

8/27/90



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

✓  
Rule 13

August 13, 1990

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

Dear Ms. Hruby:

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

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

Sincerely,

A handwritten signature in cursive script that reads "Jim Schmidt".

Jim Schmidt, DHS  
Rulemaker

Enclosure



AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA  
DEPARTMENT OF HUMAN SERVICES

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

STATEMENT OF NEED  
AND REASONABLENESS

INTRODUCTION

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

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

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

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

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

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

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

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

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

### SMALL BUSINESS CONSIDERATION IN RULEMAKING

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

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

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

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

## FISCAL NOTE DISCUSSION

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

## RULE DEVELOPMENT PROCEDURES

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

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

## 9502.0335 LICENSING PROCESS.

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

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

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

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

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

9543.0010 **PURPOSE AND APPLICABILITY.**

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

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

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

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

9543.0020 **DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

**9543.0030 LICENSING FUNCTIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**9543.0040 LICENSE APPLICATION PROCEDURES.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **9543.0050 VARIANCE REQUESTS.**

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



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

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

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

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

**9543.0060 LICENSING FOSTER CARE PROGRAMS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

**9543.0070. INVESTIGATIONS OF LICENSED PROGRAMS.**

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

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

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

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

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

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

**9543.0080 COUNTY INVESTIGATION OF UNLICENSED PROGRAMS.**

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

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

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

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

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

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

**9543.0090 CORRECTION ORDERS.**

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

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

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

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

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

### **9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.**

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**9543.0110 ENFORCING ORDERS OF THE COMMISSIONER.**

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

## RULE 13 SNR

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

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

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

### **9543.0120 REPRESENTING THE COMMISSIONER IN CONTESTED CASE PROCEEDINGS.**

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

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

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

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

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

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

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

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

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

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

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

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

**9543.0130 ADMINISTRATIVE REQUIREMENTS.**

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

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

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

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

**9543.0140 COUNTY CERTIFICATION.**

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

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

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

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

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

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

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



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

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

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

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

**9543.0150 PRIVATE AGENCY AUTHORIZATION.**

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

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

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**Repealer.**

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

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

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

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

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

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

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

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


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

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

**EXPERT WITNESS:**

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

DATE: 8-8-90

  
\_\_\_\_\_  
ANN WYNIA  
Commissioner

RULE 13 ADVISORY COMMITTEE

COUNTY REPRESENTATIVES

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Amherst H. Wilder Foundation  
919 Lafond Street  
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Vian L'Heureux  
Volunteers of America Family  
Treatment Program  
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Dassel, Minnesota 55325

Beth Mork  
11324 Yates Avenue North  
Champlin, Minnesota 55316

**STATE OF MINNESOTA**  
**DEPARTMENT OF HUMAN SERVICES**

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

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

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

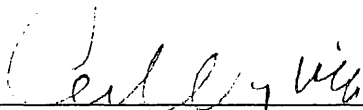
PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES.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

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

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

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Jim Schmidt, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

DATED: 8-8-90

  
\_\_\_\_\_  
ANN WYNIA  
Commissioner

**STATE OF MINNESOTA**  
**DEPARTMENT OF HUMAN SERVICES**

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

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

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

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, section 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON OCTOBER 4, 1990 UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between September 27, 1990 and October 3, 1990 at (612) 296-7815.

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

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

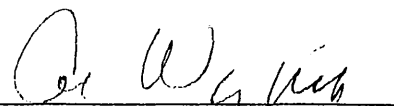
NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing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

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

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

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

DATED: 8-8-90

  
ANN WYNIA  
Commissioner