseminated and consistent information is received. Item B. is necessary to provide a timely record for monitoring compliance with Minnesota Statutes, section 245.801, subdivision 2. Items C. and D. are necessary so the agency fully understands the extent of its assistance responsibilities. It is consistent with current practice. It is reasonable that the agency continue to "recommend" since the commissioner has not delegated his authority to grant or deny a license. Finally, item E. is necessary to ensure timely compliance with Minnesota Statutes, section 245.812, subdivision 5.

Subpart 2. Unlicensed residences. This subpart is necessary to delineate those procedures to be used by the local agency with respect to unlicensed residences. It is necessary to delineate how complaints may be handled. The provision is reasonable to ensure that complaints and inquiries are handled in a timely manner and a record is kept by the local agency for future reference by the commissioner. It is necessary and reasonable to state the fine and injunction sanctions specified in Minnesota Statutes, section 245.803 to make persons aware of the possible consequences of not obtaining the required license. The provisions for violations of parts 9555.6105 to 9555.6265 and Minnesota Statutes, section 245.791 are reasonable in that they specify a reasonable time frame for investigating complaints concerning possible noncompliance. Reference to the Vulnerable Adults Act and parts 9555.7100 to 9555.7700 ensures consistency with those statutory and regulatory requirements concerning abuse and neglect complaints.

9555.5505 LOCAL AGENCY ORIENTATION AND TRAINING ROLE

Subpart 1. Agency role. It is necessary to specify within rule who is responsible for providing the orientation and training required of operators in part 9555.6185. Sources of and opportunities for training are not uniform throughout the state. Individual county and operator needs, demands, and resources vary. There are, however, some basic orientation topics that need to be covered initially, and thereafter, some general training topics that the Department seeks to mandate for those providing care to functionally impaired persons. This subpart is reasonable because orientation and training must be available within a reasonable distance from a home at hours convenient to operators and caregivers. The provision is written to allow the agency to provide training themselves, to arrange for the provision from other available sources, or to notify operators of the opportunities available within the range, hours, and subjects indicated. This allows the

agency flexibility to use their own expertise in the adult foster care field for specialized instruction or to rely on other educational offerings that relate to the field of adult foster care that are offered through colleges, vocational schools, the county health department, mental health centers, an area agency on aging, or another social service agency. In counties with few adult foster homes this subpart would allow the local agency to set up informal training experiences that meet the specific needs of operators and caregivers. If it is not practical for an individual caregiver to leave the home, self-instruction material and video equipment or independent study courses via public television can be used to meet the training requirement.

Subpart 2. Orientation. This provision is necessary to inform the local agency of the Department's initial information priorities. It is reasonable because the operator and caregivers must be aware of the provisions of the Vulnerable Adults Act and their responsibilities for reporting and protecting the adults from neglect and abuse. At a minimum, the rule standards are designed to ensure the health, safety and rights of a resident. The right to an environment that is safe, clean, and free of abuse and neglect is minimally essential. It is reasonable that the general provisions of the rule be discussed with the operator and caregivers prior to placement of a resident to ensure that they are understood.

Subpart 3. Training information. This provision is necessary to ensure that operators and caregivers are aware of acceptable training opportunities available within the county that satisfy the general provisions of part 9555.6185. It is reasonable because it does not mandate that the agency provide the training, but at a minimum identify sources and opportunities available, thus ensuring that the operator and caregivers are informed of those opportunities which are acceptable to the commissioner and best meet the needs of those persons in the foster home.

9555.5605 ASSESSMENT

Subpart 1. Assessment. This subpart is necessary to clarify who must receive an assessment, who must coordinate the assessment, and what the assessment must contain. The provision meets the requirements of Minnesota Statutes, section 256E.08. It is reasonable to require that persons with mental retardation receiving services under parts 9525.0015 to 9525.0145 have the assessment outlined in those standards to avoid duplication and because those assessment standards have higher requirements. It is reasonable to require that a person who may be applying for community social services have an assessment that is coordinated with the county assessment process in part 9550.0090.

It is reasonable that persons screened for placement in a nursing home or board and care under the Preadmission Screening/Alternative Care Grant program in Minnesota Statutes, section 256B.091 be able to use the assessment required by that program to avoid duplication and because the assessment would likely have been completed prior to the decision of the adult to seek adult foster home placement. In addition, the assessment would require similar information to be gathered on the adult.

It is reasonable to require supervision and overall coordination of the assessment process by a social worker because the assessment must be con-

ducted by a person knowledgeable about human needs and trained in gathering information on functional assessment. The person doing the assessment must also ensure that the assessment is conducted in a manner appropriate for adults with functional impairments. The provision for a social worker to coordinate the assessment is also reasonable because it was recommended by the task force. It is necessary to specify what the assessment must address in subitems (1) to (10) because these are items on which the social worker needs to evaluate whether adult foster home placement will meet the adult's needs in general and whether a specific adult foster home will meet the specific needs of the adult. Items (1) to (3) and (6), (7), (8), and (9) include items found on the adult intake assessment form and the adult functional assessment form developed through a contract with the department. These forms are part of the Adult Services Field Guide to County Social Services Agency Workers (Exhibit W). Item (4) is required to determine whether supervision is needed. This is a key factor because persons not needing supervision may not need adult foster care and may be better served in their own home. Item (5) is required to determine if an adult can be cared for in an adult foster home or needs a higher level of care. Item (10) is required to determine what other types of services the adult may need in addition to the services of an adult foster home.

Subpart 2. Mobility access assessment. It is necessary to require this additional area of the adult's functioning be assessed to find out whether the adult foster home will need modifications. It is reasonable to require consultation with the resident, the resident's legal representative, and other persons knowledgeable about the resident to gather further information. The mobility assessment is reasonable because many, but not all functionally impaired adults have mobility impairments. These impairments may require individual environmental modifications as evidenced by the committee meeting of the task force held on March 26, 1986. (Exhibit I) According to three operators at the meeting who care for mobility-impaired residents, a standard set of modifications to the residence for all mobility-impaired residents would not meet the needs of their three residents because they all have different impairments. Because modifying homes for accessibility is so expensive and could easily reduce the value of a home on the housing market, only those modifications needed by an individual resident should be required. Sometimes aides may be substituted for costlier structural changes. If general accessibility standards similar to those contained in chapter 1340 of the State Building Code were required "across the board," many mobility impaired adults would not have an opportunity to reside in a foster home and modifications may be made that are not needed. It was, therefore, recommended by task force members, Diane Sprague of the State Housing Finance Agency and Kurt Strom of the Minnesota Council for the Handicapped, that the two agencies determine the items to be in an accessibility checklist and identify which are appropriate modifications and aids for each mobility impaired resident. Consultation with persons informed about accessibility and the resident's condition is necessary because most social workers would need as much information as possible to complete the checklist. This provision is reasonable because it does not require specifically-named persons or qualifications for persons knowledgeable about accessibility because they may vary with each resident and in each community. Confinement of persons in wheelchairs to a level with an exit directly to grade is consistent with the recommendations of the State Fire Marshal.

Subpart 3. Placement standards. This part is needed to set limits on who can be placed in an adult foster home. Item A is reasonable because anyone who is not an adult is a child and, thus, would need to be placed in a foster home that is licensed under parts 9545.0010 to 9545.0230. Item B is reasonable because, under Minnesota Statutes, section 245.781 to 245.812, licensure as an adult foster home is required for an adult foster home that serves a functionally impaired adult and is not required for a home that does not serve a functionally impaired adult. Item C is reasonable because it clarifies that an adult should only be placed in an adult foster home if they desire to be placed. Item D is reasonable because it clarifies that adults should go into an adult foster home because they need the services of an adult foster home to be able to live in the community as specified in part 9555.5105. Item E is reasonable because adult foster home operators and caregivers do not have the qualifications, licenses, equipment, or expertise to provide such care. Item F is reasonable because it is required by parts 9525.0015 to 9525.0145.

Subpart 4. Placement and consumer choice. This subpart is necessary to clarify who chooses the adult foster home for the functionally impaired adult when the adult is appropriate for adult foster home placement. Allowing the adult or the adult's legal representative to choose among the homes determined by the social worker to be appropriate is a way to promote independence and ensure that the adult or the adult's legal representative are involved in the process. This is consistent with the self-determination principle in social work practice.

Subpart 5. Matching. This part is necessary to clarify how the social worker determines which adult foster home is appropriate for the adult. The need to match home and resident characteristics has similarly been supported by Crocket 8.; Evans 9.; Hollier and Hanison, 10.; and Malholm and Barton 11. Brockett 12. says that "the key to successful placement is an ability to match clients to homes." He goes on to say that "when attempting to match an operator with a prospective resident, it is important to consider the personalities and lifestyles of both parties." Brockett also points out that different lifestyles can lead to conflicts between residents, operators, and caregivers. He thinks an operator's request for certain resident characteristics should be taken into account to promote successful placements. Dorgan 13. says responsibility for matching is best left to the judgment of the social worker. This provision is reasonable because it requires the social worker to take into consideration information on the home obtained from the licensing study, information on what the operator's program can offer the resident, and the information from the adult's assessment in matching the adult foster home with the prospective resident.

Subpart 6. Preplacement visit. This provision is necessary to give the resident an opportunity to evaluate the environment by actually being in the environment. This is especially important for those persons with mobility impairments because it may be necessary to make accessibility changes to the home. The visit gives the person an opportunity to meet the operator, caregivers, and household members and discuss the routine of the residence. Cochran, Sran, and Varano 14. have documented cases of "relocation syndrome" causing anxiety and depression in persons with mental retardation who were not adequately prepared for a move to another living arrangement. One

of their recommendations to prevent this syndrome is "site visits to the new facility if at all possible." In 1977 Sherman and Newman¹⁵ studied caretakers in adult foster homes in two major programs in New York.

Caretakers from both agencies studied agreed on the importance of preplacement visits to foster homes by prospective residents. Some caretakers emphasized the value of the visits for themselves in establishing whether an individual had the qualities they were looking for in a resident. Others emphasized the value of such visits to prospective residents. One caretaker indicated that, in general, when people move, "you don't move right in; you go and look the place over first." Another noted that it was most important for the resident already living in a foster home to meet and be satisfied with prospective new residents.

It is reasonable to require the visit only for placements deemed "ongoing" because shorter placements imply an emergency situation or respite situation of a very short duration and situations that are limited in number, even in large counties, and there may be no other placement alternatives. It is reasonable to require that the social worker make arrangements for the visit because a representative of the social worker has information about the resident that the operator must consider when admitting an adult. It is necessary to specify items to discuss to ensure that the operator and resident have mutual information. Item A is reasonable because the needs of the adult are the basis for placement. Item B is reasonable so the operator and prospective resident can determine if the home will meet the prospective resident's needs. Item C is reasonable because the resident may often have a need for services away from the home. It is necessary to determine prior to placement if the operator can meet those needs or if a service agency must arrange for and coordinate, those services. Item D is reasonable to ensure prompt payment or referral for financial assistance.

9555.5705 PROVISION OF ADULT FOSTER CARE SERVICES TO RESIDENTS OF ADULT FOSTER HOMES

Subpart 1. Adult foster care services. It is necessary to state that these provisions apply only to those counties who elect to provide adult foster care services because adult foster care is not a mandated service under parts 9555.0010 to 9555.0092. It is necessary to notify residents or prospective residents of the availability of adult foster homes because they may not be aware of this placement option from the usual methods of notification required in parts 9555.0010 to 9555.0092. For example, they may not be able to see, they may be unable to read due to mental retardation or brain impairment. They may be physically handicapped and not be in places where the county board ordinarily informs citizens of its services. They may be hesitant to accept such services because of stigma and may need further information and explanation. This often happens with older persons who do not wish to be "associated with welfare." Functionally impaired adults are likely to need additional services to stay in the community whether they are generic community services, health services, or social services.

This provision is reasonable because it is consistent with Minnesota Statutes, chapter 256E (the Community Social Services Act). Minnesota

Statutes, section 256E.02, states that the purpose of the Community Social Services Act is to establish a system of planning for and providing community social services administered by the county board under the supervision of the department. Section 256E.08, subdivision 1, restates the responsibilities of county boards for administration, planning, and funding of community social services and authorizes county boards to contract or directly provide "an assessment of the needs of each person applying for assistance which estimates the nature and extent of the problem to be addressed and identifies the means available to meet the person's needs." This section also states "diagnostic and evaluation activities shall evaluate the functioning of each person with regard to an illness or disability, screen for placement and determine the need for services."

Subpart 2. Development of individual resident placement agreement. This subpart is necessary to clarify who is responsible for the development of the individual resident placement agreement, to set timelines, and to ensure that the agreement is coordinated with the resident's individual service plan, if there is one. It is reasonable to assign responsibility for development of the individual resident placement agreement to the service agency because the service agency already is directly responsible for the provision of adult foster care services and the coordination of services in the individual service plan. Because the individual resident placement agreement is a part of the coordination of community social services for the mentally retarded, the service agency is in the best position to make sure the individual resident placement agreement is properly developed. If the services are not coordinated and compatible, the efforts of various service providers might not be aimed at the same goals and objectives and this would negatively affect the resident. It is reasonable to use the individual service plan (an overall plan) as the source of reference in designing the individual resident placement agreement to address the specific care of the resident in the adult foster home and to make sure they are compatible. It is reasonable to provide that the operator has a copy of the individual service plan so the operator is aware and can contribute to and support the overall goals of the resident. Thirty days is a reasonable time to complete the individual resident placement agreement because it gives the service agency, resident, and operator time to observe the resident in the adult foster home in case further evaluation is needed and it is not too long a time period to leave the resident without a structure for care in the adult foster home. If the adult is not receiving adult foster care services under parts 9550.0010 to 9550.0092 or services for persons with mental retardation or a related condition it is reasonable to require that the operator be responsible for the development of the individual resident placement agreement because the operator is responsible for the specific care given the resident in the adult foster home and current practice has routinely allowed the operator and private pay resident to develop the plan for care.

Subpart 3. Placement review. It is necessary to require standards for a follow-up to ensure the health, safety, and rights of a resident with an individual service plan. Item A is reasonable because functionally impaired adults may have complex needs and the provision of adult foster care should be monitored to assure that the placement can meet these needs. If there is a problem with a placement, thirty days is a time span that offers basic protection for the resident and may still allow adjustments in services if needed. It also provides an opportunity for the service agency to assist

the resident and operator in working out perceived problems or gaps in the care of the resident. Item B is reasonable because the service agency responsible for the individual service plan can assess whether further assistance is needed and what kind of assistance is needed to meet the goals and objectives of the resident. The service agency is knowledgeable about the resident from the assessment and in touch with community resources that can assist the operator in providing adult foster care. Item C is reasonable because the resident may have a crisis and the service agency is in the best position to determine the needs of the resident in an emergency or crisis situation. Residents with individual service plans often have complex needs. Specific intervention technics may be helpful and the service agency is most likely to be aware of these technics. This is also reasonable because a caregiver needs support in handling difficult behaviors of some residents. If the caregiver knows this support is available, the caregiver is most likely to try to work through problems without involuntarily discharging the resident which is not usually in the best interest of the resident. Item D is reasonable because it is required by parts 9555.7100 to 9555.7700.

9555.6105 APPLICABILITY AND PURPOSE

This section is necessary to assist the public in determining the relevance of and interest in rule parts 9555.5105 and 9555.6105 to 9555.6265. Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2, require the licensing of residential facilities. Minnesota Statutes, section 245.782, subdivision 6, defines "residential facility" as "any facility. . . which. . . regularly provides one or more persons with a 24-hour per day substitute for care, food, lodging. . . supervision. . ." (emphasis added). Adult foster homes are not currently licensed by the department; instead they are "approved" or "certified" by "county welfare departments" under Minnesota Rules, parts 9555.6100 to 9555.6400. Promulgation of parts 9555.5105 and 9555.6105 to 9555.6265, and consequently, the repeal of parts 9555.6100 to 9555.6400, was authorized by 1984 Laws of Minnesota, Chapter 542, sections 1, 4, 5, and 7. Section 1 amended the definition of "person" in Minnesota Statutes, section 245.782, subdivision 2, to include ". . . for purposes of adult day care, adult foster care, and supportive living residents, an adult who is functionally impaired" (emphasis added). Section 4 amended Minnesota Statutes, section 245.782, by adding a definition of "functionally impaired." Section 5 amended Minnesota Statutes, section 245.791, by no longer exempting from licensure "a day care or residential facility serving fewer than five physically or mentally handicapped adults." Section 7 [now Minnesota Statutes, section 245.792] authorizes the commissioner to promulgate rules to implement the provisions of sections 1 to 5. The purpose of licensing day care and residential facilities and agencies, for children and adults, under the Public Welfare Licensing Act, is to regulate the provision of care and services and to assure the protection, health, rights, and safety of the persons served.

9555.6115 LICENSE APPLICATION PROCESS

Minnesota Statutes, section 245.783, subdivision 1, requires a residential facility to be licensed and application made on the form supplied by the department. Minnesota Statutes, section 245.783, subdivision 1, requires

the commissioner to offer "assistance, consultation, and information" to applicants for licensure. Including in this part the information about the place to obtain and submit the application form and who is to make the application is reasonable to make the applicant aware of the required application procedure. Minnesota Statutes, section 245.783, subdivision 1, requires that the application for a license be made "in the manner prescribed by the commissioner." The provision indicates the items which must be submitted to complete an application for licensure. The items are the completed, signed department application form and the documents needed by the department to verify compliance with parts 9555.5105 and 9555.6105 to 9555.6265. It is necessary and reasonable to require these items before an application for licensure is "complete" to ensure that applications are not approved before compliance with parts 9555.5105 and 9555.6105 to 9555.6265 can be verified. Minnesota Statutes, section 245.801, subdivision 2, states that "failure of the commissioner to approve or deny an application within 90 days of receipt of a completed application shall be deemed to be an approval of license." If item D were not included in the rule, delays in receiving additional documentation from the applicant on inspections, zoning, caregiver evaluations, or other investigative reports needed to verify compliance could result in an approved license if the delays continued for a period of 90 days or more following submission of the application form (under section 245.801, subdivision 2). This result would clearly be contrary to the intended purpose of licensing. An adequate period of time must be allotted for the department to process complete recommended license approvals and denials.

9555.6125 LICENSING STUDY.

Subpart 1. Access to residence. Minnesota Statutes, sections 245.783, subdivision 3, and 245.804, subdivision 1, require the commissioner to conduct a study and evaluation of the applicant and the residence prior to granting a license. Minnesota Statutes, section 245.804, subdivision 2, requires the operator and applicant to cooperate with the inspection needed for the study by providing access by authorized representatives of the commissioner to the residence, records, and caregivers. Since the residence may include adjacent or adjoining grounds and buildings owned and operated by the operator in conjunction with the provision of adult foster care which may be used by a resident, it is reasonable that access include them to ensure the absence of health and safety hazard. Such buildings may include a garage, carport, or barn. In cases where mobility access is being assessed external walkways or steps may be involved. Access to persons who regularly will have contact with residents is reasonable to ensure compliance with the qualification standards contained in subpart 4 and to exclude the occasional visitor or repair person from the mandated criminal history check. Definition of access to records to mean not only the "right to view" but also "to photocopy" documents, is a reasonable provision in that memorization or manual note taking by an inspector or licensor of pertinent records and documents is not only extremely time consuming, but, in cases of dispute, more prone to error and subjective interpretation. These provisions are consistent with those adopted July 7, 1986, for family and group family day care homes in parts 9502.0315 to 9502.0445.

Subpart 2. Inspections. This provision is necessary to ensure the health and safety of residents. The department must establish proce-

dures to ensure the health and safety of residents. A fire marshal is best qualified to determine the presence of fire hazard within a residence and compliance with provisions of the Minnesota Uniform Fire Code. Minnesota Statutes, section 245.802, subdivision 1, require the commissioner to consult with the fire marshal in developing rules. Requiring an initial inspection of each residence to ensure that it is a residential occupancy and complies with state fire standards for such occupancies is a reasonable way to assure the absence of fire hazard and ensure the safety of residents. An initial inspection will not create an unreasonable burden on fire marshals according to Robert Imholte of the state fire marshal's office. The procedure ensures uniform application statewide. The commissioner cannot be expert in all matters that relate to health, safety, sanitation, and building condition. It is reasonable, therefore, to allow the commissioner to require expert assistance to verify the absence of hazard. The home safety check list (Exhibit Z) provision is a reasonable way to provide the commissioner with the means to verify or measure the degree of hazard present and the extent of threat to health and safety upon subsequent inspections. It is based on rule provisions or standards contained in the Minnesota Uniform Fire Code for residential occupancies. Minnesota Statutes, section 245.783, subdivision 3, prevents the licensing of a residence when the "health, rights, or safety of a resident is threatened." It is necessary, therefore, when a hazardous condition is cited by the experts specified, that it be corrected prior to licensure.

Subpart 3. Study of the applicant. Minnesota Statutes, sections 245.783, subdivision 3, and 245.804, subdivision 1, require the commissioner to conduct a study and evaluation of the applicant and residence prior to granting a license. The local agency has been designated to assist the commissioner with the study in Minnesota Statutes, section 245.783, subdivision 3.

Item A. Minnesota Statutes, section 245.783, subdivision 3, requires the commissioner to conduct a criminal history check of each applicant; operator; household member and caregiver; and requires the Bureau of Criminal Apprehension; a county attorney; a county sheriff or a chief of a local police department to assist the commissioner by providing all criminal conviction data, arrest information, and other criminal history data on these individuals. Minnesota Statutes, section 245.804, subdivision 2, further requires operators and applicants to cooperate with all evaluations conducted, including evaluations concerning the character and qualifications of the personnel of the residence. Subdivision 2 states, "failure to comply with the reasonable requests of the commissioner in connection with the study and inspection is cause for revocation of license or for a denial of application." This provision is necessary to inform applicants, operators, and others of the nature and extent of the criminal history check and to implement the criminal history evaluation required in Minnesota Statutes, section 245.783, subdivision 3. The name, date of birth, and other information specified are minimum requirements to enable the commissioner and sheriff or chief of police, and Bureau of Criminal Apprehension and FBI, if necessary, in obtaining accurate data. It is necessary to limit the number of authorities who may be compelled to assist the commissioner in the criminal evaluation to limit unnecessary delays and paperwork costs related to the licensing process. Five years is a reasonable limit to place on obtaining national criminal data which may disqualify an applicant or opera-

tor from licensure because it is consistent with the five year prohibition for granting a license to an operator whose license was revoked because of noncompliance with applicable rules (or laws) prescribed in Minnesota Statutes, section 245.801, subdivision 6.

Item B. This provision is necessary to aid the commissioner in determining if behavior or conditions are present which may jeopardize the health, rights or safety of residents. Social history information may justify further evaluation of a caregiver or household member prior to licensure, as specified in subpart 5, if the information indicates there is reasonable cause to believe that the operator, a caregiver, or a household member may jeopardize the health, rights, or safety of a resident. Information on an applicant's and caregiver's past or current education status may aid the commissioner in determining the person's ability to meet a resident's individual care and supervision needs. Employment and financial information aids the commissioner in determining the amount of time an applicant or caregiver will spend in the residence (and the amount and extent of supervision provided to a resident), and whether there are financial circumstances which may prevent the applicant from providing proper nutrition, household services and the ongoing daily maintenance needs of a resident. Information on military service, mental health status, chemical dependency, hospitalizations, involuntary termination of parental rights, arrests, admissions, convictions and substantiated instances of neglect or abuse aid the commissioner in determining whether an operator, caregiver, or household member meets the qualifications in subpart 4.

Item C. This provision is necessary to aid the commissioner in determining whether the members or employees of a partnership, corporation, or governmental unit who are giving care to residents or are responsible for the operation of the residence meet the requirements in subpart 4, and to protect the health, rights, and safety of residents. Making available the names and addresses of all owners and board members of a partnership or corporation, an organizational chart and personnel policies enables the commissioner to determine responsibility within the corporation, partnership, or government unit and whether the partnership, corporation, or governmental unit can ensure proper nutrition, sanitation, and other health and safety needs of residents, and whether the persons in the partnership, corporation, or governmental unit with decision-making authority on matters pertaining to the operation can meet the needs of a resident. Making available the names and addresses of all employees involved in the operation of the adult foster home, their personnel records and job descriptions, and the staffing pattern used in the adult foster home also enable the commissioner to determine whether the employees meet the requirements in subpart 4, and whether the job descriptions and staffing pattern will be responsive to the needs of functionally impaired adults seeking admission to the adult foster home.

Item D. This provision is necessary to protect the health, rights, and safety of residents. Requiring three references is not unduly burdensome on applicants, is consistent with common employment practice, and aid the commissioner in determining whether the applicant will be able to comply with the rule parts or whether further evaluation may be necessary.

Subpart 4. Qualifications. This subpart is necessary to clarify what requirements of the operator, caregivers, and household members are essential

to the health, rights, and safety of residents. The qualifications contained in this subpart were recommended by the adult foster home rule advisory task force, caregiver qualifications committee, at meetings held on June 28, July 8, and September 4, 1985. (Exhibit D.). Because a variety of persons may have contact with residents, it is necessary to specify to whom these factors could be applied. It is reasonable to apply these qualifications and requirements to persons actually living in the residence, working with residents, or directly involved in the day-to-day operation of the home. The occasional visitor, friend, acquaintance, or spouse not meeting these qualifications and requirements, but in contact with a resident, should not preclude the operator from obtaining a license or caregivers from giving care.

Item A. This provision is necessary and reasonable to protect the health and safety of residents. Giving care to residents, all of whom are 18 years of age or older and require varying degrees of care and supervision, necessarily requires that the operator and caregivers be sufficiently physically and emotionally mature to assist residents with their daily routine and special needs and able to accept legal responsibility for another person's health and safety. Requiring operators and caregivers to be at least 18 years of age is a reasonable way to respond to these needs. A person who is 18 years of age is recognized as an adult according to Minnesota Statutes, section 645.451. The attainment of adult status is a commonly-accepted criteria for predicting that a person will be mature in behavior and judgment.

Item B. This provision is necessary to safeguard the health of residents. The adverse risk of exposure to reportable communicable disease from persons providing care to residents and from others regularly in the residence must be minimized. For this reason, a physical exam is required of all caregivers providing 30 days or more of care or service per year, and of household members. The requirement that the examination occur within 12 months prior to application for licensure or employment within the home, and be repeated at least once every five years is reasonable because it provides current information about the health of the caregivers and household members and a mechanism for periodic updating of health information in the event that physical exams indicating the absence of reportable communicable diseases are not regularly obtained by a caregiver or household member. A tuberculine test is not required, but was considered and rejected by the adult foster home rule public advisory task force, health and safety issues committee, at its July 25, 1985, meeting. (Exhibit D.). Mike Tripple of the Minnesota Department of Health, a member of the health and safety issues committee, indicated that the tuberculine test requirement is no longer considered necessary by the Health Department's tuberculosis control program given the relatively small incidence of outbreak and the small, isolated foster home setting. Reference to health department rule parts 4605.7000 to 4605.7800, which govern statewide responsibilities for reporting, investigating, and controlling communicable disease, assures consistency with Department of Health rules governing diseases required to be reported by physicians, other health care professionals, schools, and facility operators.

Item C. Minnesota Statutes, section 245.783, subdivision 3, requires the commissioner to conduct criminal history checks of applicants,

operators, caregivers, and household members. Minnesota Statutes, section 245.804, subdivision 2, requires operators and applicants to cooperate with these evaluations. If the persons so specified refuse to provide information for a criminal history check, the commissioner cannot comply with the statutory requirement.

Item D. This provision is necessary to protect the health, rights, and safety of residents. It is reasonable because persons with a history of or substantial evidence indicating behavior of a neglectful or abusive nature pose a risk to the health, safety or rights of residents in care. The provision is reasonable in that it is the same as that adopted for family and group family day care homes for children contained in part 9502.0335, subpart 6, item E, and is consistent with the standard for foster family homes for children contained in 9545.0090 (1).

Item E. This provision is necessary to protect the health, rights, and safety of residents. It is reasonable because it clearly specifies those acts and statutes which directly relate to the operation of an adult foster home, fitness to perform the duties and responsibilities of operators, caregivers, and household members, and the protection of the health, rights, and safety of residents. Minnesota Statutes, section 245.783, subdivision 3, permits a license to be issued only if "the health, rights, and safety of persons to be served are not threatened." Minnesota Statutes, section 245.801, subdivision 4, permits the revocation, suspension, or denial of a family foster care or family day care license upon "reasonable cause," and the immediate suspension of a license if the commissioner finds that the health, rights, or safety of persons to be served are in "imminent danger." It is reasonable to apply these standards for revocation, suspension, and denial to adult foster homes in light of the state's public policies to protect functionally impaired adults from abuse, under Minnesota Statutes, section 626.557, as well as children, under Minnesota Statutes, section 626.556. Therefore, the adult foster home rule public advisory task force recommended that operators, caregivers, and household members be held to criminal history requirements similar to those in the current department rule governing licensure of family day care operators for children, parts 9502.0315 to 9502.0445.

Minnesota Statutes, sections 609.185 to 609.345, 609.365, 609.377, and 609.378 include murder, manslaughter, aiding a person in suicide or attempted suicide, crimes against the person (assault, mistreatment of persons confined, mistreatment of residents or patients, use of drugs to injure or facilitate crime, robbery, kidnapping, false imprisonment, depriving another of custodial or parental rights, and abduction), crimes of compulsion (coercion, attempt to coerce, and interfering with religious observance), sex crimes (sodomy, bestiality, leaving the state to evade establishment of paternity, prostitution - related offenses, and criminal sexual conduct), and crimes against the family (incest, malicious punishment of a child, and neglect of a child). Inclusion of these crimes is reasonable in that it follows the recommendations of the adult foster home rule public advisory task force, and because such assaultive acts against a person would present a risk to the health, rights, and safety of residents. These crimes are also included in the current family day care rule, and in the definition of "crime against the person" found in the Minnesota Commitment Act of 1982, Minnesota Statutes, chapter 253B. Under the Minnesota

Commitment Act, anyone tried for a crime against the person and acquitted pursuant to a verdict of not guilty by reason of mental illness is presumed to be "dangerous to the public."

Minnesota Statutes, sections 609.52, 609.521, 609.525, 609.53, 609.54, 609.551, and 609.821 include theft and related crimes (theft, possession of shoplifting gear, bringing stolen goods into the state, receiving stolen property, embezzlement of public funds, and rustling and livestock theft), and financial transaction card fraud. Inclusion of these crimes is reasonable because many operators and caregivers will be assisting residents with safeguarding cash resources and offering overall protection and safety for personal possessions within the residence. The adult foster home rule public advisory task force recommended that theft and related crimes be included to provide minimum assurances that residents' cash resources and personal property will be protected. These crimes are not included in the family day care rule because providers of child day care do not usually assist with cash or personal property of children.

Minnesota Statutes, sections 609.561 to 609.563, 609.582, and 609.59 include criminal damage or trespass to property (arson, burglary, and possession of burglary tools); sections 609.625 and 609.63 include forgery and aggravated forgery. Inclusion of these crimes was recommended by the task force and is reasonable to provide minimum assurances that residents' cash resources and personal property will be protected and, in the case of arson, to protect the health and safety of residents, many of whom are mobility impaired or have other physical or mental impairments that may limit their ability to evacuate the residence in the event of fire.

Minnesota Statutes, sections 609.687, 609.71, and 609.713 include crimes involving public misconduct or nuisance (adulteration, riot, and terroristic threats). Inclusion of these crimes was recommended by the task force and is reasonable because such assaultive, violent acts against a person or the public would present a risk to the health, rights, and safety of residents, who are especially vulnerable to physical and mental abuse and threats of abuse.

Minnesota Statutes, sections 617.23 and 617.246 include indecent exposure and use of minors in sexual performance. Inclusion of these crimes was recommended by the task force and is reasonable because they are acts of obscenity which would present a risk to the health, rights, and safety of residents, who are especially vulnerable to sexual abuse.

Minnesota Statutes, sections 152.09, 152.096, and 152.097 include crimes involving the possession, use, sale, manufacture, and distribution of illegal drugs and simulated illegal drugs. Inclusion of these crimes was recommended by the task force and is reasonable because such acts present a risk to the health, rights, and safety of residents. Operators, caregivers, and household members involved with illegal drugs that may cause impairments in judgment or physical capabilities would put residents at risk in the event of an emergency and may present a risk to resident in need of medication assistance.

It is necessary and reasonable to require that operators, caregivers, and household members not be awaiting trial or have a conviction of or

admission of any same or similar crime listed in the laws of another state or of the United States or of another country. It would be unreasonable to permit a convicted murderer from Wisconsin, who relocates to Minnesota, to operate, provide care in, or live in an adult foster home if a person who was convicted of a similar offense in Minnesota would be disqualified from licensure or providing care (subject to evidence of rehabilitation). A similar argument exists for operators, caregivers, and household members who have immigrated from Canada (or other countries) where they were convicted of similar crimes. Failure to include this provision would actually discriminate against Minnesota residents who want to be operators, caregivers, or household members, and more importantly, fail to provide adequate protection to residents. The Minnesota criminal code also recognizes convictions under similar federal and state statutes for purposes of determining whether a person has a "prior conviction" or whether a conviction is a "second or subsequent offense"; see, for example, Minnesota Statutes, section 609.346, subdivision 3, (relating to prior convictions under statutes similar to sections 609.342 to 609.345). In addition, where "elements of both law and fact are identical," the criminal code recognizes convictions and acquittals under the laws of "another jurisdiction" for purposes of barring prosecution for the (similar) crime in Minnesota under section 609.045.

Item F. This provision is necessary to ensure the health, rights, and safety of residents. The provision is in the current department rule governing licensure of family day care homes for children, parts 9502.0315 to 9502.0445, and was recommended by the adult foster home rule public advisory task force. Termination of parental rights is a legally-defined process outlined in Minnesota Statutes, sections 260.221 to 260.245. Such terminations are based on behavior or conditions manifested by the person that are deemed to be permanently detrimental to the physical or mental health of the child. It is reasonable to conclude that a person who has been judged unfit to care for his or her own child would also not be fit to care for a functionally impaired adult.

Item G. This provision is necessary to ensure the health, rights, and safety of residents. A diagnosis of mental retardation or a related condition is an indication that the operator or caregiver is not mentally capable of assuming responsibility for and caring for a functionally impaired adult. However, a diagnosis of mental retardation should not automatically be a factor for license denial or disqualification as an operator or caregiver. The intent of this provision is to disqualify a person who has a diagnosis of mental retardation from being an operator or caregiver only if the person's mental limitations would have a negative affect on the person's ability to make sound judgments on matters affecting residents or on ability to give proper care. The provision is reasonable and was recommended by the adult foster home rule public advisory task force, because it provides for a verifiable measure, as opposed to a discretionary interpretation, of mental retardation and related conditions. The provision has been reviewed and approved by the Department's mental retardation division for enforceability and suitability to the adult foster care setting. The mental retardation division concluded that a person who is both diagnosed as a person with mental retardation or a related condition and receiving services under parts 9525.0015 to 9525.0145 (also known as Rule 185) is not qualified to be an operator or caregiver in an adult foster home because he or she has already demonstrated that he or she too, is functionally impaired and in need of services.

Item H. This provision is necessary to ensure the health, rights, and safety of residents. A diagnosis of mental illness may be an indication that a caregiver is not capable of assuming responsibility for and caring for a functionally impaired adult. However, a diagnosis of mental illness should not automatically be a factor for license denial. The intent of this provision is to deny licensure if a caregiver or household member has a diagnosis of a mental illness and the person's condition affects or may negatively affect the ability to make sound judgments and give proper care. License denial for mental illness of a caregiver or household member that is having or may have a negative effect on residents was recommended by the adult foster home rule public advisory task force. The provision is reasonable because it provides a verifiable measure of illness, as opposed to discretionary interpretation of "emotional instability." The intent of this provision is to mandate the study of the situation by the commissioner and consultation with a psychiatrist or licensed psychologist as authorized in subpart 5 to allow the commissioner to determine whether there is evidence to indicate that the mental illness is, has, or may have a negative impact on the ability to care for a resident. This provision is reasonable because it differentiates between mental illness which does and does not (or no longer) affects the ability to give care. The provision has been reviewed by the department's mental health division and Dr. Fred Ferron, medical director of the state hospital system.

Item I. This provision is necessary to ensure the health, rights, and safety of residents. The intent is to disqualify from licensure those operations with persons who are misusing or dependent on drugs or alcohol and there is resultant negative behavior or inability to give proper foster care. Part 9530.2500 defines an intoxicated or inebriated person as someone "incapable of managing his or her own affairs or unable to function in an effective manner because of the use of a psychological or physiological dependency-producing drug, including alcohol." Such behavior would clearly jeopardize the health, rights, and safety of residents. However, clarification of what is meant by "psychological or physiological dependency-producing drug, including alcohol," was necessary. The provision is reasonable in that it prohibits licensure due to the abuse or misuse of a specifically controlled substance which is affecting the ability to give care. The provision does not totally exclude chemical or drug use of any form by a household member, operator or caregiver. Drugs and chemicals may be used to control allergy or illness or may be taken in moderation as the law allows. This provision has been reviewed by the department's chemical dependency division and recommended for consistency with the statutory references cited.

Subpart 5. Evaluation for cause. This provision is necessary to ensure the health, rights, and safety of residents. It specifies those mental health, chemical dependency, social, and family disfunctioning experts who may be used by the commissioner to aid in the determination of behavior or conditions which may negatively affect the health, rights, or safety of a resident. It is necessary that examinations be conducted by persons trained, certified, licensed, or otherwise qualified to give such advice. It is reasonable to allow the commissioner to consult with and seek the expert advice of others qualified to make a judgment in these areas. The department recognizes the need to regulate who may perform these functions by requiring licensure, certification, or training.

Subpart 6. Zoning. This provision is necessary to specify what zoning provisions apply to adult foster homes so the local agency and applicant are aware of them and may comply. It is reasonable because it is consistent with Minnesota Statutes, section 245.812, subdivisions 2, 3, and 4.

Subpart 7. Period of licensure; nontransfer. Minnesota Statutes, section 245.783, subdivision 4, states that a license shall remain in force for up to one year. Subdivision 6 prohibits transfer of the license to a new operator or location. It is necessary for the applicant, operator, and local agency to understand the provisions of licensure and reasonable that the statutory requirements be delineated within the rules so the requirements are complied with.

Subpart 8. Provisional license. Minnesota Statutes, section 245.783, subdivision 3, authorizes the commissioner to make an initial license provisional if the applicant fails to comply with applicable laws and rules immediately, but can and will meet the requirements within one year or less, and the deviations do not threaten the health, rights, or safety of persons to be served. It is necessary and reasonable to state that the deviations must not threaten the health, rights, or safety of the residents so the applicant and local agency are aware of the provision contained in M.S. 245.801, subdivision 4.

Subpart 9. Variiances procedure. Minnesota Statutes section 14.05, subdivision 4, authorizes the commissioner to grant a variance to a rule and states that "before an agency grants a variance, it shall adopt rules setting forth procedures and standards by which variances shall be granted and denied." This subpart specifies the procedures for requesting a variance that the applicant or operator shall use.

The procedures outlined in items A, B, and C are reasonable because they clearly delineate the process that should be followed by an applicant or operator for transmission and review of a variance request. It is the responsibility of the operator to ensure the health, rights, and safety of residents, and is, therefore, the operator's or applicant's responsibility to identify the equivalent alternative means to ensure the health, rights, and safety of residents if a variance is requested. Items A, B, and C were developed in consultation with the respective administration (building code) health, and public safety departments. Expert evaluation of the adequacy of an equivalent alternative to the agreed upon rule parts designed to protect the health or safety of residents is necessary so the health, rights, and safety of residents is ensured. The department is not expert in the areas of health, building or fire codes. Concurrence and approval of the equivalent alternative measures is necessary from a person in that field of specialization.

Subpart 10. Variance standard. This provision is necessary so those seeking a variance know what the standards are for granting the variance. Expert concurrence with the adequacy of any alternative is necessary to ensure health and safety. Minnesota Statutes, section 245.783, subd. 3, states that a license may be issued if rules and laws are substantially met and deviations do not threaten health, rights or safety of residents in care.

Subpart 11. License terms. Minnesota Statutes, section 245.783, subdivision 5, requires the license to prescribe the number and age groupings of persons who may receive care at any one time. Subdivision 6 requires the license to state the date of expiration, the location of the residence, the name and address of the operator, and the rule or rules under which the program is licensed. Including in these rule parts the license terms are necessary and reasonable to assure that the operator and local agency are aware of the statutory requirements.

Subpart 12. Change in license terms. The operator is required to comply with the terms of a license issued by the department. The terms specified on the license are key, critical conditions. The terms of licensure are indications of responsibility for the care and protection of residents. Prior to or in conjunction with any change of these terms, it is necessary that the commissioner give approval. It is reasonable to require approval prior to a change in location of the adult foster home residence so reasonable evaluation and inspection for health and safety occurs. License transfer to another operator or building is not acceptable because legal responsibility must be known and the specified licensing study conducted. An addition of another person to the residence alerts the commissioner to the need for the criminal history checks and any other necessary examinations or evaluations.

Subpart 13. License renewal. Minnesota Statutes, section 245.783, subdivision 1, prohibits operation of an adult foster home without a license. A license may be issued for up to one year. Subdivision 3 requires a study of the applicant and residence before expiration of a license. This is a necessary requirement to ensure continued compliance with parts 9555.5105 and 9555.6105 to 9555.6265. To place the requirement in these rule parts is a reasonable way to make the local agency and operator aware of the time frame for periodic studies and evaluations.

9555.6135 NEGATIVE LICENSING ACTIONS

Subpart 1. Definition. This subpart further clarifies those actions which would cause the operator to cease or suspend operation. The actions are delineated in Minnesota Statutes, section 245.801, subdivision 4. The definition is necessary and reasonable to provide an exact meaning and avoid confusion of the meaning of "negative licensing action" in the context of part 9555.6135.

Subparts 2 to 5. Minnesota Statutes, section 245.801, outlines precise procedures for the commissioner to use when a license is revoked, made probationary, suspended, or when an application for licensure is denied. The local agency is the delegated representative of the commissioner. Placing these provisions within the rule makes information about the operator's respective rights and duties clear and is reasonable in that it aids in compliance with the law.

Subpart 6. Correction orders and fines. This provision is necessary so that the negative licensing actions enumerated within the rule parts are consistent with those authorized by statute. Authorization for correction orders and fines is contained within Minnesota Statutes, section 245.805,

and is a reasonable action to include in that it is a moderate means of action to apply. It is reasonable to give operators notice of all negative actions allowed by statute that may be applied.

Subpart 7. Notice of negative licensing action. Negative licensing action results from operator failure to comply with law and rules protecting the health, safety, and rights of the residents. It is necessary and reasonable to notify the residents and their legal representatives, if any, when the commissioner has decided to take such action, to ensure the health, safety, and rights of the residents in care. Notification ensures that residents and their legal representatives are aware of a situation serious enough to put into question the license (which is, in effect, the state's affirmation that the health, safety, and rights of participants are secure) and can take action on behalf of the resident. Since the notice here involves a proposed licensing action, it is licensing data and may be disclosed under Minnesota Statutes, section 13.46, subdivision 4, which classifies as public data all data "pertaining to persons licensedunder the authority of the commissioner of human services..." Because Minnesota Statutes, section 626.557 specifies detailed and complex procedures in situations where abuse or neglect of participants is reported, referencing the statute here is reasonable.

Subpart 8. Reapplication after revocation. Minnesota Statutes, section 245.801, subdivision 6 specifies that an operator whose license has been revoked because of noncompliance may not be granted a new license for five years following revocation. It is necessary and reasonable to clarify this statutory mandate within these rules so that operators and local agencies are aware of the time period and will comply.

9555.6155 RECORD ON THE RESIDENCE

Minnesota Statutes, section 245.783, subdivision 3, requires the commissioner to undertake licensing studies and investigations prior to issuing or denying a license. Item A is necessary to verify that the application was made on the form issued by the commissioner and complies with part 9555.6115. Item B contains the information verifying the physical health of caregivers and any household member in the residence on a regular basis as required in part 9555.6125, subpart 4, item B. Item C shows compliance with part 9555.6125, subpart 2. Item D shows compliance with part 9555.6125, subpart 2. Items E and F show compliance with part 9555.6125. Item G shows compliance with part 9555.6125, subpart 2, item D. Items H and I show compliance with part 9555.6155. Item J is necessary to verify compliance with part 9555.6125, subparts 9 and 10. Item K is necessary to verify compliance with part 9555.6125, subpart 4. Item L is necessary to show compliance with part 9555.6125, subpart 3.C. Item M shows compliance with part 9555.6235. Item N is necessary to show compliance with part 9555.6245, subpart 6. Item O shows compliance with part 9555.6235, subpart 1.C. Each of the records listed in items A-O serves as the basis of evaluation of both the adult foster home. The requirement is necessary and reasonable to facilitate the study and investigation required of the commissioner by Minnesota Statutes, section 245.783, subdivision 3.

9555.6165 CAPACITY

Subpart 1. Licensed capacity. It is necessary to set a maximum number of residents for an adult foster home to ensure that functionally impaired adults receive the level of care they need in the residence. 1976 Laws of Minnesota, Chapter 243, section 1, state that the purpose of licensing is to regulate the provision of care and service with respect to protection, proper care, and the habilitation and rehabilitation necessary to health, safety, and development. The capacity of four is reasonable with respect to the requirements for supervision of residents contained in the rule. The most common adult foster home setting is usually a family home with a single caregiver or a caregiver couple as specified in the current rule parts 9555.6100 to 9555.6400. An adult foster home setting is chosen for functionally impaired adults who need a "home-like" setting or adults who are coming from an institutional setting and for whom a "normal" environment is desired. Four residents in a home is a natural point to limit capacity because more residents than four in a home would require a Lodging, Food, and Beverage Establishment license from the Department of Health under parts 4625.0100 to 4625.5000. "Family" as defined in section 407 of the Uniform Building Code is "a group of not more than five person (excluding servants) who need not be related by blood or marriage living together in a dwelling unit."

Subpart 2. Capacity of roomers and residents. It is necessary to address the issue of roomers because their presence in the adult foster home influences the environment. It is reasonable to limit the number of roomers to insure a small, home-like setting. If there were no limit, the adult foster home could have a large number of unrelated adults living together which is contrary to the purposes and benefits of adult foster care.

9555.6167 INDIVIDUAL RESIDENT PLACEMENT AGREEMENT

This provision is necessary to make those seeking licensure as adult foster home operators and those currently certified aware of the process for placement of residents in adult foster homes. Though an adult may privately seek admission to a home, the Department needs to assure that placements are made in an appropriate and consistent manner. A written record outlining the agreements made by the resident, resident's legal representative, and the operator at the time of placement are needed for clarity and to serve as a reference should there be any misunderstanding at a later date about the terms of the placement. It is reasonable to place this provision in the rule parts governing the adult foster home operator so he or she is aware of the provision and may comply.

9555.6175 COOPERATE AND REPORT TO AGENCIES

Subpart 1. Cooperating with the service agency. It is necessary to state that adult foster home operators and caregivers must cooperate with the service agency in the care of certain residents so that there is coordination and not conflict in the administration of a resident's individual service plan. Some residents have goals for placement developed in individual service plans, whether it be to move on to more independent living,

prevent further deterioration, or improve day-to-day living skills. It is, therefore, reasonable to require that the operator cooperate with the implementation of the individual service plan because it is the operator or caregivers who have daily, and in some cases, constant contact with a resident. Without this cooperation, little could be accomplished. In cases where day services or additional programming are involved, as specified, in the resident's individual service plan, caregivers may have to coordinate services with other agency or community persons. Further, it is reasonable to require compliance with service agency requests in caring for residents because the service agency is responsible for the overall planning for and protection of the resident. For those residents who do not have an individual service plan it is necessary that, at a minimum, an individual resident placement agreement be developed and signed for a resident which specifies the adult foster care to be provided by the operator to the resident. This would be developed by the operator, in conjunction with the resident at the time of placement to ensure that there is a clear understanding of the services to be rendered.

Subpart 2. Abuse and neglect reporting. It is necessary and reasonable to notify the operator and caregivers of their responsibility to report abuse or neglect of a resident because a resident in an adult foster home is protected under, and abuse and neglect reporting is regulated by, the Vulnerable Adults Act, Minnesota Statutes, section 626.557.

Subpart 3. Reporting to local agency. The provisions in this subpart are necessary to ensure that the health, rights, and safety of a resident are maintained and to assist the local agency and department in determining continued compliance with these rules. The local agency, as the commissioner's representative, makes annual inspections of adult foster homes. Minnesota Statutes, section 245.783, subdivision 3, requires the commissioner to conduct a study before a license is issued. The study includes determining whether deviations from the rule procedures have affected the safety, health, or rights of residents. Minnesota Statutes, section 245.804, subdivision 2, states that the "study and inspection may involve consideration of any facts, conditions, or circumstances relative to the operation" of the adult foster home. However, during the course of the year, any change in circumstances specified in this rule are considered serious enough to warrant notification to the local agency and may warrant a reexamination or prompt investigation.

A change in the regular composition of the household or a caregiver's employment are conditions regulated because they impact the health, safety, and care of a resident. Five days notice of a change in any of these factors is reasonable. It gives the operator time to adjust to these changes, verify the health of a new regular household member and make any necessary adjustments. At the same time, the local agency receives notice and may decide to restudy or examine the setting, if necessary, to determine continued compliance with the rule parts.

The remaining provisions pertain to direct or immediate threats to the health, rights, and safety of residents. Notice within 24 hours, or immediately, of any of these conditions is reasonable given their critical nature. The safety of residents must be the first consideration and obligation of the operator at all times. Therefore, requiring that the operator

inform the agency of the circumstances and facts of a serious fire or death is necessary so that an immediate investigation of all circumstances and evidence may be made by the department with the assistance of representatives from the appropriate governmental agencies. Notice within 24 hours of a fire that causes damage to the residence or requires the services of a fire department permits the operator to cope first with the emergency situation, and yet gives the commissioner reasonably prompt notice. To have to report all injuries and accidents, regardless of severity, would place an unreasonable burden on the operator and on the commissioner. The reporting requirements are therefore limited to injuries which require emergency treatment by a physician. This policy was recommended by the Health and Safety Committee of the adult foster home rule task force. The limitation is reasonable to prevent an undue burden and yet keep the commissioner aware of the ability of the operator and caregivers to care safely for residents. A change in health status of a caregiver that could affect the care of residents is necessary to report to the commissioner because residents may need supervision, personal care or protection that can no longer be provided in the adult foster home. It is reasonable that the commissioner be given notice as soon as possible because of the need to evaluate and perhaps arrange for other care. Reportable communicable diseases must be reported immediately to protect functionally-impaired residents. The commissioner will need time to evaluate the situation, with the assistance of a health authority and make arrangements as needed; therefore, it is reasonable to require that such situations be reported immediately. The involuntary discharge of a resident may mean that the resident needs assistance to find other living arrangements. Notification to the local agency provides a means to offer services to the resident. Thirty days is reasonable because it gives the agency time to assess the resident's needs and assist by locating other living arrangements and community social services that may be needed. Notifying the agency of voluntary transfer or discharge is necessary so the agency has timely notification of a vacancy.

Subpart 4. Reporting to service agency. These provisions are necessary so the service agency receives timely notice about a resident under its care and oversight. Item A is reasonable because it provides timely notification to the service agency of a resident's needs. Item B is reasonable because it allows the service agency time to assess the resident's current needs and find an alternative placement. Because the resident is in need of adult foster care and the protection it affords, immediate discharge is not humane or suitable unless it is an emergency situation. The agency needs 30 days to secure another placement. This period of time is consistent with common tenant/landlord lease arrangements which recognize "a month's notice" prior to termination of a leasing agreement. For persons who are legally competent and wish to voluntarily leave the adult foster home, three working days notice is necessary to assess the resident's need and search for a new living arrangement. It also allows the agency time to initiate counseling to determine if discharge issues can be resolved without relocation.

9555.6185 ADULT FOSTER CARE TRAINING

This part is necessary to ensure that at least minimum levels of care and service are given in the adult foster home and the protection of residents

is assured. John McCain, (author of Adult Foster Homes, Human Services Press, New York, 1983), states that better initial and continuing training programs would help adult foster home operators do a better job considering the complex needs of the three main target groups now in foster homes -- the mentally ill, frail elderly, and mentally retarded. 17. In 1984 the Metropolitan Council completed a report on housing and older people in the Twin Cities area entitled More Than Shelter. 18. One of their recommendations is . . . "more training should be provided to adult foster care families" (p. 18). Bradshaw, Vonderhaar, Keeney, Tyler, and Harris did an extensive survey of adult foster homes in 1984. Their article in the American Journal of Geriatrics entitled "Community-Based Residential Care for Minimally Impaired Elderly: A Survey Analysis" stated that most of the operator's in their study (73.2 percent) would like to participate in a training program. 19. Brockett in his article "Issues in Promoting Adult Foster Care as an Option to Institutionalization" states that provider training is important because it helps to welcome new persons into the program and serves to establish support between the new provider and the sponsoring agency. Brockett also states that through training, providers have an opportunity to explore and develop new attitudes, knowledge, and skills that can help them provide higher quality care. 20. Caregivers are often providing care to residents with a variety of impairments and a wide range of physical and psychological needs. Caregivers must understand these needs and be familiar with various methods of providing care, training, assistance, and support. Caregivers must also learn methods of coping with a resident's problems on a day-to-day basis. Training gives caregivers the opportunity to interact with peers and others working in the adult services field. Social isolation has been consistently linked to maltreatment. Social supports offer assistance to caregivers under stress. This subpart is, therefore, reasonable as a method of informing operators and caregivers of their responsibilities.

Subpart 2. Training requirements. This provision is necessary to ensure a minimum amount of training for all adult foster home caregivers. Given the complex and varied needs of residents, the adult foster home rule task force recommended a minimum of 12 hours per year the first five years of licensure or experience and six hours per year for licensure or experience of six or more years. This is reasonable because of the broad definition of training and the flexibility with possible modes of training. Item C is necessary because caregivers may provide specialized training services in addition to those usually provided in an adult foster home. Examples are services provided within Supportive Living Services for persons with mental retardation (parts 9525.1800 to 9525.1930). It is reasonable to expect that in these instances caregivers would comply with additional training required by the contract.

Subpart 3. Exceptions. This provision is necessary because some caregivers give care to residents for very limited periods of time and in very specialized areas. Without exceptions to this standard, the number of potential caregivers available would be markedly reduced. Exceptions to this standard are in the best interest of residents because there are persons with special skills needed by the residents for very limited periods of time who would otherwise not qualify as caregivers. Caregivers are also needed for short periods of time for the purpose of respite of caregivers who would not be readily available without the exception to the training

requirement. It is reasonable to use 30 cumulative days in a 12-month period as the exception standard because it coincides with the definition of "on a regular basis" in the Public Welfare Licensing Act, Minnesota Rules, part 245.782, and the requirement of a physician's report for "caregiver" in Minnesota Rules, part 9555.6135, subpart 4, Item B. It is also reasonable to use the exception providing a specific service or specific training of eight hours or less a week because this was recommended by the task force as encompassing those part-time persons that assist residents in learning certain living skills.

Subpart 4. Training subjects. This provision is necessary to indicate acceptable training areas that relate to residents in and the provision of adult foster care. The provision is reasonable because it offers a wide variety of subjects that may meet diverse population needs while simultaneously limiting the areas to a set of topics that pertain to the service area in question. The subject list was compiled by the rule task force members.

9555.6195 PROHIBITIONS AGAINST ABUSE, NEGLECT, AND DISCRIMINATION

Subpart 1. Protection from neglect and abuse. It is necessary to inform operators and caregivers that any resident living in a licensed adult foster home is protected by the Vulnerable Adults Act, Minnesota Statutes, section 626.557 and Minnesota Rules, parts 9555.8000 to 9555.8500. It is reasonable to notify operators and caregivers of their responsibilities to protect residents from abuse and neglect and to become familiar with the provisions of the statute and rule parts.

Subpart 2. Nondiscrimination. Minnesota Statutes, section 363.13 provides that Minnesota Statutes, chapter 363 be known as the Minnesota Human Rights Act. Subdivision 18 of section 363.01, defines "public accommodation" to mean a "business, accommodation . . . facility . . . whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public." Applying the Minnesota Human Rights Act to adult foster homes is reasonable given the intent of the statute to prohibit discrimination "within public facilities." It is necessary to state this within the rule so that the operator is aware of the law and may comply.

9555.6205 PHYSICAL ENVIRONMENT

Subpart 1. Residential occupancy. This provision is necessary for the health and safety of residents. It is reasonable that foster care be in a "home" and that the home be in a place designed for and occupied as a dwelling unit in a residential occupancy. Proper sanitation and waste facilities and complete disposal of human waste in a manner which is not hazardous is a reasonable means of minimizing the transmissions of disease to the occupants and, thus, assuring the health and safety of residents. Freedom from ventilation hazard is, at a minimum, a reasonable standard. Ventilation is needed to reduce the spread of disease and to keep toxins, odor, and heat from accumulating. The standard cited, that which is not hazardous, is consistent with that mandated statewide for all residential occu-

pancies. A mechanical system which is not hazardous is necessary to ensure that there is a heat source in the residence that is safe. The standard is consistent with the minimum State Building Code requirements for a residential occupancy. Finally, though an electric source is not mandated for a residential occupancy, if electricity is provided, it must not be in hazardous condition.

Subpart 2. Living room. It is necessary to require that the living room of the adult foster home be available to residents. A general living area is part of a dwelling unit. It is a place where persons living in the home gather for socialization and to experience companionship. It is a reasonable requirement to mandate that residents have access to this room so they have an opportunity to socialize. Without this requirement, residents may be relegated to their rooms and would not feel they were in a home environment.

Subpart 3. Dining area. It is necessary to require that the dining area be accessible to residents so residents do not regularly eat meals isolated in their rooms. It is reasonable to require access to the dining area because mealtime is traditionally a time when social interaction occurs among household members. For some residents, mealtime behavior may be a part of living skills training. Residents are also more likely to eat more nutritionally-balanced meals in the company of other persons.

Subpart 4. Resident bedrooms. It is necessary to include standards on resident bedrooms to ensure a noninstitutional "home-like" environment. The task force recommended that the adult foster home reflect an environment that is similar to the way people live in their own homes. This can be accomplished by giving privacy, promoting independence, and personalizing the resident's surroundings. One of the characteristics of institutional living in the past has been a "dormitory" style sleeping arrangement. It is, therefore, reasonable to limit resident bedroom occupancy to two persons. To emphasize independence, residents should be given the choice of whether to share a bedroom based on their needs, preference, and goals for independent living. The specifications in item A on room size for a single room occupancy was recommended by the task force as a reasonable minimum requirement. The double-room occupancy requirement is reasonable because it is consistent with Department of Health Lodging and Food and Beverage Establishment requirements in Minnesota Rules, part 4625.0900. The ceiling height requirement is reasonable because it is consistent with the State Building Code, section 1207A. It is necessary to specify this standard because the State Building Code is not retroactive to all residential occupancies. Space in older homes which may be designated for sleeping may be far below the minimum standards specified which applies to homes remodeled or constructed after 1972 and to those parts of the state which have adopted the State Building Code. Subitem (2) is reasonable to ensure privacy for each resident. Subitems (3) and (4) are reasonable to provide a sense of ownership to the resident and to personalize the resident's surroundings, subject to safety, building or fire code requirements and other residents' rights or comfort. Item B establishes requirements for the health and personal care needs of residents. It is reasonable for residents to have these items to maximize their independence, personal privacy and self-esteem and for health and safety to minimize the likelihood of disease or infestation transmission.

9555.6215 WATER AND FOOD

Subpart 1. Water. Water is a substance essential to the health of residents. It is necessary that the source of water within the home be safe and sanitary. Because water sources in adult foster homes may not be secured from a municipal supply which is tested regularly for safety, it is necessary to require testing of a private water supply to ensure safety. A water source may be contaminated very quickly. Wells may change rapidly. According to the Department of Health's water supply division, testing every three to six months would not be unreasonable. Annual testing is the very minimal time period recommended by the Department of Health to assure safety. It would be financially prohibitive to test for all possible contaminants of water supplies. There are over 7,000 chemicals which can be found in water. Chloroform bacteria and nitrate - nitrogen are the two most common elements found to contaminate water supplies. They are found in animal and human waste, sewage, and fertilizers. They are usually site specific. Testing costs for these contaminants is minimal and sometimes free of charge and may be obtained from laboratories at the county level. Discretion for retesting is necessary to allow for those cases where the supply may be subject to frequent contamination from off-site sources.

Subpart 2. Food. The proper and timely intake of food within the adult foster home is necessary to ensure the health and well-being of residents. To mandate that three meals a day and snacks be offered is reasonable. This is a recognized community standard. Nutritionally-balanced usually means offering foods from the basic food groups. The basic food groups are endorsed by public health officials. A resident may require a special diet because of food allergy, dental problems, inability to digest certain foods, religion, social or other health conditions which may require a diet different from the one routinely provided in the adult foster home. Because a physician or dietician is qualified to prescribe diets for certain illnesses or conditions, it is reasonable to require that meals be prepared and served according to their instructions. The operator is given flexibility in how the resident receives meals. This is reasonable because residents may be involved in preparing meals as part of their living skills training, in which case the operator would plan meals and perhaps supervise preparation. In instances where a resident is gone for a time during the day, a sack lunch may be the preferred method of offering the meal. Snacks may be needed by some residents who have illnesses or metabolic problems, especially where long periods of time between nourishment may be dangerous, unhealthy, or uncomfortable. Nutritious snacks are required because "junk" foods and "empty calorie" foods would not promote proper nutrition and could be detrimental to residents' health.

Subpart 3. Food safety. This provision is necessary to ensure that there is a standard for the general safe storage and service of food. The intent of the provision is not to outline a procedure or mandate specific methods for food service and storage that are any more prescriptive than those applying to family homes in general. Spoiled and contaminated food should not be served.

9555.6225 SANITATION AND HEALTH

Subpart 1. Sanitation and cleanliness. This provision is necessary to ensure that there is a general, overall standard for the residence. Accumu-

lations of dirt and rubbish provide breeding grounds for vermin, insects, and disease. Peeling paint may be a hazard because it can fall into food and collect dust which may cause allergic reactions in some adults, and interfere with keeping walls clean because of its breaks and cracks on surface paint. Cleanliness refers to removing disease-causing organisms by the "soap and water" method. It is recognized that not all hazardous organisms can be removed in this manner, but the bulk of them and sources of their transmission can be destroyed in this manner. It is not reasonable to mandate a sterile or disinfected environment. Soap and water are readily available and easy to apply.

Subpart 2. Toxic substances. It is necessary to regulate the storage of toxic substances because their ingestion by residents could prove harmful or fatal. It is reasonable to require storage separate from food products to prevent their possible inadvertent substitution for food or the cross-contamination of food products.

Subpart 3. Physical examination of resident. This provision is necessary to ensure the health and safety of residents by documenting that each resident entering the adult foster home is free of reportable communicable disease as specified by the Minnesota Department of Health in Minnesota Rules, parts 4605.7000 to 4605.7800. It is reasonable to require that a resident not previously residing in a health care facility and thus having a transfer record which would contain examination information provided by a licensed physician, have a physician's examination within thirty days of entering the adult foster home. Thirty days is considered "current" by members of the task force including Mike Tripple, assistant director of the health resources division, Department of Health. The task force, recommended that if a resident does not have a physician's statement upon entering the adult foster home, that he or she obtain one within three days of placement. This period allows time to make an appointment and complete the examination while not subjecting other residents to an unreasonable amount of exposure.

Subpart 4. First-aid supplies. The requirements for a first-aid supplies within the residence is necessary so caregivers are able to respond to the needs of a resident in routine injury and emergency situations. Though adult foster home operators strive to eliminate potentially dangerous situations that might lead to accidents, no home environment can be made totally safe. Consequently, it is reasonable to require that the operator have first-aid supplies available in the residence and have directions and a manual available for proper administration so routine cuts and bruises may be attended to. In the event of severe injury, immediate attention is often necessary to stop or reduce bleeding and swelling. The minimal supplies specified are recommended and have been reviewed by the Department of Health's representative, Mike Tripple, and members of the health and safety committee of the task force. A scissors is necessary to cut bandages or compresses, and is often used to removed clothing that may be restricting breath, movement, or circulation. The ice bag or cold pack is frequently applied to reduce or limit swelling that may result in further damage to tissue. The oral or surface thermometer is necessary to verify the severity of illness or fever symptom. Oral or surface thermometers are specified because rectal thermometers are not recommended by health experts because of the risk of intestinal puncture. Soap, when used to clean a

wound, bite, or abrasion, or to remove chemicals from the body surface, should be free of harsh perfumes or detergents. Adhesive tape is necessary to secure bandages and compresses. It is necessary that a first-aid manual be included so appropriate methods and procedures are followed in an emergency. This subpart is, therefore, reasonable to ensure the health and safety of residents.

Subpart 5. Emergencies. This provision is necessary to ensure that the operator is prepared to deal with emergency situations. Item A requires that a noncoin-operated telephone be available in the residence and is necessary to ensure that caregivers or residents are able to call for medical and public safety assistance quickly in emergency situations. Telephone service must be available in the residence so emergency personnel may be contacted while caregivers continue to give care to residents. An operable flashlight is necessary and reasonable to have on hand so residents may be moved to safety or instructions read during a power outage.

Item B. Emergency numbers are necessary because a resident's physician and dentist must be readily available for routine illness, injury, and severe pain or emergencies which may require immediate medical attention. Emergency medical or dental personnel may need to contact and consult with a resident's representative or the resident's regular physician or dentist to determine the most appropriate care and treatment. The resident's representative and the resident's physician and dentist are usually the persons most knowledgeable and responsible for the resident's medical condition.

Item C. Fire, police, and emergency service numbers are necessary in a life-threatening emergency because seconds may be critical to saving a life and calmness may not always prevail. It is reasonable to require that direct numbers be readily available and visible in an emergency. The area next to the telephone is the most accessible place for this purpose.

Item D is necessary to ensure appropriate supervision of residents at all times. Emergency situations develop quickly. The caregiver may have to leave the residence. It is necessary that prior arrangements have been made for substitute care of residents so continued and consistent safety is assured. It is, therefore, reasonable that the operator plan for and make arrangements in advance for the care of residents in emergency situations.

Item E is necessary because during storms or other severe weather residents may be subject to harm from falling objects or breaking glass. During severe weather or tornadoes, the national weather service recommends a number of places within a residence that are suitable for cover. Where these places are must be designated so caregivers and residents may use them in emergency situations. The areas should be protected and large enough to accommodate all occupants.

Items F, G, and H. Escape plans are necessary and reasonable to ensure that the operator has planned for and is able to protect and properly care for adults in fire situations. Since a fire may occur rapidly, it is essential that a plan be formed in advance and caregivers are trained to implement it. Written plans and a log of fire drills verify that planning, training, and the communication process have taken place with residents. Bob Imholte, task force member and representative of the fire marshal's

division, recommended quarterly fire drills for functionally impaired persons, and the other task force members concurred. The National Fire Protection Association in the publication Operation EDITH—which stands for Exit Drills In The Home notes that escape plans should include escape route designation to avoid confusion maximize speed and efficiency of egress, and reduce the risk of harm by fire and smoke. Emergency numbers and a uniform, known meeting place to aid in the knowledge that all occupants have been evacuated and accounted for is also recommended. An emergency escape plan for each resident in apartment buildings was a provision recommended by task force member Bob Imholte, fire marshal's division, and Tom Joachim, building code administration, because residents may have unique needs due to disabilities, may need certain types of assistance, and this should be carefully thought out prior to an emergency. The individual resident will need to practice an escape plan if the resident has severe impairments and other accommodations outside of the dwelling unit may need to be considered.

Subpart 6. Individual personal articles. The operator has the responsibility to protect the health of residents in care. To carry out this responsibility, the operator must reduce, to an acceptable minimum, agents that spread infections among adults. Impaired adults may be more susceptible to disease than other adults. Diseases and infestations are spread through contact with contaminated articles, hands, and excretion, including saliva, feces, and urine. The personal articles cited come into close contact with the resident and may become contaminated with bacteria, viruses, or parasites. Requiring these individual articles for residents is, therefore, reasonable.

Subpart 7. Pets. The presence of pets in the adult foster home setting may be beneficial as an opportunity for responsibility or as a source of companionship. This provision is reasonable because not all residents may like or tolerate pets and this could affect their decision to reside in the adult foster home. Residents may be allergic to certain kinds of animals and this could affect their decision to live in the adult foster home. It is, therefore, reasonable to require prior notification of the presence of pets.

Subpart 8. Resident's medication. This provision is necessary to ensure development of self-care skills and to protect the health and safety of residents who cannot manage their own medication. The task force recommended that residents should be encouraged to manage their own medication, if at all possible, to promote and maintain self-care. On the other hand, a large proportion of residents who use foster care need assistance to take medication properly. It is, therefore, necessary to ensure adequate protection for residents who are given medication assistance by caregivers. These provisions were recommended by task force member Mike Tripple, assistant director of the health resources division, Department of Health.

Item A. It is reasonable to require that the operator receive instruction or prescriptions from a resident's physician because that is the source of the prescription and the physician is most likely to be able to judge whether a resident can be responsible for taking his or her own medication or needs assistance. This process also transmits the information on a resident's medication needs to the operator and caregivers. Item B is necessary to ensure that the resident is aware of and concurs with the assistance

given. In a family situation where a member is not able to self-medicate, another family member would give the medication. It is, therefore, reasonable in item C that, in an adult foster home, a caregiver could give medication when a resident cannot self-administer and permission be obtained from the resident or the resident's legal representative. A caregiver cannot reasonably be expected to prescribe prescription medicines or be qualified to advise on their use. Therefore, it is reasonable to require written instructions from the resident's physician or dentist on prescriptions to be certain the medication is given properly and that the health of the resident will be monitored by a licensed professional.

A permanent record of medication (item D) is needed to document how the resident is taking the medication and if it's being taken as prescribed by the residents' physician without relying on the memory of the caregiver. The medication record must include information on the consequences of not taking medication as prescribed so that the caregiver can report such instances to the physician within the optimum time required. It is reasonable to require that notations on medication, as to starting and stopping, changes, and adverse reactions, be kept in the record so that the resident's physician will have specific information on which to base the resident's diagnosis and treatment plan. This record would also be available to emergency medical personnel in treating a resident in a medical emergency.

Items E. and F. Medication can have serious side effects. For example, medications may cause an allergic reaction in some persons. These allergic reactions are unpredictable and can prove to be serious. Medication may also interact with other chemicals causing potential dangerous reaction. This can happen when different professionals prescribe drugs and are not aware of what other drugs the resident may be taking. Occasionally, some persons may not be able to tolerate certain dosages of a medication or may not be able to tolerate the medication at a certain time. Only a physician can evaluate the seriousness of a situation and make appropriate adjustments or substitutions in medication. It is, therefore, reasonable to require the reporting of adverse medication reaction immediately to the resident's physician. If a resident refuses to take medication as directed, it may threaten the resident's life or health. Certain medications are antipsychotic and prevent a resident's behavior from being dangerous or threatening to others. Medications taken for these reasons are serious and any disruption in the recommended schedule must be reported to the physician who can evaluate the situation and prescribe an immediate course of action. The local agency must be notified because refusal to take needed medication may require adult protection services from the local agency and the placement may have to be evaluated or other referrals made. Some medications, on the other hand, are necessary but disruption of a prescribed ingestion schedule would not endanger the resident or others and would not need to be immediately reported to the resident's physician. This provision is reasonable because it provides the flexibility needed to take into account the seriousness of the situation.

Item G. Injectable medications must be handled with caution because reactions act so rapidly. Unlike other medications that are absorbed slowly through various bodily tissues, injectable medications enter the circulatory system almost immediately. Improper handling or measuring can result in an injurious or fatal reaction. This means that persons giving injections must

have training so they will be able to administer the injectable medication properly. One method of ensuring training is to require a current Minnesota nurse's or LPN's license. To hold a license a nurse or LPN must have training in the administration of injectables. Another method is to require that the caregiver have training by the resident's physician or physician's staff. The health and safety of the resident must be protected in these potentially dangerous situations and the authorization must be as specific as possible. For this reason, the requirement that the caregiver must be specifically authorized to give specific injections has been added. The documentation for the authorizations and instruction of the caregiver by the physician or the physician's staff is a reasonable way of determining compliance with the rule. To confirm that these procedures were acceptable to health officials the following were contacted: Lorene Wedeking, assistance director, Public Health Nursing, Minnesota Department of Health; Joyce Showalter, director, Minnesota Board of Nursing; the International Diabetes Center; Jack Breveu, attorney for the State Board of Pharmacy; and David M. Ziegenhagen, executive director of the Minnesota Board of Medical Examiners (Exhibit Y). These persons believe that these procedures are satisfactory in an adult foster care setting. It is unlikely that caregivers would be called on to give injectables in many adult foster home situations. However, given the functionally impaired population, it may be necessary in some instances. Procedures for caregivers who perform this service are necessary. It could, for example, mean the difference between living in an adult foster home and living in a more restrictive setting. This standard is reasonable because it provides measures to ensure safety yet provides enough flexibility for unusual situations.

Subpart 9. Storage of medication. It is necessary to require the proper storage of medication to ensure the health and safety of residents. Schedule II controlled substances listed in Minnesota Statutes, section 152.02, subdivision 3, are often subject to abuse and are highly addictive according to David Holstrom, executive director of the Board of Pharmacy, a registered pharmacist and attorney. Holstrom stated that under state and federal regulation these substances are subject to strict storage requirements. Manufacturer's directions also recommend security when storing these substances. Because these substances are often subject to pilferage by potential abusers and because residents and others could misuse them, this standard is reasonable.

Subpart 10. Weapons. It is necessary to require the safe storage of weapons to ensure the health and safety of residents. Weapons are dangerous items in the hands of persons not responsible for, or knowledgeable about, their proper use because they can kill or severely injure. Certain residents in adult foster homes may be mentally ill, have depression, or suicidal tendencies. Weapons should not, therefore, be accessible for those who might use them impulsively. The provision for storing weapons in locked areas, not visible to residents, is reasonable because it reduces the likelihood that such incidents will occur. The additional provision requiring separate storage of ammunition and firearms on the premises is reasonable because it reduces the likelihood of accidental discharge.

9555.6235 ADULT FOSTER HOME PROGRAM

A written plan is needed so that the operator has a way of letting the commissioner know about the services and level of care that is or may be pro-

vided in the residence. In that way, the commissioner can evaluate the appropriate placement of residents in the adult foster home. The plan informs prospective residents and their legal representatives of the services and care offered by the operator in the adult foster home when selecting a living arrangement. It is reasonable to require that the adult foster home plan be in written form for clarity and consistency. The plan needs to meet the minimum criteria in items A to C, which were recommended by the task force. It is, therefore, reasonable to require that the commissioner approve the plan as a measure of whether the written plan meets the minimum criteria for an adult foster home plan. Items A, B, and C are necessary to meet the minimum information needs of the social worker who is assessing the needs of the prospective resident and matching them with placement options.

Item A is a necessary provision because there are functionally-impaired adults with a wide range of characteristics and impairments. For example, residents might have some of the following conditions: mental retardation, mental illness, a physical handicap, chronic illness, or frailty due to conditions associated with age. Residents may also cover a wide age range. Various operators may have different preferences and different capacities to meet the needs of certain adults. For the sake of efficiency and safety, it is reasonable to require that the operator specify the specific types of impairments in residents that the adult foster home can or wishes handle.

Item B is necessary because adult foster homes may provide a variety of services to adults depending on operator and caregiver ability, interest, and resources. This information is needed by the social worker and the resident or resident's representative in deciding whether a particular adult foster home is appropriate for a prospective resident. For the sake of efficiency and to ensure that the adult foster home meets the definition of "adult foster home" as stated in part 9555.6105, subpart 3, it is reasonable to require that the operator of the adult foster home specify the extent of its services in these areas.

Subitems (1), (2), and (3) are reasonable because all adults have a need for lodging, food, and protection but, residents, because of their disabilities, are likely to have greater needs and fewer resources to meet them. Functionally impaired adults often have considerable needs in activities of daily living and assistance with personal care (4) or household living (5) may be needed. Subitem (6) is reasonable because a functionally-impaired adult has a need for integration into the community and disabilities and impairments can present barriers. Subitem (7) is reasonable because residents usually need continuing contact with their family and friends for socialization, a normal human need. Subitem (8) is reasonable because a resident may need assistance in managing day-to-day cash resources. This may result from illness or disability. Even if the resident has a legal representative, a caregiver may assist in handling a resident's personal needs allowance or regular monthly expenses. Subitem (9) is reasonable because supervision may vary from adult foster home to adult foster home depending on the availability of caregivers. For example, the supervision in a home with an individual caregiver an adult foster home operated by an organization with shift staff. Residents need varying degrees of supervision so this information is needed to make appropriate placements. Subitem (10) is reasonable because most residents do not have automobiles and must depend on

others for transportation. Transportation may be needed to social and health care services or for other appointments or for visits to community resources, family and friends. The adult foster home may not be able to directly provide all transportation needed by a resident. The extent that it can be provided either directly by the operator or via public conveyance must be known. Subitem (11) is reasonable because residents often need supplementary services outside of the services provided by the adult foster home such as counseling, shelter workshops, day care, developmental achievement center programs, doctor or medical appointments. The operator must play a supportive role in obtaining these services through referral, encouragement, and supporting training goals.

Item C is required by Minnesota Statutes, section 626.557.

9555.6245 PERSONAL RECORD OF RESIDENT IN ADULT FOSTER CARE

Subpart 1. General provisions. A written record on each resident is needed to facilitate consistency, promote understanding, cope with emergencies, document services given, and document compliance with regulations and laws. The provision is necessary and reasonable to facilitate the study and investigation for maintaining and licensing a facility required of the commissioner under Minnesota Statutes, section 245.783, subdivision 3.

Subpart 2. Demographic information. This section is necessary to ensure that uniform and adequate information is obtained and maintained on each resident. The information requested assists the operator and commissioner in determining compliance with these rules and aids in proper notification in the event of emergencies or medical attention. Recording where the resident moves facilitates forwarding mail or other property of the resident.

Subpart 3. Medical information. This provision is necessary to protect the resident's health. It is reasonable to have a record of the resident's physician, dentist and other health resources so that they can be contacted in an emergency or to maintain continuity in the resident's routine medical care. It is reasonable to require that health information, allergies and other health risks be recorded to ensure that the resident is not exposed to conditions that might be medically harmful. It is reasonable to require that currently-prescribed medication be recorded to ensure that this information is available for medical care and medical emergencies. Documentation of the resident's physical examination and resident's medication record are needed to determine compliance with rule parts. It is reasonable to record emergency medical treatment provided the resident while in the adult foster home so this information is available for medical personnel treating the resident and for the commissioner to be informed of the resident's medical treatment while in the adult foster home. The medication record requirement is reasonable to ensure that medical personnel treating the resident have accurate information on how the resident has been taking medication in order to make proper treatment decisions.

Subpart 4. Cash resource information. It is necessary to specify a record on cash resource assistance because some residents will receive this help in the adult foster home. It is reasonable to require that personal funds be accounted for in a record so the resident and the resident's legal

representative, if any, may be informed of the resident's petty cash situation. It also gives protection to the resident against possible exploitation or mismanagement by the operator and caregivers.

Subpart 5. Incident reports. It is necessary to specify that incidents be reported because these document compliance with these rule parts and assist in protecting the health and safety of residents. It is reasonable to specify emergency incidents because the commissioner and the resident's legal representative have a right to know about occurrences of an unplanned serious nature that affect the resident and the resident's treatment plan. Vulnerable Adult complaints are required under Minnesota Statutes, section 626.557. Two hours after occurrence is a reasonable time to require recording the incident because it is a short enough period of time so that the incident won't be forgotten and a long enough period of time to allow for assisting the resident after onset of the incident.

Subpart 6. Individual abuse prevention plan. This item is necessary and reasonable because it is required by Minnesota Statutes, section 626.557.

Subpart 7. Individual service plan. It is necessary to require that the individual service plan be a part of the resident's personal record because it represents the agreement for total service delivery between the resident and the service agency. It is reasonable for the adult foster home to have a copy of the original and updated individual service plan because the operator will assist in coordinating and facilitating other services and programming with which the resident is involved. The individual service plan also includes the overall goals of the resident. This information is used by the operator and caregivers in working with the resident toward these goals.

Subpart 8. Individual resident placement agreement. A written record outlining the agreement between the resident and the operator regarding the resident's care in the adult foster home is essential for to ensure that the resident receives the foster care specified and all parties are clear about the care which will be provided. It is, therefore, necessary to require that an individual resident placement agreement be in the resident's personal record.

Subpart 9. Individual mobility check list. This provision is necessary to ensure that the checklist completed in accordance with part 9555.5605, subpart 2 and the results of the survey of the residence and the resident's mobility access needs are on file in the residence.

Subpart 10. Transfer or discharge. This provision is necessary to ensure compliance with rule provisions and a complete status record on the admission and discharge of persons who are or have resided in the home.

Subpart 11. Record storage. It is necessary to require record storage because certain records may be needed by federal, state, and county officials for audit purposes and to document compliance with rule parts. Federal and state regulations require keeping records for three years for medical assistance audit purposes. Because federal fiscal years may not be the same as county, state or the operator's fiscal year, it is reasonable to

require that records be kept four years to take care of any overlaps of time.

9555.6255 RESIDENT'S RIGHTS

This part is necessary because the commissioner is ultimately responsible to protect the health, safety, and rights of residents in care as specified in M.S. 245.801, subdivision 4.

Subpart 1. Information about rights. It is necessary to address how a resident and a resident's legal representative will be informed of these rights to make them effective. Without this information, a resident would be unaware of what kind of care to expect and whether his or her rights had been violated. In addition, the resident could be unaware that he or she was protected by the Vulnerable Adults Act. After being informed of his or her rights, it is necessary to tell a resident where to submit complaints regarding violations of these rights. There must be a uniform procedure for informing all residents. The time when it is most likely to be meaningful is at the time of admission when the resident is being oriented to new surroundings. A resident may have difficulty reading and, therefore, an explanation is a reasonable requirement. Some residents may also wish to have a written description to refer to at a later date or to review from time to time. Because a copy of the statutes addressing the Vulnerable Adults Act would be confusing to many, a summary is needed for clarity and brevity. Summaries are already available through printed department brochures. It is, therefore, reasonable to require that an explanation and copy of these resident's rights and a summary of the Vulnerable Adults Act be given to the resident and the resident's representative at the time of admission. It is also reasonable to give the resident the name, address, and telephone number of the local agency to which complaints may be made so violations can be expediently reported.

Subpart 2. Right to use telephone. The telephone is one of the most fundamental and useful ways to communicate in our society. It is, therefore, necessary to ensure that residents have access to a telephone. A coin-operated telephone could prohibit the use of a telephone in an emergency situation. Keeping in touch with family and friends by telephone is an important way to maintain and develop personal relationships. The telephone is also important for the resident to maintain as high a level of independence as possible. It is, therefore, reasonable that residents have daily, private access to a noncoin-operated telephone. The task force realizes that long-distance telephone calls could be a problem because residents might run up large telephone bills for which there are no funds. The task force wanted to be certain to qualify the use of the telephone for long-distance calls to those for which the resident could pay or were made collect. This is necessary to prevent undue financial obligations on the operator. This standard allows operators to limit long-distance calls to paid for by the resident.

Subpart 3. Right to receive and send mail. It is necessary to address this issue to ensure the resident's privacy. Privacy promotes independence, a sense of security, family ties, and relationships outside of the adult foster home. It is, therefore, reasonable to require that residents be al-

lowed to send and receive uncensored, unopened mail. The task force did not intend to preclude an adult foster home operator or caregiver from assisting the resident, at the resident's request, with certain financial reporting forms for public assistance, Social Security, or other similar benefits.

Subpart 4. Right to privacy. This standard is necessary to ensure that each resident is treated as an individual, in a humane manner with dignity. Functionally-impaired adults need special consideration in these areas to encourage self-esteem and a sense of self-worth, which ultimately promotes and preserves independence. These goals are consistent with the intent of adult foster care. A resident's room must be considered the resident's "own" to promote normalization and establish a trusting relationship with caregivers. Toileting, bathing, and activities of personal hygiene are areas where privacy is important for self-respect and to promote self-care. The task force recognized there are times when it is in the resident's best interest to assist or check on the resident. It is, therefore, reasonable to require that operators, caregivers, household members, and volunteers knock on the door before entering the resident's room or during activities of personal hygiene, except in an emergency or to assist a resident. It is reasonable to require that the type of assistance a resident needs on a routine basis be noted in the resident's record so there is a decision on these matters by the resident and operator thus eliminating any misunderstanding or infringement of a resident's right to privacy.

Subpart 5. Right to use personal property. This provision is needed to foster the "normalization" principle inherent in adult foster care. The "Principle of Normalization" was introduced by Bengt Nirje in the 1960s and refers to the system which serves mentally retarded persons. 21. "Normalization" essentially means having a normal rhythm of the day, normal developmental experiences, and having a range of choices. The task force has strongly recommended that adult foster homes bear as little resemblance to institutions as possible. This implies, for example, that the rooms of residents be personalized. This can be accomplished by allowing residents to keep their possessions in the adult foster home. Being able to select and use personal clothing supports independence and self-care. Use of personal possessions and clothing also provides a sense of continuity and maintenance of identity which are threatened by moving from one residence to another. An important consideration in this standard is setting limits and the task force recommended that space and health, safety and rights of other occupants should dictate the number of personal possessions the resident is allowed to use. This standard is reasonable because it provides flexibility for various adult foster home conditions.

Subpart 6. Right to associate. This provision is necessary to ensure that a resident has the freedom to participate fully, or not participate, in the life of the community and to develop personal relationships. Residents, as adults, have the right to make decisions about how they spend their time and who they spend it with. This is a part of being a responsible adult. To restrict a resident in these activities could promote dependence and limit self-growth and confidence. The task force did not intend this provision to preclude an operator from having "house rules" just as any family-like setting would have. The task force further recommended that the limit be "infringement on the rights of other residents and household members." This standard is, therefore, reasonable because it provides a reasonable amount of freedom for a resident subject to the exercise of the same freedoms by others.

Subpart 7. Married residents. This provision is necessary to ensure the health of residents in an adult foster home setting. A resident must be encouraged to maintain the marriage relationship since this is important to mental and physical health. This may be the strongest tie that a resident has in his or her life. Privacy is basic to maintaining the marriage relationship. Married couples living together in an adult foster home must be given the opportunity to share a room. This allows for the possibility that marriage partners may choose not to share a room and bed. Marriage is a strong, intimate, human relationship that must be recognized and supported.

9555.6265 SAFEGUARDS FOR CASH RESOURCES ENTRUSTED TO OPERATOR

Subpart 1. Determination. It is necessary to specify how a determination is made about a resident's cash resources to protect the resident from exploitation and promote independence and self-care skills. Some functionally-impaired residents need assistance with their finances because they may, for example, be blind, unable to read, or not able to intellectually handle funds. Residents in these situations genuinely need this service from an adult foster home. Other residents are perfectly capable of handling their own funds and have the right to do so. If residents, who are capable of doing things for themselves, are denied such opportunities, dependence is the result. The social worker at the time of initial assessment is in the best position to determine if a resident will need this type of assistance because of the information about the resident that is gathered to develop the individual service plan or individual resident placement agreement. This provision is reasonable because it puts specific responsibility on the social worker who is in the best position to make such a determination.

Subpart 2. Procedures for handling cash resources. It is necessary to develop procedures for handling a resident's cash resources to provide for uniformity once assurance that the resident will not be exploited.

Item A. Receipts are a reasonable requirement because they are a commonly-used method to document a cash transaction. The signature of the resident or the resident's legal representative provide documentation that he or she actually received the cash, saw the amount the receipt was written for, and presumably noted that it was accurate.

Item B. This provision is reasonable because amounts in excess of \$300 would probably be difficult for a resident who receives public assistance, Minnesota Supplemental Aid or who is otherwise on a fixed income to replace should these funds be stolen, misappropriated or destroyed in some manner. Excess money in large amounts in the adult foster home might prove to be a target for theft or exploitation. This procedure is consistent with Minnesota Rules, parts 4655.4130 through 4655.4160 governing the licensure of nursing homes.

Item C. It is reasonable that the resident and the resident's representative be allowed access to records on their financial arrangements and transactions because the funds belong to the resident. The resident, or his or her legal representative, has the right to these items. This provision also provides a way for the resident, or resident's representative, to monitor transactions.

Item D. There must be a reporting system established to provide for accountability of a resident's funds. Written statements provide a permanent and ongoing method to document how funds have been received and disbursed. The quarterly time period was recommended by the task force because a resident's personal funds are usually less than \$300 per quarter. It would not be reasonable to require monthly reporting of very small amounts. On the other hand, a longer period of time than three months would not assure maintenance of accurate records. Three months is also a period of time that is adequate and reasonable to keep the resident informed of funds for planning purposes and consistent with standard business reporting practices.


Item E. A procedure for disposition of a resident's cash resources and valuables upon his or her death is necessary to facilitate the orderly disposition of the decedent's estate under Minnesota probate laws. Because these resources rightfully belong to a resident's estate, it is reasonable to require that they be turned over to the resident's representative or executor or the administrator of the estate. A receipt is a reasonable requirement for documentation of the transaction.

Repealer and Effective Date. This provision is necessary and reasonable to give those currently-certified operators a reasonable amount of time to come into compliance with the proposed standards. Such operators would have from six months to one year to make the adjustments required. The time recommended is a compromise between the urgency to upgrade standards and to accommodate the need for institutional placement diversions, and the need for time by operators to substantially comply with the health and safety standards. Six to twelve months is consistent with that used in the adopted rule parts governing family day care and child foster care.

SJ/RULE/01

9/15/86

DATE



LEONARD W. LEVINE
Commissioner

BIBLIOGRAPHY

All materials cited in this bibliography are not subject to frequent change and are available at the state law library or through the public library system's MINITEX service.

1. Brown, S. J., Wendle, C., and Stewart, E. American Journal of Mental Deficiency, 1962, p. 119.
2. Apetekar, H. H., Encyclopedia of Social Work, (New York: National Association of Social Workers), 1986, pp. 351-357.
3. Schrader, P. J., and Elms, R. R. Guidelines for Family Care Operators, Springer, New York, 1972.
4. CFR Federal Register, January 31, 1978, p. 4020.
5. Burt, Martha R., Harder, Paul W., Gornick, Janet C., Services to Disabled Adults. Urban Institute Study, 1983, pp. 118-121.
6. Federal Omnibus Budget Reconciliation Act of 1981, Title XIX, section 2176 and Laws of Minnesota, 1983, chapter 312.
7. Adult Foster Care: A Manual for Social Workers.. Prepared by the Northwest Regional Development Commission for the Minnesota Department of Human Services, pages 1-4.
8. Crockett, H. M. (1934). "Boarding homes as a tool in social case-work with mental patients," Mental Hygiene, vol. 18, pp. 189-204.
9. Evans, E. B. (1979). "Issues in community-family care of psychiatric patients: Implications for social work practice," Chicago: National Association of Social Workers.
10. Hollier, N. W., and Hanison, R. M. (1956). "A home care program in the community," Mental Hygiene, vol. 40, pp. 574-584.
11. Malholm, H. B., and Barton, W. E. (1941). "Family care: A community resource in the rehabilitation of mental patients," American Journal of Psychiatry, vol. 98, pp. 33-41.
12. Brockett, Ralph G. (1984). "Issues in Promoting Adult Foster Care as an Option to Institutionalization," Journal of Housing Practice vol. 2, pp. 51-62.
13. Dorgan, J. (1958). "Foster home care for the psychiatric patient," Canadian Journal of Public Health, vol. 19, pp. 411-419.
14. Cochran, Winston E.; Sran, Pushpa K.; and Varano, Grace A. (1977). "The Relocation Syndrome in Mentally Retarded Individuals." Mental Retardation vol. 15, pp. 10-12.
15. Sherman, Susan R., and Newman, Evelyn S. (1979). "Role of the caseworker in adult foster care," Social Work vol. 24, pp. 324-328.

16. Brockett, Ralph G. IBID
17. McCain, John, Adult Foster Homes, Human Services Press, New York, 1983, p. 169.
18. More Than Shelter, Metropolitan Council, St. Paul, MN 1984, p. 18.
19. Bradshaw, Barbara R., Vonderhaar, William P., Keeney, Virginia T., Tyler, Lucy S., and Harris, Susan, "Community-Based Residential Care for Minimally-Impaired Elderly: A survey Analysis," American Journal of Geriatrics, Vol. 24, No. 9, 1976, pp. 423-429.
20. Brockett, Ralph G., "Issues in Promoting Adult Foster Care as an Option to Institutionalization," Journal of Housing for the Elderly, Volume 2, No. 1, 1984, pp. 51-62.
21. Nirje, Bengt, "Principle of Normalization" found in the monograph by Kugel, R., and Wolfensberger, W. "Changing Patterns in Residential Services for the Mentally Retarded," commissioned by the President's Commission on The Mentally Retarded, 1968.

EXHIBITS

- A. Notice of Solicitation for parts 9555.6105 to 9555.6265 as published in the State Register, May 13, 1985, 9 S.R. 2476.
- B. Adult foster home task force members.
- C. Notice of Solicitation for parts 9555.5105 to 9555.5705 as published in the State Register, February 24, 1986, 10 S.R. 1760.
- D. Minutes of meetings of adult foster home task force for June 5, 1985; June 28, 1985; July 2, 1985; July 8, 1985; July 9, 1985; July 10, 1985; July 23, 1985; July 25, 1985; August 22, 1985; August 28, 1985; September 3, 1985; and September 4, 1985.
- E. Minutes of meeting of adult foster care service task force, February 28, 1986.
- F. Adult foster care services task force members.
- G. Minutes of combined task forces on adult foster homes and foster care services meeting held on June 16, 1986.
- H. Minnesota Merit System description of social worker class qualifications, work, knowledge, and ability.
- I. Minutes of mobility subcommittee of adult foster home task force, March 26, 1986.
- J. Adult Foster Care: A manual for social workers. Prepared by the Northwest Regional Development Commission for the Minnesota Department of Human Services, pp. 1-4.
- K. Comments received as a result of the Notices of Solicitation.
- L. Proposed certified rule parts as submitted to the administrative law judge for hearing.
- M. Proposed certified rule parts as published in the State Register.
- N. Statement of Need and Reasonableness.
- O. Fiscal Note.
- P. Order for Hearing.
- Q. Notice of Hearing.
- R. Affidavit of mailings.
- S. Certificate of mailings.
- T. Affidavit of additional mailings.

- U. Certificate of additional mailings.
- V. Adult Foster Home Survey, Minnesota Department of Human Services, 1985.
- W. Field Guide to county social services agency workers, Department of Human Services, adult services.
- X. Fiscal Note Survey of Local Agencies
- Y. Letter from David Zeigennagen, executive director, Minnesota Board of Medical Examiners, July 18, 1986.
- Z. Home Safety Check List.

SNR/SJ/53-55

The following persons may testify at the hearing on behalf of the department or be used as expert witnesses:

Gwen Wildermuth, Social Services Division, Department of Human Services

Julie Harris, special assistant, Attorney General's Office

Jane Nelson, Rules Unit, Department of Human Services

Robert Prouty, Mental Retardation Division, Department of Human Services

Cheryl Nyhus, Licensing Division, Department of Human Services

Dr. Frederick Ferron, Medical Director, Department of Human Services

David Zeigenhagen, executive director, Minnesota Board of Medical Examiners

Robert Imholte, State Fire Marshal's Office, Department of Public Safety

Mike Tripple, assistant director of Health Resources Division, Department of Public Health

Thomas Joachim, State Building Code, Department of Administration

Diane Sprague, Minnesota Housing Finance Agency