

DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF HUMAN SERVICES GOVERNING FOSTER CARE FOR CHILDREN, MINNESOTA RULES, PARTS 9560.0500-9560.0670. STATEMENT OF NEED AND REASONABLENESS

Minnesota Rules, parts 9560.0500-9560.0670, govern Minnesota's local social service agencies in administration of foster care for children. The rule was last revised in 1983.

The primary reason for revision of this rule is the Legislature's statutory directive ordering the Department of Human Services ("Department") to promulgate standards for (1) removal of children from their homes; and (2) for conducting searches for relatives of children in foster care. See Minnesota Statutes, sections, 257.071, subdivision 8, and 257.072, subdivision 9.

The proposed rule amendment contains the standards for conducting searches for relatives. The criteria for removal of children from their homes will be placed in the child protection rule, Minnesota Rules, Part 9560.0221.

In drafting standards requested by the Legislature, the department also rewrote much of the rule. The department changed some provisions to reflect changes in state and federal law. Other provisions were rewritten for greater brevity and clarity. When possible, the department copied provisions found in other rules and statutes, for example, definitions, rather than creating new definitions.

The department convened an advisory committee of 51 persons, six alternates, and six other "interested persons." The committee met from October 1993 - January 1995. Subcommittees met from June 1994 - December 1994.

Some changes were made throughout the rule and rather than refer to them each time, the necessity and reasonableness of those changes are given here:

1. Much of the rule has been rewritten to substitute plain, short words and sentences for polysyllabic words and lengthy sentences. These sections are indicated by the notation "edited for brevity and clarity." It is necessary to revise the rule in this way so that it is easier to understand. When amending a rule to conform with statutory directive, it is reasonable to edit other parts of the rule to make it more readable.

2. When possible, the proposed rule uses definitions and provisions found in other rules or statutes. This harmonizes the

body of law that agencies must deal with and simplifies the agency workers' task of understanding the various statutes and rules they must comply with.

3. The proposed rule contains more references to Indian children and the law governing them than does the current rule because it is important to emphasize to local agencies that Indian children are governed by additional laws not applicable to non-Indian children. The department has heard complaints that too often the rights of Indian tribes, which are sovereign nations, are not respected. The department is committed to seeing that local agencies respect and follow the separate law governing Indian children.

4. The word "guardian" has been added in many provisions because guardians often have the same rights and responsibilities as parents. One notable exception is the parents' right to object to a search for relatives. See New Part 9560.0535. The statute gives this right only to parents, not to guardians, and the rule, therefore, carefully avoids the use of "guardian" with respect to this right.

5. The term "local agency" has been substituted for "local social services agency" because it is shorter and more clear than the current term.

6. The word "must" has been substituted for "shall" because the Revisor's Drafting Manual recommends this substitution.

7. The phrase "long-term foster care" has been substituted for "permanent foster care" because current policy is that children should not be in foster care permanently.

8. Although much of the rule has been rewritten, little of the change is substantive. If the change is substantive, this report explains the need and reasonableness of the change. If a rule part has been rewritten for brevity and clarity but has not changed substantively, the original need and reasonableness of the rule still pertains.

Current Part 9560.0500 SCOPE

This part has no substantive changes.

Current Part 9560.0510 PURPOSE OF FOSTER CARE

This part has no substantive changes.

Current 9560.0520 DEFINITIONS

Current rule part 9560.0520 is being repealed and is replaced by part 9560.0521.

New 9560.0521

Many of the terms from the current definitions section (part 9560.0520) are in this new definition section. The terms included in this part are those that occur frequently in this rule and require some definition to be understood.

Subpart 2. Administrative Review

This definition, formerly in part 9560.0520, subpart 10, is edited for clarity. The term "guardian" is added.

Subp. 3. Child

This definition is being added to the rule. It is exactly the same as the definition in the child protection rule, Minnesota Rules, part 9560.0214, subpart 4. It is reasonable to have the same definition of "child" in both rules because both rules govern similar populations of children.

Subp. 4. Commissioner

This definition is being added to the rule. It is taken from the child protection rule, Minnesota Rules, part 9560.0214, subpart 6a, but with the substitution of "designated representative" for "designee."

Subp. 5. Custodian

This definition, formerly in part 9560.0520, subpart 1, has been expanded to add the complete definition as found in Minnesota Statutes, section 260.015, subdivision 14. It has also been expanded to include the definition of custodians for Indian children as found in the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 257.351, subdivision 8.

Subp. 6. Department

This definition is being added to the rule. References to the "Department of Human Services" are necessary in this rule, and "Department" is a reasonable shorthand.

Subp. 7. Difficulty of Care Payment

The only change in this definition (formerly in part 9560.0520, subpart 11) is a substitution of "local agency" for "local social services agency."

Subp. 8. Dispositional hearing

This definition, formerly in part 9560.0520, subpart 12, is edited for clarity.

Subp. 9. Foster care

This definition is being added to the rule and is taken largely from Minnesota Statutes, section 260.015, subdivision 7. The definition replaces the term "foster care services," currently in 9560.0520, subpart 2. The department has added the phrase, "following placement by the commissioner or a licensed child-placing agency with legal placement responsibility pursuant to court order or voluntary placement agreement." The reason for limiting the definition in this way is that the statutory definition of foster care could conceivably be broad enough to encompass juveniles in correctional facilities or even children in boarding schools. But, this rule is not intended to cover those kinds of situations. Therefore, for purposes of this rule only, the definition of foster care is limited to those instances in which there is legal authority for placing a child in foster care.

Subp. 10. Foster care maintenance payments

This definition, formerly in part 9560.0520, subpart 13, is edited for brevity and clarity.

Subp. 11. Foster care provider

This definition is being added to the rule. In rewriting this rule, the department felt the need for a generic reference for those who provide foster care. "Foster parents" is not broad enough because it excludes group homes and institutional providers of foster care. "Foster care provider" is a reasonable generic reference for persons and institutions providing foster care.

Foster care service

This definition, formerly in part 9560.0520, subpart 2, was deleted because it unnecessarily duplicates the new "foster care" definition in the rule. Additionally, this rule focuses on foster care rather than on casework and other services. Therefore, this definition is unnecessary.

Subp. 12. Foster family home

This definition, formerly in part 9560.0520, subpart 3, has been changed to conform to change in state law. Deletion of the phrase "who are unrelated to the family" is necessary because the statute now requires licensing and approval of relatives who provide foster care for related children. See Minnesota Statutes, section 245A.03, subdivision 2a.

Group home

This definition, formerly in part 9560.0520, subpart 4, was deleted because it is already defined in the licensing rule, Minnesota Rules, chapter 9545, and the rule is easily understandable even without the definition.

Subp. 13. Guardian or legal guardian

This definition is being added to the rule and is taken from Minnesota Statutes, section 524.1-201(20). The proposed rule adds the word "guardian" to provisions that refer to "parents," because in most cases, guardians and parents will have the same rights and responsibilities. A notable exception is the parents' right to object to a search for relatives, a right that guardians do not have. See New Part 9560.0535.

Subp. 14. Indian child

This definition is being added to the rule and is taken from Minnesota Statutes, section 257.351, subdivision 6.

Subp. 15. Legal custody

This definition, formerly in part 9560.0520, subpart 5, is edited for brevity, with a reference to the more complete definition in Minnesota Statutes, section 260.015, subdivision 8. This is also the same definition in the child protection rule, Minnesota Rules, part 9560.0214, subpart 16.

Subp. 16. Local social services agency or local agency

This definition substitutes the term "local agency" for "local social services agency," formerly in part 9560.0520, subpart 6. The newly-worded definition is taken from the child protection rule, Minnesota Rules, part 9560.0214, subpart 17.

Subp. 17. Parent

This definition is being added to the rule. It is necessary to define "parent" because this rule often refers to the rights and responsibilities of parents. The department intentionally excluded stepparents from this definition because only birth and adoptive parents have legal rights to make decisions about their children. But, the terms "custodian" and "relative," both of which occur in the rule, do include stepparents, and, therefore, a child could be placed with a stepparent. The definition of Indian parents, from Minnesota Statutes, section 257.351, subdivision 11, differs somewhat from the definition of non-Indian parents in permitting adoption by tribal custom, and is, therefore, specifically stated here.

Subp. 18. Placement plan

This term is being added to the rule. It is necessary to define "placement plan" because this term occurs frequently in the rule and is not a term easily understood with reference to a dictionary. The term "placement plan" has also been substituted for "case plan" throughout the rule because "placement plan" is more specific.

Subp. 19. Relative

The change in this definition (formerly in part 9560.0520, subpart 7) is necessary to be consistent with the child placement statute, Minnesota Statutes, section 260.181, subdivision 3, which defines "relatives" to include members of the child's extended family and friends. The statute requires local agencies to try placing children with relatives.

Subp. 20. Residential facility.

The term "foster care" has been substituted for "these services" for greater clarity of this definition, formerly in part 9560.0520, subpart 14.

State agency

"State agency," formerly in part 9560.0520, subpart 8, is being deleted because it is used very little in the rule, and because it would merely duplicate the term "department," a more clear shorthand. Additionally, the term "state agency" could be easily confused with the term "local agency," whereas the term "department" would not cause such confusion.

Subp. 21. Voluntary placement

This term, formerly in part 9560.0520, subparts 9 and 15, is being consolidated and changed somewhat. The word "child" has been substituted for "minor" for greater consistency with the rest of the rule. "Local agency" has been substituted for "local social services agency."

Subp. 22. Voluntary placement agreement

This term, formerly in part 9560.0520, subpart 16, is edited for brevity. The department believes it is unnecessary to specify that the agreement is binding on the parties. The term "guardian" has been included also.

Current Part 9560.0530

This part has been deleted but the content has been moved into new part 9560.0529.

Current Part 9560.0540

This material has been edited and divided into three separate parts, new parts 9560.0523; 9560.0525; and 9560.0527.

New Part 9560.0523

This material is from current rule part 9560.0540, subpart 1. It is also necessary to add new language noting that state law also grants authority for placement in emergencies through 72-hour holds. See Minnesota Statutes, section 260.165, subdivision 1. The addition of this language makes this part more comprehensive.

New Part 9560.0525

This rule is from current rule part 9560.0540, subpart 2. Current items B, C, E, F, G, H, and I have been retained but rewritten for brevity and clarity. Item D from the current rule is retained as is, except for the substitution of "foster care provider" for "foster parents." Current item A has been deleted. Current item A requires agencies to "avoid precipitous movement of the child." While the department plans to retain this policy, it is more suitable as a practice pointer, taught in training, rather than as a rule to be enforced. Current item A also requires agencies to seek permission of the court "for time to place the child in an orderly fashion." The department believes this requirement is unnecessary because a local agency that has legal custody of a child has the legal authority to place the child and does not need additional permission to place the child "in an orderly fashion."

New Part 9560.0527

This material is from current rule part 9560.0540, subpart 3. The only substantive change is that the department deleted the requirement that the agency return the child within 30 days and instead now requires return of the child within 24 hours. (New Item E). This change is consistent with the statute governing voluntary placement of Indian children, which also requires return of children within 24 hours of the parent's demand. Minnesota Statutes, section 257.353, subdivision 4. The advisory committee recommended that children be returned to their parents upon demand as soon as possible. The committee and the department believe that 24 hours gives sufficient time for the agency to prepare the child for a return to the parents.

A written and notarized demand for return of Indian children is required by Minnesota Statutes, section 257.351, subdivision 4.

New Part 9560.0529

This material is from current part 9560.0530. The exception for placement in a relative's home has been deleted because the statute currently requires relatives to be licensed or approved.

A simple reference to the licensing statute, Minnesota Statutes, chapter 245A, and Minnesota Rules, chapters 9543 and 9545, is reasonable.

New Part 9560.0532

The standards for removal of children from their homes are in the child protection rule, Minnesota Rules, Part 9560.0221. This part references the applicable statutes and rules governing removal of children from the home.

New Part 9560.0535

Minnesota Statutes, section 257.072, subdivision 9, directs the commissioner to draft rules governing the search for relatives of children requiring foster care. New Part 9560.0535 is the result of this directive.

Subpart 1 reflects the legislature's directive that agencies search for a child's relatives, unless the child's parent objects. Minnesota Statutes, section 257.072, subdivisions 1, 7(1) (a).

Subpart 2 directs local agencies how to respond to a parent objecting to the search for relatives. Advisory committee members felt strongly that parents' objections to a search for relatives must be respected and that the agency should try to understand the reasons for the parents' objections and try to address those concerns. Committee members commented that the parents' objection to the relative search may stem from concern for the children. They noted that even parents who abuse children may care enough for the children that they would wish to avoid placing the children with abusive relatives. Some parents, on the other hand, may object to the relative search out of anger or embarrassment. The instructions in Subpart 2 will help the local agency evaluate the parents' reasons for objecting to the search and address their concerns.

The department notes also that this part refers only to the parent's, and not the guardian's or custodian's objections to the search. The department decided against requiring deference to objections from the guardian or custodian because the governing statutes refer only to "parent" (Minnesota Statutes, sections 257.072, subdivision 7(1) (a) and 260.181, subdivision 3). Additionally, parents and children have the same relatives and a common history with those relatives. The parents thus deserve to be heard if relatives are to be involved in the parents' private affairs. A guardian or custodian, on the other hand, may or may not be related to the child's relatives and, therefore, it is appropriate that they have less say in whether to involve the child's relatives.

Some committee members suggested that children, not just parents, also be allowed to object to the relative search. The department notes that the statute only allows for parents to object to the relative preference and not children. Minnesota Statutes, sections 257.072, subdivision 7(1)(a) and 260.181, subdivision 3. The rule follows the recommendation of the committee in requiring children to be consulted about placement preferences but not requiring deference to children objecting to a search for relatives.

If a parent still objects to the relative search, this part requires the agency to notify the juvenile court, as required by Minnesota Statutes, section 257.072, subdivision 7(1)(a). The committee agreed that the department should not specify a procedure for notifying the court so that agencies and courts can be flexible in handling this issue.

The committee had asked that the notification to the court be "in a manner that ensures due process." Due process, however, might require a hearing before the court. The department believes that a hearing would be burdensome to the courts, agencies, children, and parents. The department believes it is sufficient if agencies inform the court of the parents' reasons for objecting and if the agency also tells the parents of the notification to the court. Agencies and courts are free to create a more formal process if they wish.

The reference to the Indian Child Welfare Act is included to remind local agencies to follow the federal law, rather than this rule, in conducting searches for relatives of Indian children. Federal Indian law requires involvement of the Indian child's tribe in the search. See 25 United States Code 1912 (requiring notification of tribe foster care placement is requested).

Subpart 3 requires local agencies to search for relatives for at least six months after the child's first placement, as required by Minnesota Statutes, section 257.072, subdivision 1. Requiring a relative search even if the initial placement is with a relative is necessary and reasonable because that relative may be available only for short-term placement, problems could occur with the initial placement, another relative may have closer bonds with the child. More important, perhaps, the department believes that the whole family -- the extended family -- has responsibility for the child, and it is useful and appropriate to involve the extended family in placement of the child. At the very least, it is useful for an agency to have a list of relatives of the child whom the agency can contact if problems occur with the initial placement, for example an abusive foster care provider, hospitalization or death of the provider.

It also requires agencies to "thoroughly document" the search. This requirement is reasonable because it aids the court in its

review of the agency's search efforts pursuant to Minnesota Statutes, section 260.191, subdivision 3a.

The committee did not want to require the agency to "complete" a search within a short period because this might not be possible but the committee was also concerned that children not be left in the limbo of temporary foster care while a years-long search for relatives continued. Therefore, this rule, following the statute, requires only a six-month search -- a reasonable length of time to find relatives -- and permits the agency to continue the search beyond that time.

However, this subpart also requires agencies to resume the search for relatives if a subsequent placement is needed, and if other relatives might be available. This provision is necessary because often children move from one placement to another, and a relative not found in the search for the first placement may be found in a subsequent search. The committee strongly recommended that the department require renewal of the search for subsequent placements.

Subparts 4 and 5 elaborate on the statute's requirement that agencies make "special efforts" to recruit relatives. See Minnesota Statutes, section 257.072, subdivision 1. Subpart 4 contains the committee's recommendations for mandatory actions by the local agency. Subpart 5 contains the committee's recommendations for optional actions by the local agency.

Special efforts that are mandatory include asking the child, parents, and guardian ad litem about their preferences. Special efforts also include contacting relatives but this is only if the parents have not objected or if the court has ordered the agency to proceed with the relative search despite the parents' objections. Committee members felt strongly that relatives should be involved in placement decisions, and this part reflects their suggestions.

Some committee members felt that local agencies should not be allowed to favor relatives who lived near the parents when more loving relatives who lived farther away might be more appropriate. Other committee members disagreed, noting that familiarity with a relative who lives nearby can be very important to the child. Additionally, they pointed out that placing the child with relatives living nearby aids in frequent visitations between parents and child.

At least one committee member asked that local agencies be encouraged to contact relatives in foreign countries because of what she described as strong family bonds in Asian cultures. Other committee members disagreed, believing this to be too much of a burden on local agencies. The department leaves this issue to the discretion of the local agencies -- the rule does not

prohibit contacting relatives in foreign countries but neither does the rule require it.

The department believes that the relative's geographical distance is only one factor to consider. The proposed rule carefully steers away from expressing a preference for relatives who live nearby or from requiring consideration of relatives who live far away. Instead, the rule simply requires agencies to ask the children and parents for their preferences about relatives. (See Item A.)

The department assumes that agencies conducting the search for relatives (as required by state statute) already question the child, parents, and guardian. Therefore, it is unlikely that this "new" requirement will change the current practice of agencies in conducting the search for relatives.

Item D of subpart 4 requires written consent of the parent or guardian for release of information about the child when the agency consults with other persons who know the child's family. This item aids the agency in complying with the Minnesota Data Practices Act, Minnesota Statutes, chapter 13.

While subpart 4 specifies which persons the agency must contact during the search for relatives, subpart 5 specifies persons the agency may contact, namely, the Office of the Ombudsperson for Families, the state ethnic council related to the child's family, and other sources. Minnesota Statutes, section 257.072, subdivision 1, specifically permits agencies to contact the Office of the Ombudsperson for Families and the state ethnic council related to the child's family.

New Part 9560.0542

This part specifies the records the agency must keep to document its search for the child's relatives.

Subpart 1 specifies the information that must be in the record. Items A and B, information about the date the search began and the agency's efforts to place the child with a relative, will aid the court in determining whether the agency made "special efforts" to search for relatives.

Item B, requires documentation of the effort to place the child with relatives. It is reasonable to require such documentation so that the department can monitor agencies' compliance with state law requiring children to be placed with relatives, when possible.

Item C requires documentation of a requirement in federal statute -- the effort to place a child in the most family-like setting.

Item D requires documentation of any determination that the child belongs with a same-race family. Because the Multiethnic Placement Act, 42 United States Code 5115a, forbids discrimination on the basis of race, it is reasonable to require documentation of any placement in which race was a consideration.

Item E requires documentation of the search for relatives of an Indian child so that the department can monitor the agencies' compliance with the Indian Child Welfare Act.

Subpart 2 specifies that for court-ordered placements, the agency must place in the child's record copies of important documents such as court findings and decisions. It is reasonable to require copies of court documents in the child's file so that agencies can follow instructions and orders of the court. This provision is probably a part of the current practice of most agencies, and therefore it will probably have little effect on the agencies.

New Part 9560.0545

All of the material in this part is from the Multiethnic Placement Act (MEPA), 42 United States Code 5115a, and the Policy Guidance for MEPA, issued by the Department of Justice in April 1995.

MEPA forbids racial discrimination in the placement of children into foster care or for adoption. The statute permits consideration of the child's and the foster care provider's race as only one of a number of factors used to determine the best interests of the child. The federal statute seemingly conflicts with state statute requiring children of color, who are not placed with relatives, to be placed with same-race families, when possible. (See Minnesota Statutes, section 260.181, subdivision 3). The policy guidance issued by the justice department clearly states that a state law establishing a preference for placing children in same-race families clearly violates federal law. (Policy Guidance, p. 10).

By placing MEPA requirements in the rule, some confusion about the current state of the law can be avoided.

The requirement of a narrowly-tailored, individualized determination is from page 9 of the Policy Guidance.

The permissible factors agencies may consider in placing a child are from the Policy Guidance, page 11, footnote 2.

Current Part 9560.0550

This part is being repealed and rewritten as new part 9560.0552.
New Part 9560.0552

This part is essentially the same as former part 9560.0550. The contents have been rewritten and subdivided for brevity and clarity. There has been no substantive change.

Current Part 9560.0560

Subpart 1 of the current rule has been deleted because it is too vague. It is not clear just what kind of agreements agencies must make with each other. Subpart 3 of the current rule better specifies just what kinds of agreements agencies must make. Therefore, subpart 1 of the current rule is superfluous. The rest of this part has been rewritten for brevity and clarity but otherwise there has been no substantive change to current subparts 2 and 3, which have been renumbered as new subparts 1 and 2, respectively.

Current Part 9560.0570

This part has been deleted because it is vague and gives little helpful information. The rule on group homes, parts 9545.1400 to 9545.1500, answers any questions agencies might have. Also note that the definitions of "foster care" and "foster care provider" encompass group homes.

Current Part 9560.0580

Much of the substance of the current rule has been retained in a more compressed form.

Current items B, F, and H have been deleted because the department wishes to reduce the prescriptiveness of its rules to allow agencies more flexibility in working with the parent and the child.

Item A has been edited to waive the requirement of preplacement visits for infants under six months of age. A preplacement visit gives children and foster care providers a chance to become acquainted before beginning foster placement. The current item waives the requirement only for "newborn infants," many of whom will probably be adopted. The department believes that extending the waiver to infants under six months of age lightens the burden on agencies while still protecting the need of older children for a tryout placement.

New item B is a generalized requirement to provide social services as necessary to meet the child's needs. This item replaces the more specific requirements of current items B and D.

New item C is a generalized requirement to provide social services to the child's family as necessary. This general requirement replaces the more prescriptive requirements of current items C and E.

New item D, requiring assistance to the foster care providers, replaces the more prescriptive requirements in current item F.

New item E is essentially the same as current item G, both of which require follow-up services to the child and family when the child returns home.

Current Part 9560.0590

This part has been edited for brevity and clarity. The word "disregard" has been substituted for "waive."

Current Part 9560.0600

All changes to this part are minor. Item A has been changed to reflect the amendment in the governing statute, Minnesota Statutes, section 257.071, subdivision 1. The material added to B is from the same statute. Item C substitutes "Child and Teen Checkup," the current term for what is referred to in the current rule as the "EPSDT." Items D and E are edited for brevity and clarity.

Current Part 9560.0610

This part is being repealed and will be replaced with new parts 9560.0603, 9560.0606, 9560.0609, and 9560.0613. Breaking it into smaller parts makes it easier to read.

New parts 9560.0603, .0606, .0609, .0613.

Most of the material in these parts is taken from state statutes. When the governing law is scattered in various statutes, it is reasonable to place it in an orderly fashion in a rule to help affected persons better understand and comply with the law.

New Part 9560.0603

This material revises and replaces a portion of current part 9560.0610.

New subpart 1 is substantively the same as subpart 2 of current part 9560.0610, which was edited for brevity and clarity. This subpart complies with the governing statute, Minnesota Statutes, section 257.071, subdivision 1.

New subpart 2 directs the local agency to prepare the placement plan according to court order if it is a court-ordered placement or according to the statute governing voluntary placements. It is reasonable to direct the local agency to the statutes governing placement plans.

New subpart 3 is from current part 9560.0610, subpart 2, item C.

New subpart 4 is a compressed, edited version of current part 9560.0610, subpart 2, items A, B, and C.

The governing statutes for the items in subpart 4 are as follows:

Items A, C, D, F, H, and L -- Minnesota Statutes, section 257.071, subdivision.

Item B -- Minnesota Statutes, section 260.172, subdivision 2.

Items E, F, G, and H. Minnesota Statutes, section 260.191, subdivision 1e.

Item J requires the plan to state the foster care provider's duties regarding the foster child's education. It is reasonable for the plan to state such a requirement to avoid confusion about the child's educational plan.

Item K requires the plan to set forth a notice advising the child and parent of their rights to legal counsel and assistance from social services. Placing the notice in the placement plan ensures that the parties are fully informed of their rights to assistance.

Subparts 5, 6, 7, and 8 are from Minnesota Statutes, section 257.071, subdivision 1.

Subpart 6 is an edited version of current part 9560.0610, subpart 2, item D.

In **subpart 7**, items A and B are edited versions of current part 9560.0610, subpart 2, item E. Item C of proposed subpart 7 requires the local agency to notify the parents or guardians if the agency plans to file a petition to terminate parental rights. It is necessary and reasonable to require such notice so that the parents and guardians have a chance to prepare for the termination hearing.

Subpart 8 requires that the child be informed and involved fully in the placement process, as required by statute. See Minnesota Statutes, section 257.071, subdivision 1. Committee members, especially attorneys, also expressed a wish that there be greater involvement of children in the placement process.

New part 9560.0606

Subparts 1 and 2 are required by recent amendments to statute in Minnesota Statutes, section 257.071, subdivision 1a.

Subpart 2 is an edited version of current rule part 9560.0610, subpart 3. The new material in this subpart is from the

governing statute for this entire subpart, Minnesota Statutes, section 257.071, subdivision 2.

New Parts 9560.0609 and 9560.0613

The requirements for hearings and reviews in foster care cases are manifold and come from various sources in state and federal law. Accordingly, it is reasonable to put them together in one place so that agencies can better understand the review and hearing requirements. In the current rule, some of these provisions were in part 9560.0610. For the sake of clarity, the hearing requirements are divided into "court-ordered placements" and "voluntary placements" because the hearing requirements for these types of placements are different.

New Part 9560.0609

Subpart 1 defines "developmentally disabled" and "emotional handicap." These definitions are not in the definitions section at the beginning of the foster care rule because they apply only in this part. The definitions are taken from Minnesota Statutes, section 257.071, subdivision 4.

Subpart 2 is from Minnesota Statutes, section 257.071, subdivisions 3 and 4.

Subpart 3 is from Minnesota Statutes, section 260.192(b) and 260.192(a).

Subpart 4 is from Minnesota Statutes, section 257.071, subdivision 3.

New Part 9560.0613

Subpart 1 is from Minnesota Statutes, section 260.191, subdivision 3a.

Subpart 2 is from Minnesota Statutes, section 260.191, subdivision 3b(a). The statute requires a permanent placement hearing no later than 12 months after the child's placement and requires the agency to file pleadings with the court 10 days before the permanent placement hearing. This subpart gives the agency 30 days before the end of the 12-month period to allow sufficient time to schedule a hearing.

Subpart 3 is from Minnesota Statutes, section 257.071, subdivision 2.

Subpart 4 is from Minnesota Statutes, section 260.242, subdivision 2, paragraph (d).

Subpart 5 is from Minnesota Statutes, section 260.191, subdivision 3b(d).

Subpart 6 is from Minnesota Statutes, section 257.071, subdivision 2. This information is also placed in part 9560.0606, subpart 2.

New Part 9560.0615

The criteria for return of children to the home parallel the criteria for removal of children in the child protection rule, part 9560.0221.

Subpart 1

A. Under item A(1) if a child is removed because of an emergency, then the child must be returned to the parent or guardian if the emergency no longer exists, that is, if the child's safety with the parent or guardian can be ensured.

Item A(2) requires mitigation of the conditions that caused the nonemergency removal of the child. The committee strongly recommended that return of a child removed because of a non-emergency should not depend on correcting all the conditions causing a child's removal. Theoretically, many conditions could combine to require a child's removal. This item, therefore, simply requires mitigation of "the conditions." Likewise, the word "mitigation," would require a moderation or lessening of the conditions that caused the child's removal. Thus, a child removed because of a parent's severe alcoholism, could be returned to the parent if the parent showed improvement in controlling the alcoholism. The parent would not be required to prove a complete "cure" of the alcoholism.

B. The department decided against requiring parents and guardians to submit written requests for return of children in voluntary placement because some parents and guardians are illiterate. But, written requests are encouraged.

C. Item C permits local agencies to release children into the custody of relatives, rather than a parent or guardian, under certain circumstances. This option is necessary for those circumstances in which a relative wishes to care for a child who is in foster care with a stranger but the relative does not wish to be a foster care provider. But, the local agency must fully inform the relative of all of the rights and responsibilities of relatives caring for a child. This requirement is necessary to avoid confusion about whether the local agency is releasing children into the care of a relative who does not want foster care payments or whether the local agency is, in fact, placing a child with a relative without informing the relative of the possibility of foster care payments.

The language of this item safeguards the rights of relatives to be fully informed about foster care issues but also permits relatives who do not need or want foster care payments to become temporary custodians of the children.

Subpart 2

The language in items A and B is from the Indian Child Welfare Act, 25 United States Code 1912, and 1922. The language in item C is from Minnesota Statutes, section 257.351, subdivision 4.

Current Part 9560.0620

This part has been edited for brevity and clarity.

Current Part 9560.0630

This part is being repealed because it conflicts with the Multiethnic Placement Act.

Current Parts 9560.0640-9560.0660

These parts, governing foster care payments, were not open for amendment.

New Part 9560.0665

This part is necessary to place into rule the federal law requiring agencies to give a fair hearing to any individual whose claim for benefits is denied or not acted on with reasonable promptness. 42 United States Code 1397b.

The proposed notice and appeal procedures were drafted as part of a settlement agreement in a lawsuit filed against the department, Budreau vs. Hennepin County Welfare Board.

Children are sometimes left in the care of relatives, either by parents or by agencies. There has been some confusion and resulting litigation regarding the issues of whether agencies have placed children with relatives and of when relatives caring for children are entitled to foster care payments. The department and the legal advocates in this lawsuit believe that the proposed notice and appeal procedures in this part address the requirements of federal law and also meet concerns raised about lack of notice given to relative and nonrelative foster care providers.

Federal regulations require agencies to give adequate notice to claimants on issues involving denial of benefits. 45 Code of Federal Regulations 205.10. The notice and appeal procedures in this part were drafted as part of the settlement agreement, after

much negotiation. The parties' agreement is a strong indication of the reasonableness of the procedures.

Subpart 1 requires notice to be given to relatives who are caring for a child and who request foster care payments. The purpose of the notice is to inform relatives how to make a child protection report and how to request foster care payments. It is reasonable to include this information in a notice to caregiver relatives because children in the care of relatives may have been abandoned by their parents and, if the children were placed by agencies, the relatives may be entitled to foster care payments.

Subpart 2 requires counties to notify relative caregivers of decisions on requests for foster care payments. The required information in the notice is reasonable because it will help relatives understand the reason for the decision and give them information necessary to pursue an appeal.

Subpart 3 requires counties to give information to all foster care providers about the amount and method of calculating foster care payments and difficulty of care payments. It is reasonable to require counties to give this information so that foster care providers understand the reasons for the payments they receive and so that the providers have sufficient information to pursue an appeal.

Subparts 4 and 5 require counties to give information to foster care providers about the difficulty-of-care assessment and reassessment and of the provider's right to review of the reassessment. It is reasonable to include this information in this notice so that providers understand the reasons for a difficulty-of-care assessment and so that they have the necessary information to pursue an appeal should they wish to do so.

Item J, regarding requests for continuance of the payments pending hearing, is from 45 Code of Federal Regulations 205.10(a)(7), which governs the requirements of fair hearings on appeals.

Subpart 6 requires the county to give a detailed explanation of the reasons for making foster care payments for fewer days than the provider requested. It is reasonable to require this information in the notice so that providers understand the reasons for the amount of payment and so that they have the necessary information to pursue an appeal should they wish to do so.

Subpart 7 requires the county to give a detailed explanation of the reasons for terminating foster care payments. It is reasonable to require this information in the notice so that providers understand the reasons for terminating foster care

payments and so that they have the necessary information to pursue an appeal should they wish to do so.

Item G, regarding requests for continuance of the payments pending hearing, is from 45 Code of Federal Regulations 205.10(a)(7), which governs the requirements of fair hearings on appeals.

Subpart 8 sets forth the process foster care providers must follow to request a fair hearing. This subpart comes from Minnesota Statutes, section 256.045, subdivision 3. The 90-day deadline is from 245 Code of Federal Regulations 205.10(a)(5)(iii), which gives claimants reasonable time to submit appeals, but not to exceed 90 days.

Subpart 9 gives the scope of review of hearings involving claims to foster care payments. This subpart is necessary to clear up confusion regarding the scope of review involving claims to foster care payments. The scope of review is reasonable because it reflects the federal law that requires fair hearings only on financial issues.

The federal statute requires fair hearings on claims for benefits that have been denied or not acted on promptly. 42 United States Code 1397b. The issue of whether a placement by the county has occurred can determine whether a caregiver is entitled to foster care payments. It is reasonable therefore to limit review to the issue of whether a placement has occurred and also to the amount of foster care payment.

Because federal law requires hearings only on the financial issues, it is reasonable to deny a hearing on the issues of the propriety of the county's child protection determination or child placement decision.

Current Part 9560.0670

Current **subpart 1** has been edited for brevity and clarity.

New subpart 1a was added to comply with Minnesota Statutes, section 257.072, subdivisions 7(1) and 7(2), which require local agencies to develop and implement a recruitment plan. This subpart also complies with the amendment to the Social Security Act, 42 United States Code 622(b)(9), which requires recruitment of foster families from various ethnic groups.

Although the state statute requires a recruitment plan to permit children to be placed with same-race families, the federal act, prohibiting such discrimination, supersedes the state statute. A disproportionately large number of children in foster care are of minority ethnicities but there are few minority families in Minnesota and even fewer minority families who volunteer to

provide foster care. Unless a local agency has a plan for recruiting families of minority ethnicities, it will be difficult to find enough minority foster families for minority foster children.

New subpart 1b is from Minnesota Statutes, section 257.072, subdivision 1, which requires child-placing agencies to recruit families of minority heritage by working with community and religious organizations.

New subpart 1c requires local agencies to keep records of their actions to comply with new subparts 1 and 2. The record-keeping requirement is necessary and reasonable because otherwise the department would not be able to assess whether agencies were doing enough to recruit minority families.

The documentation can be as simple as a one-page report of what the agency has done in the past year.

Subpart 2 has been edited for clarity. It has also been made less prescriptive.

Subpart 3 has been edited for clarity.

Subpart 4 has been edited for brevity and clarity. It has also been made less prescriptive.

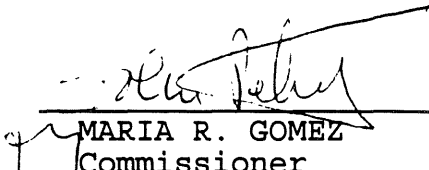
Subpart 5 has been rewritten for brevity and clarity. It has also been rewritten in light of MEPA.

In preparing the proposed repeals, the department considered the requirements of Minnesota Statutes, section 14.115, but believes that any impact on small business falls within the exemptions in Minnesota Statutes, section 14.115, subdivision 7(2), (3).

Because the proposed rule does not have a direct and substantial adverse impact on agricultural land in Minnesota, Minnesota Statutes, section 14.11, subdivision 2, is not applicable.

11/29/95

Date



MARIA R. GOMEZ
Commissioner