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IN THE MATTER OF THE PROPOSED ADOPTION OF DEPARTMENT OF HUMAN SERVICES AMENDMENTS TO RULES GOVERNING THE ADMINISTRATION AND PROVISION OF CHILD PROTECTIVE SERVICES BY LOCAL SOCIAL SERVICE AGENCIES, MINNESOTA RULES, PART 9543.0100 AND PARTS 9560.0210 TO 9560.0234

MINNESOTA DEPARTMENT OF HUMAN SERVICES

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

The above-entitled rule amendments are authorized by Minnesota Statutes, §§256.01, subdivisions 2 and 12, which give the commissioner authority to administer and supervise all child welfare activities, as well as require local agencies to establish local child mortality review panels; 256E.05, subdivision 1, which gives the commissioner supervisory authority over community social services administered by counties; 257.175, which authorizes the commissioner to promote the enforcement of all laws for the protection of neglected children; and 393.07, which assigns the commissioner supervisory authority over the child public welfare program, including the responsibility to assist in carrying out the child protection responsibilities of the state.

HISTORY

The Department's rule governing the administration and provision of child protective services (Rule 207) was originally promulgated in the fall of 1976. Because of statutory changes since 1976, amendments to Rule 207 were promulgated in June 1980. The rule was amended again in November, 1983 and in August, 1988. The 1988 amendments resulted in a complete reorganization of the rule, and old parts 9560.0250 to 9560.0310 were repealed; new parts 9560.0210 to 9560.0234 were adopted.

The proposed amendments are necessary to incorporate 1989-1991 changes in state law and to clarify certain provisions that have generated questions from county agency case workers.

On April 1, 1991 at 15 *State Register* 2192, the Department published a Notice of Solicitation of Outside Information or Opinions. On August 15, 1991, an advisory committee composed of representatives from counties, the Metro Counties Child Protection Association, minority affairs councils, Parents Anonymous, the Minnesota State Bar Association, the Minnesota Association of Guardians ad Litem, and this Department was convened to discuss the proposed draft. The language of the proposed rule reflects input received from the committee.

During the Department's internal routing process, the Licensing Division requested that the rule be amended to include directives to local agencies regarding which responsible licensing agency will receive reports of maltreatment that will not be investigated by local agencies for maltreatment but which may establish licensing violations. Additionally, the Licensing Division requested that clarification for local agencies be added when reports of maltreatment allege maltreatment of children of facility license holders during both business and non-business hours. Because addition of these elements constituted a substantial change in the rule from the description of the proposed rule published at 15 *State Register* 2192, a new Notice of Solicitation of Outside Information or Opinions was published at 16 *State Register* 2412 on May 4, 1992.

SPECIFIC RULE PROVISIONS

The above-entitled rules are affirmatively presented by the Department in the following narrative in accordance with the provisions of the Minnesota Administrative Procedure Act, Minnesota Statutes, chapter 14 and the rules of the Attorney General's Office.

9543.0100 RECOMMENDING NEGATIVE LICENSING ACTIONS.

Subpart 1. Basis for recommendation.

Part 9543.0100 is part of the Department's rule governing family day care, adult foster care, and child foster care licensing functions of county and private agencies. The rule was amended effective March 29, 1991 and establishes standards for performance of delegated functions to ensure that program rules are uniformly enforced by agencies. Part 9543.0100, subpart 1 establishes uniform standards by listing the information that county or private agencies must submit to the commissioner when recommending a negative licensing action.

As currently written, item A, subitem (5) requires agencies to submit to the commissioner an evaluation of the risk of harm to persons served. Agencies may use the risk assessment in part 9560.0222, subpart 9. However, as discussed on page 17, part 9560.0222, subpart 9 is being repealed. Therefore, it is necessary and reasonable to delete its reference here to update part 9543.0100.

9560.0214 DEFINITIONS.

Subpart 5. Child protection worker.

As the rule is currently written, a "child protection worker" must either be a social worker employed by a local agency or a supervisor of social workers responsible for providing child protective services. It is necessary to amend this definition in order to clarify that a child protection worker need not be a social worker (a term of art as currently used) or someone who supervises social workers. Rather, child protection workers are employees of local agencies who provide child protective services. This amendment is reasonable because many local agencies' child protection workers are not licensed social workers.

Subpart 6a. Commissioner.

This subpart is necessary and reasonable to clarify the use of this term in part 9560.0232, subpart 5. Adding "designee" is reasonable and necessary because the commissioner cannot perform all the tasks for which he or she is responsible and therefore routinely designates to representatives.

Subpart 9. Emotional maltreatment.

It is necessary to repeal this subpart because a 1990 legislative change added a definition of "mental injury" at Minnesota Statutes, §626.556, subdivision 2, paragraph (k). "Mental injury" now encompasses much of the definition of "emotional maltreatment," and may itself be an element of physical abuse (Minnesota Statutes, §626.556, subdivision 2, paragraph(d)). Because "mental injury" is now found as an element of physical abuse, and therefore part of the larger definition of "maltreatment," it is reasonable to repeal this outdated definition.

Subpart 11. Family unit.

Item A.

"The child" is made a part of the definition of "family unit," necessary because, through an oversight, children were never made a part of the family. Because the purpose of this rule is to provide child protective services, it is reasonable to include children in the definition of "family unit."

Item B.

Item B is now joined with item C by an "and," necessary and reasonable to clarify that relatives and persons living in the

same household as the child are parts of a "family unit," and not mutually exclusive, as current language implies.

Subpart 12a. Indian child.

This is necessary in order to clarify its use in part 9560.0223 and because there are separate federal and state requirements when placing a child of Indian heritage, versus a "child" or a child of "minority race or minority ethnic heritage." It is reasonable because it takes its content from subpart 4 (a person under the age of 18), a definition also found in Minnesota Statutes, §259.21, subdivision 2, and from the Indian Child Welfare Act of 1978, 25 USC §1903(4), Public Law 95-608; Minnesota Statutes, §257.351, subdivision 6, part of the Minnesota Indian Family Preservation Act; and Minnesota Statutes, §260.015, subdivision 27.

Subpart 13. Infant medical neglect.

Subpart 13 is amended to include a definition of "infant," necessary because the rule, in practice, also applies to children aged one year or more who have been continuously hospitalized since birth, although current rule language does acknowledge this. The definition of infant is reasonable because it follows the language of 45 CFR 1340.15(b)(3)(i) (regarding "withholding of medically indicated treatment," the term "infant" can also include "an infant older than one year of age who has been continually hospitalized since birth . . ."). This definition is further reasonable because without this amendment, once a child reaches one year of age, a strict interpretation of the current rule prohibits a finding of infant medical neglect and, therefore, inhibits child protective services.

Subpart 18. Maltreatment.

It is necessary to amend this subpart in order to comply with 1990 statutory changes. It is reasonable because it follows the language of Minnesota Statutes, §626.556, subdivision 10e, which defines maltreatment as physical abuse, neglect, sexual abuse or mental injury, all of which are further defined in Minnesota Statutes, §626.556, subdivision 2.

As noted in the discussion of subpart 9 ("emotional maltreatment"), Minnesota Statutes, §626.556, subdivision 2, paragraph (d) defines physical abuse as any "physical or mental injury, or threatened injury. . . ." This "mental injury" has essentially the same meaning as this subpart's current "emotional maltreatment;" therefore, it is reasonable to delete the reference to "emotional maltreatment."

1990 legislative changes to the definition of neglect in Minnesota Statutes, §626.556, subdivision 2, paragraph (c) added that neglect includes "prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2. . . ." Therefore, it is reasonable that this language is incorporated into the rule.

9560.0216 BASIC REQUIREMENTS.

Subpart 1a. County of service: no imminent danger.

As written, current subpart 2 describes the duties of local agencies in emergency situations when reports of child maltreatment are received. However, the rule is silent regarding nonemergency situations when reports of child maltreatment are received. Current practice regarding nonemergency situations is described in XVI-§4200 of the Department's *Social Service Manual* (Attachment #1), which requires that child protective services "are to be provided by the county in which the child is currently physically residing." This is currently followed by counties, but because Rule 207 is more widely read than the *Manual*, it is necessary to create a new subpart to follow current practice and to update the rule. New subpart 1a states that in situations not involving imminent danger, local agencies shall provide child protective services to any child residing in the county who is alleged to have been maltreated.

The term "imminent danger," used at the recommendation of the Rule Advisory Committee and defined in 9560.0214, subpart 12, means "that a child is threatened with immediate and present maltreatment that is life threatening or likely to result in abandonment, sexual abuse, or serious physical injury." Certainly, while it makes sense for a county to immediately provide child protective services to a child in a situation of imminent danger without regard to the legal residence of the child (discussed in subpart 2, below), for a child <u>not</u> in a situation of imminent danger, it is reasonable that only the county of financial responsibility (i.e., the county where the child resides) must provide child protective services.

This language is also reasonable because it follows the language of Minnesota Statutes, §256G.07, subdivision 4 ("The types and level of social services to be provided . . . are those otherwise provided in the county in which the person is physically residing at the time those services are provided."). Because state law is current practice, there is no fiscal impact for new subpart 1a.

Item A.

Current practice, as noted in XVI-§4200 of the *Social Services Manual*, holds that the local agency may request another local agency to provide child protective services if there is any conflict of interest between the local agency where the child resides and the (child's) family unit. For example, an employee of the local agency, or a board member, may be a member of the child's family unit, thereby suggesting a conflict of interest. In such situations, not only is it reasonable to allow the local agency to request the assistance of another, objective, local agency, but it is reasonable to require the local agency to request such assistance.

Item B.

Current practice, as noted in XVI-§4200 of the *Social Services Manual*, is that sometimes (in nonemergency situations) local agencies request another local agency to assist in an assessment. It is reasonable and necessary to add language here to comply with current practice.

Subpart 2. County of service: imminent danger.

The wording of this title and subpart has been changed to clarify that the content applies to situations of imminent danger. This change is necessary and reasonable to make clear that emergency situations differ from the non-emergency situations covered in new subpart 1a.

It is necessary to delete the phrases referring to "where the child lives" and the child's family because XVI-§4200 of the *Social Services Manual* (Attachment #1) refers only to the "county where the child is found." It is reasonable to follow current practice and the guidance found in the *Manual*. By deleting "or the child's family," the intent is not to diminish its relevance, but rather to clarify that it is not a factor to be immediately considered in a situation of imminent danger.

Subpart 3. Screening reports.

Most of the changes to subpart 3 are grammatical. Instead of the local agency not conducting an assessment, now it shall conduct an assessment. Additionally, the change from "must" to "shall" is necessary and reasonable in order to make the second sentence follow the grammar of the first sentence and to comply with the Office of the Revisor of Statutes' *Minnesota Rules Drafting Manual*, which suggests using "shall" when imposing a duty on a person or body (here, a local agency).

Item B.

Item B is amended to clarify that a local agency must conduct an assessment if, among other criteria, a report gives enough identifying information to locate the child or at least one member of the family unit.

By definition, "family unit" means the child and all persons related to the child, all persons living within the same household as the child, or the child's guardian. See part 9560.0214, subpart 11. It is unreasonable to expect that the entire family unit be located before a local agency conducts an assessment (because that may be impossible), but it makes sense to expect an assessment if at least one person from the family unit is located. Therefore, it is necessary to locate at least the child, or some other member of the family unit, in order to conduct an assessment.

Item C.

This change is necessary to reflect current practice and reflect input from the Advisory Committee, which suggested that a local agency should conduct an assessment if the report contains information that has not been previously received and assessed. It is logical that if a local agency should conduct an assessment when it receives new information, it should likewise conduct one when this information hasn't been assessed, in order that a complete assessment and report screening is conducted.

This complies with Minnesota Statutes, §626.556, subdivision 10, paragraph (a), which requires that if "the report alleges neglect, physical abuse, or sexual abuse . . . within the family unit . . . the local welfare agency shall immediately conduct an assessment and offer protective social services . . . ." (emphasis added). Also, Minnesota Statutes, §626.556, subdivision 10b, paragraph (a), requires the commissioner to "immediately investigate" if a report alleges that a child in a facility is neglected, physically abused, or sexually abused, or has been maltreated within the facility within the three years preceding the report or if a child was maltreated while in the care of a facility within the three years preceding the report. The commissioner may "delegate to a local welfare agency the duty to investigate reports." (emphasis added).

Subpart 3a. Report alleging maltreatment of child of facility license holder.

Counties have asked the Department what to do if the following scenario is brought to a local agency's attention: An investigation substantiates maltreatment of a child of a provider (where child means a minor related by blood, marriage, or adoption) -- either during the facility's business hours, or

during a facility's non-business hours. Does the local agency investigate the report of maltreatment pursuant to part 9560.0220 (maltreatment within the family unit) or pursuant to part 9560.0222 (maltreatment within a facility)?

The Department's Licensing Division has consistently informed local agencies that providers cannot use corporal punishment on their own children, or use their own culturally approved, but abusive, form of discipline during a facility's business hours. The reasoning is that these children are receiving a licensed service during business hours and are entitled to all the benefits and protections offered by licensure.

Therefore, because clarification is necessary, the Department proposes new subpart 3a to identify which part of the child protective services rule must be followed when a report of maltreatment identifies maltreatment of a child of a provider.

Item A. This item provides that part 9560.0220 (covering the family unit) must be followed if a report of maltreatment alleges maltreatment during non-business hours. This means that the actions by the local agency will involve only the family unit and the responsible licensing agency identified from the list in part 9560.0222, subpart 1.

This is reasonable because no other individuals (i.e., other children and/or their family members) were present when the alleged maltreatment occurred. Adequate investigation by the local agency should prevent any further harm to a provider's children.

The local agency must notify the responsible licensing agency when a report of maltreatment is received and when the assessment is finished. This language is taken from Minnesota Statutes, §626.556, subdivision 10d, paragraph (a), which covers maltreatment in facilities. Even though in this item the local agency must treat the situation as a *family unit* matter and Minnesota Statutes, §626.556, subdivision 10d, paragraph (a) does not expressly authorize notification to licensing agencies, it <u>does</u> allow for broad notification when facilities "<u>licensed pursuant to sections 245A.01 to 245A.16</u>" (the Human Services Licensing Act) are involved (emphasis added). If, pursuant to statute, notifications to family members, guardians, or legal custodians are required for facility investigations, it makes sense that for family unit investigations the responsible licensing agency (licensed under Minnesota Statutes, chapter 245A) should be kept informed. Furthermore, Minnesota Statutes, §626.556, subdivision 10d, paragraph (c) requires notification to parents, guardians, or legal custodians when facility investigations are completed; here, at the very least, the responsible licensing agency should be so informed.

Item B. On the other hand, when a report of maltreatment alleges maltreatment during business hours, other children and/or their family members are present. Therefore, it is necessary that the directives of part 9560.0222 (covering facilities) be followed. This is reasonable in order to ensure the protection of all children in the care of a facility and to whom the alleged offender may have access.

This subpart does not have a fiscal impact on local agencies, because it merely clarifies which part of the rule must be followed and which responsible licensing agency is to be notified.

Subpart 6. In person observation.

This subpart is amended to clarify that in the first stages of an assessment, the local agency must observe the child reported to be maltreated. This change is necessary because current language simply requires an observation when "the local agency conducts an assessment," and the Department believes that observation must be made at the beginning of an assessment in order to properly screen a report of maltreatment and complete an accurate assessment.

Subpart 7. Notice to persons being interviewed.

Items A & B.

The only changes are grammatical, necessary and reasonable because of new item C.

Item C.

Subpart 7 clarifies for local agencies their responsibilities for providing data privacy and appeal rights information to persons being interviewed. This notice is commonly referred to as the "Tennessen Notice."

Item C is needed because county case workers have asked the Department whether the "Tennessen Notice" must be provided to minors being interviewed. Item C answers that question by stating a notice is not required for a child under ten years of age.

This item is reasonable because it follows the requirement of Minnesota Statutes, §626.556, subdivision 11, which states that in "conducting investigations and assessments . . . the [Tennessen] notice . . . need not be provided to a minor under the age of ten who is the alleged victim of abuse or neglect." This allows discretion by the local agency, important because

some children may be sufficiently mature to understand the notice procedure, while others will not.

Further, current part 9560.0220, subpart 3, item B, governing child interviews when a local agency is responding to reports of maltreatment within the family unit, refers to the "Tennessen Notice" of part 9560.0216, subpart 7, and states that the "local agency may waive the notice . . . when interviewing a child under ten years of age who is reported to be maltreated."

9560.0218 RESPONSE TO REPORTS OF INFANT MEDICAL NEGLECT.

Subpart 1. Screening.

Item A. It is necessary and reasonable to amend item A to follow the new definition of infant as found in part 9560.0214, subpart 13, for the reasons found in the discussion of part 9560.0214, subpart 13, on page 4.

9560.0220 RESPONSE TO REPORTS OF MALTREATMENT WITHIN THE FAMILY UNIT.

Subpart 2. Coordination with law enforcement.

Item A, subitem (2).

Minnesota Statutes, §626.556, subdivision 10, paragraph (a), states that if a report alleges a violation of a criminal statute "involving sexual abuse or physical abuse" (examples of maltreatment), coordination between local agencies and law enforcement is required. As currently written, the rule follows the statute.

The Minnesota Criminal Code, Minnesota Statutes, chapter 609, lists crimes involving sexual abuse and physical abuse. In order to clarify for local agencies that these crimes are found in Minnesota Statutes, chapter 609, it is necessary and reasonable to cite Minnesota Statutes, chapter 609 in subitem (2).

Minnesota Statutes, §626.556, subdivision 10, paragraph (a), does not mention neglect when requiring coordination between local agencies and law enforcement. However, by definition, neglect is also considered maltreatment -- see Minnesota Statutes, §626.556, subdivision 10e. Therefore, this item is amended to broaden the duty of local agencies to work with law enforcement when neglect or endangerment of a child, or malicious punishment of a child, is alleged to have occurred.

It is necessary to include these two crimes because they are severe enough to require local agency and law enforcement coordination. A child who is deprived of necessary food, clothing, shelter, health care, or supervision and substantially harmed physically or emotionally (the definition of neglect in Minnesota Statutes, §609.378, subdivision 1, paragraph (a), clause (1)) in the family unit should receive the same child protective services as one who is a victim of sexual or physical abuse.

Additionally, Minnesota Statutes, §609.377 (malicious punishment of a child), specifies a crime similar to physical abuse: a parent, legal guardian or caretaker (defined in Minnesota Statutes, §609.376, subdivision 3, as someone with "responsibility for the care of a child as a result of a family relationship," wording similar to that used in the definition of "physical abuse" in Minnesota Statutes, §626.556, subdivision 2, paragraph (d)) who intentionally "evidences unreasonable force or cruel discipline" excessive under the circumstances is guilty of malicious punishment of a child. Certainly, it is reasonable that such a child also deserves the protection part 9560.0220 provides.

There is no fiscal impact due to the addition of "malicious punishment" and "neglect or endangerment" to the instances when a local agency must ask law enforcement to accompany the child protection worker to interview the child because all the new language requires is that the agency must <u>request</u> the assistance of law enforcement. Furthermore, many agencies already request such assistance as a part of their standard practice.

Subpart 6. Local agency determinations.

Item A, subitems (1) and (2).

It is necessary to amend subitems (1) and (2) by using "maltreatment" in order to comply with state statute and the language of this rule. It is reasonable because Minnesota Statutes, §626.556, subdivision 10e, and part 9560.0214, subpart 18, define maltreatment as physical abuse, neglect, sexual abuse, or mental injury. It is also reasonable to refer to the rule's definition of maltreatment for the sake of brevity.

Subitem (1) is also amended by changing the standard of proof necessary to allow local agencies to determine child maltreatment has occurred from "credible" evidence to "the information obtained through the assessment leads the child protection worker to conclude that it is more likely than not" (a "preponderance of the evidence" standard). This change is necessary in order to clarify the evidentiary standard in child protective services and to provide consistency statewide; currently, some counties use the "credible evidence" standard,

while others apply the higher standard of "preponderance of the evidence."

While members of the Advisory Committee strongly stated that using the word "preponderance" would be too "legalistic" and confusing for local agency case workers, they felt that something stronger than the current "credible evidence" standard is needed.

According to Black's Law Dictionary, Fifth Ed., credible evidence is evidence worthy of belief, whereas preponderance of evidence is evidence "which as a whole shows that the fact sought to be proved is more probable than not." In other words, under the current language, any evidence of maltreatment is enough to cause a local agency to make a determination of maltreatment. As reports of child maltreatment increase, local agencies have found it reasonable to require a stronger standard of evidence in order to best serve children -- where there is more evidence that maltreatment occurred than evidence to the contrary.

The amendment is a compromise between the Department's preference for the use of the word "preponderance" and the Advisory Committee's strong sentiments against using it. The amendment contains the same idea as "preponderance" (i.e., that there is enough information to cause a child protection worker to conclude that it is more likely than not that a child has been maltreated) without making the rule sound "legalistic" to those applying its provisions.

Subpart 7. Determining the need for protective intervention.

Current items A and B are combined. This is necessary to make the rule easier to read; in both instances, the local agency determines that child protective services are needed, triggering protective intervention under subpart 8. It is reasonable to combine items A and B so that local agencies know that whether or not they determine that maltreatment occurred, if they determine that child protective services are needed, then they must provide protective intervention.

"Other needed services" is deleted from current item B because local agencies have asked during department training sessions for a definition of "other needed services." Because the Department believes that protective intervention as defined in subpart 8 is what is required if child protective services are needed, it is necessary and reasonable to delete this ambiguous phrase. Note that "needed services" is not deleted from current item C (relettered item B). In that case, no child is in need of protective services (and protective intervention is not required), requiring "alternative services" that are not properly the subject of this rule.

Subpart 8. Protective intervention procedure.

Item A.

It is necessary to amend this item to clarify its intent. Some local agencies have taken it to mean that a local agency must evaluate the risks of keeping children in the home; others have taken it to mean that a local agency must evaluate the risks to all the children remaining in the home. Therefore, it is reasonable to clarify the Department's intent that a local agency must evaluate the risks to all children in the home to whom the alleged offender has access.

Item B.

It is necessary to amend item B to clarify that a local agency has only the authority to <u>seek</u> removal of children (through a court order or with the help of law enforcement). As this item is currently written, it states that a local agency has the authority to remove children. It is reasonable to clarify this language for readers of this rule.

Additionally, it is necessary to amend this item to comply with Minnesota Statutes, §260.165, subdivision 1, paragraph (c), clause (2), to clarify that it is a last resort to seek removal, and only when the child is found in surroundings or conditions which endanger the child's health or welfare so that the child cannot be protected while at home. It is reasonable to be specific in subitem (3), because local agencies must be cautious about removing a child from his or her home, unless there is no alternative.

Item D.

It is necessary to add the phrase "written protective services" in order to clarify its use throughout this rule, and in particular, part 9560.0228, subpart 2 (written protective services plan). The amendment is reasonable because it uses the same phrase as is used in part 9560.0228 and throughout the rule.

Subpart 9. Removal procedures.

Item A.

It is necessary to add a reference to new part 9560.0223 regarding placement so local agencies know children must be placed in the least restrictive setting and in closest proximity to their families as possible pursuant to Minnesota Statutes, §260.173, subdivision 2. It is reasonable because items B to D discuss placement.

Item C, subitem (2).

If a child is in imminent danger in their family unit and is not placed voluntarily, the local agency may temporarily place the child in a shelter care facility or with a relative of the child pursuant to Minnesota Statutes, §260.173, subdivision 2. Current rule language does not include the option of temporary placement with a relative, so it is necessary to amend this option into subitem (2). Because of this amendment, it becomes necessary to change "facility" to "child's" location.

Item E.

This item is necessary to comply with 1991 amendments to Minnesota Statutes, §256F.07, subdivision 1. Laws of Minnesota 1991, chapter 292, article 3, section 16, amended this statute to require that emergency placements "be reviewed to determine services necessary to allow a child to return home." Because local agencies are the entities that will review emergency placements, it is reasonable to require in that part of the rule covering removal procedures from the family unit that local agencies review emergency placements, thereby hastening a child's return to the home.

In 1990, 1717 children were placed in out of home (emergency) placements while child protection assessments were prepared. The Department estimates that it will take approximately 30 minutes to review emergency placements. As discussed in the accompanying Fiscal Note, the Department estimates that this statutory requirement will result in total county costs of $21,463 for each of two years following promulgation of this rule amendment, averaging out to $247/year for each county.

Note: As currently written, subpart 9 states that there are four items, A to D. However, there is no item D in the current rule.

9560.0222 INVESTIGATION OF REPORTS OF MALTREATMENT WITHIN A FACILITY.

Subpart 1. Screening.

A necessary amendment is the reference to part 9560.0216. When a report of maltreatment alleges maltreatment of a child of the license holder, local agencies must know which basic procedures to follow in addition to the specifics required in part 9560.0222. Referencing part 9560.0216 is a reasonable method of informing local agencies that they must follow that part's basic procedures. Specifically, part 9560.0216, new subpart 3a informs local agencies which part of this rule to follow if a

report of maltreatment alleges maltreatment in a facility during business, and non-business, hours.

It is also necessary and reasonable to include all the people working a facility (the license holder, the facility staff, and any volunteers) so that the list of those who may have maltreated children is complete.

Subpart 1a. Report to licensing agency.

This new subpart, containing some language of subpart 1, is necessary to emphasize that a report not meeting the criteria in subpart 1 (i.e., the allegations do not constitute maltreatment; the report does not contain sufficient identifying information to allow an investigation; and the report contains information that has already been investigated) still should be reported as a possible licensing violation to the responsible licensing agency listed in this subpart. This subpart reasonably clarifies that a local agency that determines there is no need for investigation shall notify the county and state agencies (here, the Department) licensing the facility *within 48 hours, excluding weekends and holidays*.

This is necessary to respond to the Department's Licensing Division, which requested that any report pertaining to a licensed facility that is received by a local agency be "immediately reported" to the Department, and this timeframe is reasonable because current part 9560.0222, subpart 3 (coordination with state licensing agencies), requires that local agencies notify the "responsible state licensing agencies within 48 hours, excluding weekends and holidays" after receiving maltreatment reports. Requiring that any report pertaining to a licensed facility be reported is reasonable because some reports of maltreatment in licensed facilities, while not meeting the definition of maltreatment, may still be licensing violations. One example is corporal punishment. In such instances, it is necessary that the Department's Licensing Division be aware of licensing violations.

Subpart 1a is also necessary because the current rule language in subpart 1 does not identify which licensing agency should receive these reports, and counties have asked for clarification. To take one example, some counties have interpreted the current language of "state agencies that license the facility" to mean the Department, when in fact licensing duties and authorities have been delegated to the counties and to private licensing agencies in Minnesota Rules, parts 9543.0010 to 9543.0150 (governing family day care and adult and child foster care).

Therefore, it is necessary to list in items A to E which licensing agencies are to receive reports:

- local agencies retain reports concerning family day care, as noted in the example above;
- if a private licensing agency licenses a child foster care provider, it receives the report; otherwise, it is retained by the local agency;
- the Department receives reports concerning facilities it directly licenses (group homes, day care and child care centers, and residential treatment homes);
- the Department of Corrections receives reports concerning facilities it licenses (juvenile detention centers); and
- the Department of Health receives reports concerning facilities it licenses (hospitals).

Subpart 2. Coordination with law enforcement.

Item A, subitem (1).

Grammatical changes are necessary and reasonable to make subitem (1) follow part 9560.0220, subpart 2, item A, subitem (1).

Item A, subitem (2).

It is necessary to amend subitem (2) to make the subitem follow part 9560.0220, subpart 2, item A, subitem (2). The reasonableness of the new language citing Minnesota Statutes, chapter 609 -- the state's criminal code -- is discussed on page 10.

The addition of "malicious punishment of a child" and "neglect or endangerment of a child" is necessary and reasonable for the reasons covered in part 9560.0220, subpart 2, item A, subitem (2), on page 10.

Subpart 3. Coordination with licensing agencies.

It is necessary and reasonable to reference the list of responsible licensing agencies found in subpart 1 for the reasons covered in subpart 1 on page 14.

Subpart 5. Notice to parents, guardians, or legal custodians.

Item C.

Subpart 5 allows local agencies to notify parents, guardians, or legal custodians of children in the care of a facility of reported maltreatment. The change is grammatical only and makes the rule easier to read.

Subpart 6. Interviewing children.

It is necessary to amend subpart 6 to comply with Minnesota Statutes, §626.556, subdivision 10b, paragraph (a), clause (2), and to be consistent with the wording in part 9560.0222, subpart 5, item C (children "who are in the care of the facility"). It is reasonable because state law provides that local agencies may interview children who are or were in the care of a facility during an investigation.

Additionally, Minnesota Statutes, §626.556, subdivision 10, paragraph (c) gives local agencies the authority to interview, without parental consent, minors who live with or who have resided with the alleged offender. Therefore, it is necessary and reasonable to allow local agencies to interview children of alleged offenders, and other children who live with or who have lived with alleged offenders, during facility investigations.

Subpart 8. Interviewing persons outside the facility.

The changes to this subpart are necessary and reasonable for the same reasons discussed in subpart 5, item C, above.

Subpart 9. Information evaluation.

Item A. It is necessary and reasonable to repeal this item because, at the present, there is no risk assessment format for facilities -- risk assessment is only used in the family pursuant to part 9560.0220, subpart 6, item B. Instead, in facility investigations, the facts of the case are gathered and a decision made based on these facts, without using a risk assessment tool.

It is anticipated that repeal of this subpart will result in minimal cost savings for county agencies that currently follow subpart 9.

Item B.

It is necessary and reasonable to repeal this item because it is the experience of the Department that some local agencies consult with the Department's Licensing Division and rely solely

on the division's opinion, rather than also relying on the other factors the agencies have gathered.

Subpart 10. Local agency determination.

It is reasonable and necessary to amend subpart 10 for the same reasons discussed for part 9560.0220, subpart 6, item A, subitem (1), on page 11. Other minor changes are grammatical, necessary to be consistent with part 9560.0220, subpart 6.

Item B.

The "license holder" is included in this list of because it is just as possible that a license holder commits maltreatment as facility staff or volunteers. Therefore, it is reasonable to make an inclusive list of those who may be guilty of child abuse.

Subpart 11. Protective intervention.

The phrase "or that child protective services are needed" is added to this subpart in order to comply with Minnesota Statutes, §626.556, subdivision 10e, which requires that after every investigation, the local agency shall determine if maltreatment occurred and if child protective services are needed. This amendment is reasonable because it follows the statutory language.

There is no fiscal change due to this amendment because it is already current practice in local agencies; this modification simply updates this rule.

Item A.

It is necessary and reasonable to amend this item because the Office of the Revisor of Statutes' *Minnesota Rules Drafting Manual* recommends that "shall" be used only when imposing a duty on a person or body and that "must" be used only to talk about a thing rather than a person (here, a report). It is also necessary and reasonable to change the wording from a child "within" the facility to a child "who is in the care of" the facility "or was in the care of the facility" in order to follow the same wording in subpart 5, item C and in subpart 6.

Added is wording to establish a timeframe for local agencies to provide written reports. Now, local agencies provide reports until either the investigation is completed or the alleged offender is no longer present in the facility, whichever comes first, and then only to parents, guardians or legal custodians of children currently in the care of the facility or who were in the care of the facility when the maltreatment occurred. This is necessary because only those people who have children in a

facility, or had children in the facility when the maltreatment occurred should be informed as to the progress of the local agency's plan of protective intervention.

It is reasonable that these people be informed from the time of the maltreatment until the end of the investigation or until the alleged offender leaves the facility, whichever comes first, because at the end of the investigation, one to two things will happen: Either protective intervention will be provided (if it is determined that maltreatment occurred), or, if the offender leaves the facility, the risk to children ends.

Item C.

It is necessary and reasonable to reference the responsible licensing agencies in subpart 1 for the reasons discussed in subpart 1 on page 14.

Subpart 12. No determination of maltreatment or a need for child protective services.

It is necessary to amend the heading because subpart 12 discusses what a local agency must do if there is not enough evidence to determine whether there was maltreatment or a need for child protective services. Simply put, there are times when a child protection worker may believe a child was maltreated but he or she is unable to substantiate maltreatment. The revision is reasonable because it makes the heading follow the content of the subpart, clarifying the rule.

The inclusion of "a need for child protective services" is necessary and reasonable for the reasons discussed in subpart 11, above.

It is necessary and reasonable to identify only the relevant subitems of subpart 11, item A, as some of the subitems are not applicable if there is no determination of maltreatment or a need for child protective services; namely, subitems (2) (the nature of the maltreatment) and (6) (remedial measures being provided).

Item B.

It is necessary and reasonable to reference (part 9560.0222), subpart 1, to make item B consistent with the structure of item A.

Item C.

It is necessary and reasonable to restructure current language regarding the ombudsman as item C in order to make it consistent with the structure of items A and B.

Subpart 13. Removal procedures.

This new subpart is necessary for the same reasons as discussed for part 9560.0220, subpart 9, item A, on page 13. It is reasonable because, just like removal from the home, local agencies must comply with the law when removing children from facilities and placing them in appropriate facilities.

9560.0223 PLACEMENT PREFERENCE.

When a child is removed from the home or facility, local agencies should have direction from the Department on where to temporarily place the child. Currently, part 9560.0220, subpart 9, details removal procedures, but not placement preferences under state law, and part 9560.0222 says nothing about placement preferences. Therefore, new part 9560.0223 details state law placement preferences for children removed from the family unit or from facilities.

Item A.

This part is reasonable because it follows the requirements of Minnesota Statutes, §§260.015 and 260.173. Minnesota Statutes, §260.173, subdivision 2 states that a child taken into custody pursuant to Minnesota Statutes, §260.015, subdivision 1, paragraph (a) (by order of a court because there are reasonable grounds to believe the child's health, safety or welfare is endangered; allows law enforcement to take custody) or paragraph (c), clause (2) (law enforcement immediately takes custody because child's "health or welfare" endangered):

> shall be detained in the least restrictive setting consistent with the child's health and welfare and in closest proximity to the child's family as possible. Placement may be with a child's relative, or in a shelter care facility.

Item B.

This is necessary to comply with Minnesota Statutes, §260.173, subdivision 2. As noted, Minnesota Statutes, §260.173, subdivision 2 states that placement may be with a child's relative or in a shelter care facility. Subdivision 2 covers situations where the child was in imminent danger, so it is reasonable to clarify that item B applies in situations of imminent danger to the child.

Item C.

An Indian child is provided for separately from "a child of a minority race or minority ethnic heritage" due to the Indian Child Welfare Act of 1978, 25 USC §1901 et. seq., Public Law 95-608 and the Minnesota Indian Family Preservation Act, Minnesota Statutes, §§257.35 to 257.256. The federal and state statutes, read in conjunction with the requirements of Minnesota Statutes, §260.165, subdivision 1, paragraph (c), clause (2), make clear that there are specific prioritized choices for placing an Indian child "in the absence of good cause to the contrary." 25 USC §1915(b). It is necessary to follow federal and state law, and reasonable to set out the specific provisions in 25 USC §1915 as subitems (1) to (3) because the Indian Child Welfare Act is neither well understood nor consistently followed by child protection case workers.

Additionally, should an Indian child's tribe establish a different order of placement preference, it must be followed. This is necessary to comply with 25 USC §1915(c) and reasonable because its language is taken from this federal law.

Item D.

It is necessary to include item D in order to follow Minnesota Statutes, §257.071, subdivision 1a, which governs family foster care placement and placement preferences. It is reasonable to cite state law because department data indicates past placement preferences have not been consistently followed, nor have all local agencies applied these statutory provisions to all children. By stating the law, the Department clarifies that Minnesota Statutes, §257.071, subdivision 1a applies to all children in family foster care.

Item E.

Because local agencies will be reviewing placements, language requiring these entities to review the placements is included. It is reasonable to add this because this is just one piece of the placement preference work of local agencies.

The placements will be reviewed after 30 days and each 30 days thereafter for the first six months. This is necessary to give local agencies notice that there are timelines for their placement reviews. This language is taken from Minnesota Statutes, §257.071, subdivision 1a. This subdivision requires that a family foster care placement must protect the racial or ethnic heritage of children. Further, it was amended in 1991 to require that local social service agencies review "<u>the placement</u> [of a child "from a family of color" in a "foster home of a different racial or ethnic background"] <u>after 30 days and each 30 days thereafter for the first six months</u> to determine if

there is another available placement that would better satisfy the requirements of this subdivision." (emphasis added).

Proposed part 9560.0223 covers placement preference for children in need of protection. This paragraph covers local agency review of placements. Certainly, if local agencies are required to review placements of each child in a foster family composed of a "different racial or ethnic" background within 30 days and each 30 days thereafter for the first six months so that a child's heritage and background is protected, it is reasonable to require that, at a minimum, local agencies use the same review timelines when a maltreated child is placed outside the family unit pursuant to this part.

9560.0226 INFORMATION PROVIDED REPORTERS.

Subpart 1. Voluntary reporters.

This change is grammatical only and makes the rule easier to read.

Subpart 2. Mandated reporters.

This change is also grammatical and makes the rule easier to read.

9560.0228 PROTECTIVE SERVICES.

Subpart 1. General requirement.

It is necessary to add the phrase "protective services" in order to clarify its use in subpart 2 and elsewhere throughout the rule. The use of "written protective services plan" is reasonable because this is the terminology used by county child protection workers and the Department.

Subpart 2. Written protective services plan.

It is necessary and reasonable to amend subpart 2 using the phrase "written protective services plan" for the reasons noted in subpart 1. The use of "family unit" is necessary and reasonable for the reasons discussed in part 9560.0214, subpart 11, on page 3.

This subpart is also amended to require that the written protective services plan required under Minnesota Statutes, §260.191, subdivision 1e and based on the risk assessment in part 9560.0216 be completed within 60 days after the assessment is finished. This is necessary to ensure that protective services plans are completed within a reasonable time. The time

period originally suggested by the Department for completion of the written protective services plan was 30 days, but members of the Department's Rule Advisory Committee stated that this was too short a period, and suggested instead 60 days (current practice). There is no fiscal impact to this requirement, as local agencies already complete protective services plans within 60 days after assessment.

Item A.

Amendments to the first part of item A are necessary in order to comply with Minnesota Statutes, §260.191, subdivision 1e. They are reasonable because everyone in the family unit and, in cases of court dispositions, custodians, guardians ad litem and tribal representatives must participate in crafting the written protective services plan in order to provide the best protective services for a child.

It is necessary to add that the child protection worker not only provide the family unit with a copy of the plan signed by the family unit and the worker but also provide documentation if the family unit did not sign the plan, as this is current practice. It is reasonable to provide the family a copy of the signed plan so that the family unit knows what is expected of it, why protective services are being provided, the consequences for failure to comply, etc.

As discussed in the Fiscal Note, in 1990, 4306 protective services plans were written statewide. Of this number, 1077 involved court dispositions.

The Department estimates that this statutory requirement will result in total county costs of $13,463 for each of the two years following promulgation of this rule amendment, averaging out to only $155/year for each county.

Item B.

Item B is amended by reducing the number of necessary elements of the written protective services plan. Amendments are necessary because county case workers and families have found the current list of twelve subitems cumbersome and inefficient; because so much time is spent formulating the protective services plan, other clients cannot be effectively served by local agencies.

In general, those elements that are not crucial to a protective services plan (i.e., those elements that do not further social services involvements) have been deleted.

Currently, item B is based on the general county duties required in part 9550.0090 (plan for provision of community social

services). However, part 9550.0090 is not as specific as the requirements found in part 9560.0610, subpart 2, item B, substitute care case placement plans for children.

Minnesota Rules, part 9560.0610 covers children in "foster family homes, group homes, or relatives' homes," unless placement with the relative is permanent, "and for whom the local social service agency has placement or supervisory responsibility." In part 9560.0610, subpart 2, the local agency is required to "prepare a written plan for each child who is placed in a foster home or a residential facility." The plan includes the following items (part 9560.0610, subpart 2, item B):

- the specific reasons for placement of the child
- specific actions to be taken by parents to end problems or conditions that necessitated placement
- date on which child expected to be returned home
- specific action to be taken by the child, if appropriate
- frequency of contacts of agency with parents and the child

It is reasonable to amend part 9560.0228, subpart 2, item B's list by using most of the elements already found in part 9560.0610, subpart 2, item B, because these are the "core," or most important elements that are necessary for a complete protective services plan -- elements that provide flexibility for change when the family unit makes progress.

It is necessary to delete subitem (1) because family needs and strengths are not essential to a protective services plan. They do not provide enough information for the reader of this rule as is necessary, and are rather nebulous concepts to include in a plan. Essential elements of a plan inform a family unit of the reason for social services action, as well as what the family unit must do to provide a safe and healthy environment for its children; listing out family needs and strengths does not accomplish these objectives.

Renumbered subitem (1) (current subitem (2)) is changed grammatically; there is no change in its meaning.

Renumbered subitem (2) (part of current subitem (6)) is amended by adding deleted subitem (7). Advisory Committee members and Department staff believe that observable behaviors (and timelines) demonstrating that the family unit's goals of reducing risk of harm to the child have been achieved provide for ease in monitoring local agency protective services plans and are benchmarks for child protection workers when conducting quarterly reassessments, as well as for family members (renumbered subitem (6)).

Subitem (3) is amended by deleting the examples of "specific services expected to ameliorate the conditions that present harm to children." This is necessary and reasonable to allow the worker and the family the full range of possible services, rather than relying on the finite listed examples, examples that were never intended as an exclusive list.

Subitem (4) is deleted because the specific services provider or providers may not be known for all services at the time the protective services plan is developed. Further, for the same reason regarding essential elements discussed in subitem (1), above, this subitem is not crucial to the plan.

It is necessary to delete current subitems (5) and (10) because the amount, frequency, and duration of services, as well as the time required to achieve goals, must be flexible; problems are not bound by time considerations. Therefore, it is reasonable to provide child protection workers and the family as much time as is needed for receipt of services, without constriction to a timeline. Additionally, when protective services plans are written, the amount, frequency and duration of services by services providers may be unknown.

As noted, part of current subitem (6) is now found in renumbered subitem (2). It is necessary to delete that content of subitem (6) regarding "alternative permanency planning goals for children" because alternative permanency plans are used by case workers working with children in out-of-home placement and are more appropriately a subject for the Department's substitute care rule.

Also deleted is language regarding "the basis for determining that the family lacks capacity to reduce the risk of harm to children." Language identifying achievable family unit goals to reduce risk of harm to the child is picked up in renumbered subitem (2), but that is not to say that the local agency does not ensure that it is working to address the issue of safety for the child while the protective services plan is being prepared. Whether or not language regarding the family unit's lack of capacity to reduce the risk of harm to children is deleted here, the safety of children is always a local agency's #1 priority.

Renumbered subitem (4) is amended by requiring that the plan identify the specific tasks to be performed by each "appropriate" family member. It is necessary because some members of the family do not need to be involved in the case plan. For example, a newborn should not (and cannot) be made to perform any type of task. This addition is reasonable because it allows only the most suitable to act on specific tasks.

It is necessary and reasonable to delete subitem (9) because contacts between the family, the child protection worker and other service providers need to remain flexible.

Renumbered subitem (6) is amended to replace "timetable" with "projected date," necessary to incorporate this suggestion by a county representative on the Rule Advisory Committee. The county representative pointed out that the word "timetable" is incorrect, because county case workers do not fill out a timetable, but rather a projected date (usually, filling in the name of a month) for the next quarterly assessment. Therefore, it is reasonable to substitute "projected date" for "timetable."

Because the number of elements in a protective services plan is reduced from twelve to six, it is anticipated that the amount of time to write a plan will be reduced by approximately one-half. As discussed in the Fiscal Note, the Department anticipates that it will now take approximately 2.5 hours to prepare a protective services plan (rather than 5 hours), resulting in total county savings of $269,125 for the first year following promulgation of this rule, averaging out to $3094/year for each county.

Item C.

As currently written, for a child in out-of-home placement (substitute care), item C allows a local agency to use a substitute care plan pursuant to Minnesota Statutes, §257.071 or a court ordered plan that meets the criteria for a written protective services plan. However, court ordered plans may be made without the involvement of the family unit and cannot meet the criteria for a protective services plan. It is reasonable, then, to delete the reference to a court ordered plan. What remains is that a local agency may use a substitute care plan.

Because there may be confusion among counties as to whether the substitute care plan must meet the criteria of a protective services plan, it is necessary to state that local agencies may use a substitute care plan "in lieu of a protective services plan." And, because substitute care plans need not meet the criteria of protective services plan, it is reasonable to clarify that they meet the substitute care plan criteria of Minnesota Statutes, §257.071.

The Department anticipates that the option of using only a substitute care plan meeting the substitute care plan statutory criteria will result in cost savings to those counties that currently use the protective services plan criteria. As covered in the Fiscal Note, the Department estimates that total county savings will be approximately $107,313 for the first year following promulgation of this rule amendment, averaging out to $1234/year for each county.

Item D. New item D states that when a family has at least one child residing in the home who requires child protective services and at least one child in out-of-home placement, the local agency shall develop both a protective services plan (for the child in the home) and a substitute care plan under Minnesota Statutes, §257.071 (for the child outside the home).

This is necessary because in a family unit where there is actual or alleged child maltreatment, the family unit may be separated into more than one living arrangement. If so, it is necessary that each child, no matter where they reside, receive the most appropriate type of social services. Therefore, it is reasonable that for a child living in the home who needs child protective services, a protective services plan be developed; for a child in substitute care, it is reasonable that a substitute care plan be developed.

There is no fiscal impact to this item, as it is already current practice.

Subpart 4. Monitoring services.

Item A.

The use of "written protective services plan" is necessary and reasonable for the reasons discussed in subpart 1 on page 22.

The other changes to item A are grammatical. Current subitem (3) is combined with subitem (2) for clarity. Current item B is new subitem (3), necessary to make clear that the child protection worker must consult with other service providers, if any, at least quarterly <u>when the child remains in the home while protective services are being provided</u>. Because of the addition of new item C (covering children in out-of-home placement), it is reasonable to move current item B into item A to clarify that there are certain steps a case worker must take when the child remains in the home.

Item B.

Item B provides that the "child protection worker's supervisor shall conduct a review at least semiannually." Currently, (reconstituted) item B is item C, which could be read to require that this review is conducted when a child remains in the home. However, with the addition of new item C (covering the situation when a child is in out-of-home placement), it is necessary to clarify that indeed, the supervisor's review is to be conducted <u>when a child remains in the home while protective services are being provided</u>. It is reasonable to add such language to item B to separate this requirement from the requirement in new item C, dealing with a child not living in the home.

The change from "shall" to "must" is necessary and reasonable for the same reason discussed for part 9560.0222, subpart 11, item A, discussed on page 18. The necessity and reasonableness of "written protective services plan" is discussed in subpart 1 on page 22.

It is necessary and reasonable to delete current subitem (3) because child protection supervisors do not attend administrative or court reviews for children in substitute care. Case workers do. Further, item B governs children remaining in the home, not in out-of-home placement.

Item C.

This new item is necessary to clarify the monitoring services available pursuant to part 9560.0580 (which governs substitute care) are necessary for a child not at home as in item A, but in out-of-home placement (for example, in foster care). It is reasonable to provide direction in rule for these children, as they are legally entitled to receive monitoring services.

It is anticipated that this amendment represents a cost savings for counties. Currently, counties responsible for children in out-of-home placement monitor services pursuant to part 9560.0580 <u>and</u> pursuant to Rule 207. Now, counties must monitor services only pursuant to the rule governing substitute care.

As addressed in the Fiscal Note, the Department estimates that this amendment will result in total county savings of approximately $107,250 for the first year following promulgation of this amendment, averaging out to $1233/year for each county.

Subpart 5. Quarterly reassessment.

It is necessary to amend subpart 5 to require the child protection worker and the family to meet to assess the protective services plan so that each person has the opportunity to provide input into the plan. Currently, some child protection workers reassess the plan of protective services without involving the family. Therefore, requiring an actual meeting is reasonable to provide needed input and better cooperation by the family.

The necessity and reasonableness of the use of "written protective services plan" is covered in subpart 1 on page 22.

Item A.

Deleting the phrase "and objectives" is necessary and reasonable because, as used in this rule, it has the same meaning as "goals" and is redundant.

Items B. and C.

It is necessary and reasonable to combine items B and C because both deal with specifics that must remain flexible -- goals, behaviors, tasks, and services. It is reasonable to combine these items while clarifying that quarterly assessments are a time of reevaluation and modification.

"Services" will now be discussed by the child protection worker and the family to see if additional services are necessary to achieve specific goals. This is necessary and reasonable because services, like tasks, may need to be added to the protective services plan at some point -- in other words, the plan should remain flexible.

Subpart 6. Termination of protective services.

Added is language stating that a risk assessment tool, including the factors listed in part 9560.0220, subpart 6, item B, subitems (1) to (11), must be used when the local agency considers termination of protective services. This is necessary because it is the Department's intent to require use of the risk assessment tool when an agency is considering closing a child protection case, rather than only at the time of assessment. Using this tool <u>throughout</u> the process, based on the risk of maltreatment to a child, results in better child protective services. In order to clarify the meaning of the risk assessment tool, it is reasonable to cite part 9560.0220, subpart 6, item B governing the risk assessment tool.

Item A.

This change is necessary and reasonable for the reasons described in subpart 1 on page 22.

Item B.

Although there is no statutory authority regarding county provision of voluntary child protective services, Minnesota Statutes, §626.556, subdivision 1, provides that:

> the public policy of this state is to protect children whose health or welfare may be jeopardized . . . . In furtherance of this public policy, it is the intent of the legislature . . . to strengthen the family and make the home, school, and community safe for children . . . . In addition, it is the policy of this state to . . . provide protective and counseling services in appropriate cases.

The Department believes that it is reasonable and in the public interest to give guidance to counties that desire to provide *voluntary* child protective services when subpart 6, item B, applies (the family does not achieve its protective services plan goals but there are insufficient legal grounds to proceed with any court action to *require* county protective services).

County representatives on the Rule Advisory Committee provided examples of counties desiring to provide voluntary protective services and stated that, in fact, this is a common practice. These committee members stated their desire to see language in the rule allowing voluntary protective services. Therefore, new language was added to item B.

9560.0230 OFFICIAL RECORDS.

Subpart 3. Disclosure of report records.

Item B.

This new item is necessary to comply with Minnesota Statutes, §626.556, subdivision 10h (Laws of Minnesota 1991, chapter 319, section 24). It is reasonable because this new law states that:

> [T]he responsible authority or its designee of a local welfare agency <u>may release private or confidential data</u> on an active case involving assessment or investigation of actions that are defined as sexual abuse, physical abuse, or neglect . . . <u>to a court services</u> agency . . . . (emphasis added).

Subpart 4. Nondisclosure of reporter's identity.

Item A.

The changes to item A are grammatical only and make the rule easier to read.

Subpart 5. Notice of determinations.

The only amendment adds "the director of the facility" (in the case of a facility investigation) to the list of those who must be notified of a local agency's determinations. This is necessary to update the rule to follow Minnesota Statutes, §626.556, subdivision 10f, and reasonable because it follows the statutory language:

Within ten working days of the conclusion of an assessment the local welfare agency shall notify the parent or guardian of the child of the determinations. Within ten working days of completing an investigation of a licensed facility, the local welfare agency shall notify the person alleged to be maltreating the child, the director of the facility, and the parent or guardian of the child of the determinations.

9560.0232 ADMINISTRATIVE REQUIREMENTS.

Subpart 4. Child protection team.

This subpart is amended to require each county to establish a multidisciplinary child protection team and is necessary to comply with state law. It is reasonable because Minnesota Statutes, §626.558, subdivision 1, amended in 1990, requires each county to establish such a team.

The Department anticipates no fiscal impact to this requirement, as every county has some form of a child protection team and is therefore already complying with Minnesota Statutes, §626.558, subdivision 1.

Subpart 5. Child mortality review panel.

According to Minnesota Statutes, §256.01, subdivision 2, clause (3), the commissioner shall "administer and supervise all child welfare activities; promote the enforcement of laws protecting . . . neglected . . . children . . . ." Because the commissioner cannot singly "administer and supervise all child welfare activities," it is necessary and reasonable that counties (local agencies), as agents of the commissioner, fulfill this responsibility.

Minnesota Statutes, §256.01, subdivision 12, paragraph (b) authorizes the commissioner to require counties to establish local multidisciplinary child mortality review panels. The commissioner has decided that it is important that each county have such a review panel, and most counties already have them. Therefore, subpart 5 is necessary to implement state law and current county practice.

Because, as will be noted in item B, a local agency's child protection team established pursuant to subpart 4 may serve as the local review panel, it is anticipated that counties will not incur new costs due to promulgation of this subpart.

Item A.

This item is necessary and reasonable for clarity - it is an explanation that "local review panel" means the full local multidisciplinary child mortality review panel.

Item B.

It is reasonable to require the local agency to participate on the panel because Minnesota Statutes, §256.01, subdivision 12, paragraph (b) authorizes the commissioner to require that "all professionals with knowledge of a child mortality case participate" in the review; according to the law, "professional" includes social service providers.

It is further reasonable to allow the local agency's child protection team to serve as the local review panel because these county representatives best know the facts of the case under review.

Finally, it is reasonable to require the review panel, as agents of the commissioner, to compel participation by professional representatives because Minnesota Statutes, §256.01, subdivision 12, paragraph (b), gives the commissioner authority to so require their participation. It is important to have a professional, objective perspective on the local review panel. If county case workers (those "with knowledge of the child mortality case being reviewed") are participants on the local review panel, an objective view is gathered by also requiring participation pursuant to Minnesota Statutes, §256.01, subdivision 12, paragraph (b)'s other "professionals": law enforcement personnel; social service agency lawyers; and social service, health care and mental health care providers.

Item C.

Subitem (1). Pursuant to the delegation power discussed above, it is reasonable to follow Minnesota Statutes, §256.01, subdivision 12, paragraph (c), which allows the commissioner and, by delegation, local review panels, access to not public data under Minnesota Statutes, chapter 13 maintained by other state agencies, statewide systems, or political subdivisions. Further, the commissioner has already delegated this power; this subitem simply sets in rule current practice.

Subitem (2). Currently, when a child dies, local social services agencies should notify the Department within 48 hours of the receipt of a report or notice of death. The Department sends the death certificate and a *Report of Records Search* to the local agency (unless the agency has already notified the Department of the child's death). The Department then notifies the local agency if the State Child Mortality Review Panel will

review the case; if the state will review, the local agency is then required to conduct a county review, which may be conducted by the county child protection team. This county review is then submitted to the Department eight working days before the date of the state review. See the Department's *Social Services Manual* XVI-§4632.04 (Attachment #2).

Subitems (2) and (3) change this procedure. Now, within 60 days of the death of a child, the county's local review panel will <u>automatically</u> conduct a review of the child's death if one of the subunits of (a) to (c) are met. This brings the rule into compliance with the requirements found in the *Social Services Manual* XVI-§4632.03 (Attachment #2). Within 30 days of completing this review, the local review panel must submit a report of the review to the Department.

It is reasonable to set up some time limit (here, 60 days) for child mortality panels to conduct reviews of cases for several reasons. First, the information and memory of those involved with the child's family unit tends to be more accurate and comprehensive when reviews are completed as soon as possible after the death. Second, reports of local review panels can be used by the Department to screen cases for the state review at an earlier date. Third, reviews completed within 60 days may determine gaps in procedures or policy that may reduce the risk of maltreatment for children in similar circumstances. Lastly, a timely review may also provide investigators with previously unknown data to aid in their investigation or help to determine other children at risk.

A review may be delayed if there is pending litigation or an active assessment or investigation. This is necessary and reasonable because this is the policy of the Department, as well as current practice. See the *Social Services Manual* XVI-§4632.03.

Subitem (3). This item requires that within 30 days of completing a review, the local review panel must submit a report of the review to the Department. This requirement is necessary because it greatly aids the Department if there is an available local report (currently, the state screens cases without the aid of a local report).

Adding the timeframes in subitems (2) and (3) together, the local review panel has a total of 90 days to complete a review and submit the report to the Department. Ninety days is reasonable because it coincides with the approximate date the Department receives the death certificate from the Department of Health, and it aids the Department in determining cases for state review.

Item D.

Item D is necessary to comply with Minnesota Statutes, §256.01, subdivision 12, paragraph (d), and reasonable because it restates the content of this state law. As with item E, local review panels will examine classified data, and guidance on how to legally treat this data is necessary for local review panels.

Item E.

Item E is necessary to comply with Minnesota Statutes, §256.01, subdivision 12, paragraph (e), and reasonable because it restates the content of this state law.

Item F.

Item F states that when the Department notifies the local agency that a state review will be conducted pursuant to the state's statutory authority, the local agency must submit within five working days a copy of the social service file. This is necessary and reasonable because the language simply puts into rule current practice. See the Department's *Social Services Manual* XVI-§4632.04, subpart 3a.

As considered in the Fiscal Note, the Department anticipates that establishment of local multidisciplinary child mortality review panels will result in some costs to counties. However, because some counties are already reviewing deaths meeting the criteria now included in rule, the additional costs will be minimal.

The Department estimates that total additional county costs will be only $1750.00 in each of the two years following promulgation of this rule amendment, averaging out to only $20/year for each county. However, it should be noted that in 1990, the year for which the most current figures are available, only 25% of the state's counties reported deaths meeting the threshold for local review; therefore, actual costs/county may actually be closer to $80/year.

EXPERT WITNESSES/SMALL BUSINESS

If this rule is heard in public hearing, the Department does not intend to have outside expert witnesses testify on its behalf. The proposed rule amendments do not affect small businesses as defined in Minnesota Statutes, §14.115.

AGRICULTURAL LAND

The proposed rule amendments do not have a direct or substantial adverse effect on agricultural land as defined in Minnesota Statutes, §17.81, subdivision 3, and referenced in Minnesota Statutes, §14.11, subdivision 2.

Dated: 12-3-92

NATALIE HAAS STEFFEN
Commissioner