

DECEMBER 23, 2002

**Minnesota Departments of Human Services and Corrections**

**STATEMENT OF NEED AND REASONABLENESS**

**Proposed Adoption of New Rules Governing the Licensure and Certification of Residential Treatment and Detention Facilities, and Foster Homes for Children and Juveniles, Minnesota Rules, Parts 2960.0010 to 2960.3340.**

**INTRODUCTION**

The Minnesota Department of Human Services [DHS] and the Minnesota Department of Corrections [DOC] are proposing to jointly adopt rules governing the licensure and certification of residential treatment and detention facilities, and foster homes for children and juveniles. The proposed rules will replace five DHS and four DOC existing rules and create a new certification category for programs that offer transitional services. Transitional services programs are now licensed by DHS under group homes license requirements, with appropriate rule variances granted to these programs to meet the unique care requirements of transitional services programs.

**Organization of the Rule**

The proposed rules are grouped into sections which contain requirements that providers must meet to be licensed. Parts 2960.0010 to 2960.0120, establish general conditions for caring for children which all license holders must meet. Parts 2960.0130 to 2960.0220, establish the conditions which programs licensed as “group residential” programs must meet. Parts 2960.0230 to 2960.0290, establish the conditions which programs licensed as “detention” programs must meet. Parts 2960.3000 to 2960.3340, establish the conditions which programs licensed as “foster care” settings must meet.

Licensed programs may apply to be certified to provide one or more specialized services for children and juveniles. Parts 2960.0300 to 2960.0420, establish the conditions which a program must meet to be certified to provide secure program services to juveniles. Parts 2960.0430 to 2960.0490, establish the conditions which a program must meet to be certified to provide chemical dependency treatment to children and juveniles. Part 2960.0500 establishes the conditions which a program must meet to be certified to provide transitional services. Parts 2960.0510 to 2960.0530, establish the conditions which a program must meet to be certified to provide shelter care services to children and juveniles. Parts 2960.0540 to 2960.0570, establish the conditions which a program must meet to be certified to provide correctional program services to juveniles. Parts 2960.0580 to 2960.0700, establish the conditions which a program must meet to be certified to provide mental health treatment services to

children with severe emotional disturbance. Part 2960.0710 establishes the conditions which a program must meet to use restrictive procedures with a resident.

## **License and Certification**

Laws 1995, Chapter 226, Article 3, section 60, subdivision 1, requires the commissioners of the Departments of Human Services and Corrections to adopt uniform “licensing” and “programming” rules. Chapter 2960 is divided into separate licensing and programming categories. Licensed programs may apply to be certified to offer one or more kinds of programming according to parts 2960.0300 to 2960.0710. Many program residents have multiple problems including homelessness, chemical dependency and severe emotional disturbance and need multiple services such as transitional services, chemical dependency or mental health treatment and correctional services to meet their needs. Allowing programs to be certified to offer one or more kinds of programming is necessary to meet the requirements of Laws 1995, Chapter 226, Article 3, section 60, subdivision 1, that require rules to be developed which will enable “facilities to provide appropriate services to juveniles with single or multiple problems”.

## **The Process of Developing the Umbrella Rule**

The process for developing and adopting the proposed rules, Chapter 2960 [the so-called “Umbrella” rule] has been going on since the rule was authorized by the legislature in 1995. Laws of Minnesota, 1995, Chapter 226, Article 3, section 60, required that the commissioners of the Departments of Human Services and Corrections put together an advisory committee and develop a rule governing the licensure of facilities that provide out of home care for children. The 1995 legislation was based upon recommendations contained in a 1994 report issued by the Task Force on Juvenile Programming, Evaluation, and Planning. The 1995 legislation was authored by task force members Senator Jane Ranum and Representative Mary Murphy.

In 1995 a committee of providers and experts about caring for children in out of home care was convened to help develop the rule. The committee was called the “Core Group”. Over a six month period the Core Group produced an outline of the rule and made recommendations about possible rules. It was decided to develop a rule without reliance on the rule outline developed by the Core Group.

The commissioners of DHS and DOC appointed the co-chairs for the advisory committee, who in turn were to appoint advisory committee members, under the requirements of Laws 1995, Chapter 226 Article 3, section 60, subdivision 3. The advisory committee was initially comprised of over 30 members who were broadly representative of the population of the state. Criticism of the makeup of the committee led to a subsequent appointment of additional members some of whom were foster parents or persons who were more representative of the racial and ethnic characteristics of the children in residential care in licensed facilities. The departments used an advisory committee made up of over 60

people, who broadly represented Minnesota's geographic areas, professional interests and ethnic diversity, to develop a draft rule during 1996 and 1997. The members of the committee included the parents of children who had been in residential programs, expert professionals, trade group representatives and persons with substantial experience providing residential care and services to children in both DOC and DHS licensed programs. The advisory committee divided into sub-committees and task forces to sort through policy questions and provide input into the development of parts of the rule. Department staff put together a series of drafts of the rule which were discussed by the advisory committee over a period of several months. The advisory committee discussion and review process resulted in a draft rule which included the major parts of the proposed rule.

During the summer and fall of 1997 the departments sought comments from the public on the draft rule by sponsoring a series of meetings around the state. Meetings were held in Marshall, Mankato, St. Cloud, Rochester, Duluth, Bemidji and at several locations in the metropolitan area. The departments scheduled meetings in each city during both the evening and day time hours, to foster the participation of interested citizens as well as care and treatment professionals.

The departments also sought comments from communities of color, by contacting the Council on Asian Pacific Minnesotans, Council on Black Minnesotans, Chicano-Latino People Affairs Council, and Indian Affairs Council to arrange meetings and seek advice about the rule. The departments worked with community groups to set up community meetings to provide information to communities of color which were scheduled in places and at times that were convenient for the public to attend and give public comments.

Professional association and interest group reviewers, including the Minnesota Association of County Social Services Administrators, Rules Committee (MACSSA), Minnesota Association of Rule Eights (MARE), Minnesota Council of Child Caring Agencies (MCCCA), North American Council on Adoptable Children (NACAC) and representatives of foster care license holders have reviewed and commented on drafts of the rule. They have commented about foster care and residential facility care and treatment services and rule requirements and the fiscal implications of those rule requirements for license holders, residents and those that pay for the care and treatment.

An extensive review of the rule concerning the possible impact of the rule on county concerns has been conducted by MACSSA. The Department of Human Services and MACSSA have a standing policy to consult with each other about possible rules, especially rules which may affect county social services. Since 1997, MACSSA has invited DHS at least yearly to discuss the rule and its fiscal implications for counties because counties are a part of the system of care for children who need treatment and counties pay for the care of an overwhelming majority of children cared for in residential programs.

The rule was redrafted on the basis of the community comments received and internal departmental reviews of the rule. Policy differences between DHS and DOC were resolved during the review and comment process. Rule parts regarding juvenile sex offender treatment were eliminated from the rule as

requested by DOC. Rule parts regarding “treatment foster care” were added to the rule in response to direction from the legislature. Rule parts regarding “foster residence” settings we added to the rule as requested by DHS.

## **ALTERNATIVE FORMAT**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or audio tape. To make a request, contact Robert Klukas at Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN, 55155-3816, or call 651-296-2794, or fax a request to 651-297-3173. TTY users may call the Minnesota Relay Service at 1-800-627-3529.

## **STATUTORY AUTHORITY**

The proposed rules are required by laws adopted during the 1995 legislative session. Laws 1995, Chapter 226, Article 3, section 60, requires the commissioners of corrections and human services to jointly adopt licensing and programming rules for secure and nonsecure residential programs for children and juveniles that they license. Laws 1995, Chapter 226, Article 3, section 51, requires the commissioners of corrections and human services to jointly adopt licensing rules which require license holders to have operating policies for the continued use of secure treatment placement. Laws 1995, Chapter 226, Article 3, section 50, requires the commissioners of corrections and human services to jointly amend licensing rules to allow residential facilities to admit 18- and 19-year-old extended jurisdiction juveniles [EJJ] and to develop policies which would be approved by the commissioner regarding separate programming and housing for residents based on the age of the residents. Under these laws, the Departments have the necessary statutory authority to adopt the proposed rules.

In addition to the rulemaking authority in Laws 1995, Chapter 226, Article 3, there are laws which provided the statutory authority to adopt the existing licensing rules. DOC licensed programs are governed by rules authorized by Minnesota Statutes, section 241.021, for programs in general, and Minnesota Statutes, section 242.32, subdivision 3, for secure programs. DHS licensed programs are governed by rules authorized by Minnesota Statutes, sections 245A.03 and 245A.09, for programs in general; Minnesota Statutes, sections 245A.095, 245.484, 245.4882, 245.696 and 245.802, subdivision 3, for mental health programs; Minnesota Statutes, section 254A.10, for chemical dependency programs; Minnesota Statutes, section 245A.16, for foster care; and Minnesota statutes, sections 245A.095, subdivision 2, and 245A.22, for transitional services programs.

## **REGULATORY ANALYSIS**

**“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”**

Chapter 2960 sets standards for providers of residential care and treatment. These standards will affect all children who receive or may receive licensed children's or juvenile residential care or treatment and their families. Programs licensed under Chapter 2960 provide residential care and treatment to children and juveniles who are placed in these programs as either delinquent or children in need of protection and services ["CHIPS" or "CHIPS kids"] by the courts, children placed in treatment programs by their families, and children who place themselves in a treatment program. Chapter 2960 may also affect the child's family, because the rule requires license holders to work with the resident's family, if appropriate, during treatment and to prepare the resident to return to the resident's family and community after staying in the residential program.

Chapter 2960 will also affect the persons and entities that provide residential care or treatment and the entities that pay the cost of care and treatment for children and juveniles. To the extent that the cost of caring for children increases under this rule, the license holder will be affected by increased costs. However, the license holder usually is compensated for increased costs of doing business by converting the cost into increased charges which are billed to and paid for by those that buy the care from the license holder. The cost of care and treatment for children and juveniles is usually paid by counties and funded by local tax levies and grant money from state, federal or private sources. A small portion of children's treatment costs are paid for through non-public private means. Insurance and other private payment arrangements pay for less than three percent of children in residential out of home care.

Children who need out of home care and treatment and their families will benefit most from the proposed rule, because the rule sets standards for health and safety intended to protect the child and sets program standards and requirements for outcomes of care and treatment intended to promote the improved functioning of the child and the child's family. License holders who provide care and treatment to children and their families under this rule will benefit from having a set of updated standards under this rule which will allow the license holder to operate certified programs to treat children with multiple problems. The indirect beneficiaries of rule requirements include the general public, who will live in the community with children and their families who have benefitted from treatment and care which is intended to make the children and their families function better than they might function without care and treatment.

**“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”**

Implementation and enforcement of Chapter 2960 by DHS and DOC will result in both one-time implementation costs and ongoing cost increases. The rule governs licensing of over 5,000 foster homes and residential facilities. The license holders and their staff as well as the staff of the licensing agencies will require training about the rule and the departments will need to produce written material, including copies of the rule, to support the training and to distribute for public information.

Staff from DHS and DOC have estimated the one-time costs to implement the rule including costs for training departmental staff, county licensing staff, and license holders. The Department of Corrections has estimated that they will experience an initial training cost of approximately \$25,000 to train approximately 100 license holders about the rule. The Department of Human Services estimates that it will cost approximately \$30,000 to train approximately 550 county and private agency licensing employees who will monitor approximately 5,200 foster care homes and to train approximately 150 license holders that will be monitored by DHS and licensed under the rule.

Some license holders suggested that there may be a need to translate Chapter 2960 into one or more languages. If the rule was translated, it could cost somewhere between \$50 and \$100 per page, depending on a variety of factors including the specific language chosen and the time allowed to deliver the translated document, according to estimates from companies who have state master contracts to provide translation services. The rule is approximately one hundred single-spaced, typewritten pages long. If the departments determine the need to translate the rule, the cost of translating the rule could be between \$5,000 and \$10,000 per language.

Department of Human Services staff have estimated that Chapter 2960 will cost more to administer, because it will result in the department licensing some foster homes as group residential programs and it is anticipated that DOC licensed programs will apply to be certified to provide mental health and chemical dependency treatment. The number of investigations of reports of maltreatment will probably also increase, because the number of facilities the department will license or certify will increase. The cost of one additional licenser is estimated to be approximately \$75,000 per year. The cost of an additional maltreatment investigator is estimated to be approximately \$75,000 per year.

The departments do not believe that other agencies will experience additional costs to implement and enforce the laws and rules they currently enforce in programs they currently license.

The Department of Human Services currently collects approximately \$35,000 per year from license fees, which are determined according to a formula in parts 9545.2000 to 9545.2040. The fees collected are deposited directly into the General Fund. The Department of Human Services will collect additional license and certification fees from newly licensed or certified programs according to the formula mentioned above. The Department of Human Services estimates that approximately 50 new programs will be licensed or certified under Chapter 2960 and that there will be a corresponding increase in fees. The Department of Corrections does not collect a license fee. There are no firm plans to pursue a change in law nor a change in rules to bring about a uniform license fee for facilities licensed under Chapter 2960. Therefore, the rule will not result in a change in revenue to the state, beyond the added fees collected by DHS from parties who wish to be newly licensed as group residential facilities and parties who wish to be newly certified to provide chemical dependency or mental health treatment.

**“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule” and “(4) a description of any alternative methods**

**for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”**

The purpose of the rule is to license programs that provide residential care for children in out of home placement. The enabling legislation, Laws 1995, Chapter 226, Article 3, section 60, subdivision 1, specifically requires that the departments adopt rules. Therefore, the adoption of rules to license programs that provide residential care is the only method that meets the requirement of this rule’s enabling legislation.

During the development of Chapter 2960 discussions were held with the Core Group about the possibility of using accreditation standards instead of rules or incorporating accreditation standards into the rule by reference as a substitute for carrying forward the standards of existing rules into Chapter 2960. Some licensed residential programs are currently accredited. It was determined that accreditation standards were not created to, nor are they intended to be used for rule standards. Furthermore, the accreditation standards for accrediting children’s programs which were discussed specifically state that accreditation standards are not suitable for use as licensing rules and should not be used as a substitute for licensing rules.

**“(5) the probable costs of complying with the proposed rule”**

The estimated costs of complying with the proposed rule are analyzed for those parts which are likely to either increase or decrease the license holder’s cost of rule compliance and for those parts which are likely to increase the costs to local government. The change in the license holder’s cost of complying with the rule is analyzed on a part-by-part basis.

The departments sent out a cost survey to license holders in 1999 to determine the fiscal impact of the rule on licensed programs. The results of that survey are not included in this estimate of the probable costs of complying with the proposed rule. The results of that survey are of little use to determine the cost of the rule as it is proposed for adoption, because the rule has been changed significantly since 1999. In addition the survey had a disappointingly low number [13] of responses from license holders, and many of the license holders who responded exhibited significant misapprehension about the intended purpose of some rule requirements or misunderstood the effect of the rule. In the time since the cost survey was sent out, some license holders made changes to their practices in response to other law changes, and some license holders made program changes that would fit the proposed rule before the rule was proposed, so it is not reasonable to attribute the changes to a rule which is not in effect.

**PARTS 2960.0010 TO 2960.0220**

**Part 2960.0050, subpart 3, item A.** *The license holder must give the resident a written copy of the resident’s basic rights information and explain to the resident in a language that the resident can understand, if the resident is incapable of understanding the written basic rights documents,*

information about the resident's rights related to the resident's care in the licensed facility within 24 hours of admission.

**Cost analysis:**

Beginning in 2004 when the rule is effective, facilities will have to create or redraft the written material they give to residents at the time the resident is admitted to the program. Many facilities already have a written facility handbook which is given to residents at admission, including DOC licensed facilities who must provide either a written copy of facility rules and information about program activities and options or an oral explanation of the information, according to part 2930.3100. Part 9545.1005 requires license holders who provide residential mental health treatment to children with severe emotional disturbance to give written rules of conduct to facility residents. However, some types of facilities do not have a handbook. The initial cost of preparing the information about resident rights and the ongoing cost of updating the information about rights is not known.

The departments do not know how many facilities provide handbooks to residents at admission. It is difficult to estimate the number of facilities that will need to either revise their resident handbook or create a resident handbook for the first time, beginning in 2004 when the rule is effective.

This item also contains a requirement that the license holder must provide the basic rights information in a language that the resident can understand. The departments do not have reliable data on the number of residents in out of home placement who can not understand either written or spoken English. An unknown number of facility residents will not understand spoken or written English which will require the license holder to employ an interpreter or translator to interpret documents into a language the resident will understand. License holders can satisfy the requirement by using facility staff as an interpreter or by employing or contracting with other persons to provide interpreter services. Because neither the number of residents who will need interpreter services nor the number of facilities who have multilingual staff is known, the costs of interpretation can not be reliably estimated.

**Part 2960.0080, subpart 7, item D.** *cultural sensitivity, including the provision of interpreters and English language skill development to meet the needs of facility residents as required by Minnesota Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, paragraph (2), clause (v).*

**Cost analysis:**

The requirements of the enabling legislation for Chapter 2960 indicate that interpreters should be provided as needed and also that facilities should assist residents to get help if the resident needs to develop English language skills. The departments have been assured by a representative of the Minnesota Council of Child Caring Agencies that children in treatment

programs are now getting the translation services they need, because it would not be possible for the treatment program to provide treatment to a resident with whom they could not communicate. While this requirement is a new requirement in rule, facilities are already providing the service, so the departments do not anticipate a large cost increase as a result of complying with this requirement. As noted above in the discussion of the requirement for interpretation in part 2960.0050, subpart 3, item A, the departments do not have reliable information about the number of residents who need interpreter and translation services, nor do the departments have complete information about the interpreter and translation resources available now in programs.

The departments anticipate that there are more residents who will need help to develop their English language skills, than there are residents who will need interpreter and translation services. Local school districts commonly help students develop their English language skills. Many students in residential programs have individual education plans which include information about whether the student needs to develop English language skills. Those students in residential programs are already getting help to develop their English language skills as a part of their education program. The exact number of facility residents who will need help to develop their English language skills beyond the help that is provided as a part of the resident's education program is not known.

While it is not possible to determine the costs of meeting the requirements of this item because the number of residents who need the service is not known, the departments anticipate that these needs are already being met, but the extent to which residents' needs are already met is not known.

**Part 2960.0080, subpart 13, item B.** *an appropriate sized, clean, fire-retardant mattress and two sheets or one sheet and clean mattress cover and sufficient clean blankets to provide comfort under existing temperature conditions, and one pillow and one pillowcase that is anti-allergenic, if required, to meet a resident's health care needs.*

#### **Cost analysis:**

It is estimated that not all programs licensed by DHS have fire-retardant mattresses. The cost of a fire retardant mattress which is not made with polyurethane, is about \$300. Programs licensed by DOC are required to have fire retardant mattresses according to part 2930.4700, subpart 2. The exact number of mattresses that will need to be purchased to meet the rule requirement is not known, so the total cost of complying with this requirement is not known.

#### **DETENTION**

**Part 2960.0240, subpart 4, item B, subitem (1).** *Staff employed in a long-term secure detention facility and in an eight-day temporary holdover facility must complete at least 24 hours of*

orientation training before working alone with residents. Other staff and volunteers must complete orientation consistent with their responsibilities.

#### **Cost analysis:**

The proposed rule represents a decrease in the hours of mandatory orientation training from 40 hours required under existing rules to 24 hours as noted above. This rule change will reduce training requirements by 16 hours per year, per new employee who requires orientation training. This rule change affects thirteen long term detention centers. The exact number of new employees per year who will require orientation training, beginning when the rule is effective in 2004 is not known.

#### **SECURE PROGRAMS**

The proposed standards will have no fiscal impact if adopted.

#### **CHEMICAL DEPENDENCY TREATMENT**

The proposed standards will have no fiscal impact if adopted.

#### **TRANSITIONAL SERVICES**

Currently transitional services programs are licensed by DHS under parts 9545.1400 to 9545.1480, which are the rules intended to be used to license group homes. Because transitional programs are not intended to care for the clients who are cared for in group homes and the clients do not require the supervision of group home residents, a more or less standard set of variances from group home licensing rule requirements are granted to transitional services programs. The development of Chapter 2960 presented an opportunity to draft a set of rules which are appropriate for licensing transitional services programs.

While the requirements of part 2960.0500 are the same as the requirements imposed by the existing rules now used to license transitional services, the rules may be considered “new”, even though the requirements are the same as existing licensing requirements. Care was taken to create a licensing rule which did not increase the operating costs of transitional services programs.

The proposed standards in part 2960.0500 will have no fiscal impact on the operation of transitional services programs if adopted.

#### **SHELTER CARE SERVICES**

The proposed standards will have no fiscal impact if adopted.

## **CORRECTIONAL PROGRAMS**

**The proposed standards will have no fiscal impact if adopted.**

## **MENTAL HEALTH TREATMENT FOR SEVERE EMOTIONAL DISTURBANCE**

**The proposed standards will have no fiscal impact if adopted.**

## **RESTRICTIVE PROCEDURES**

**The proposed standards will have no fiscal impact if adopted.**

## **FOSTER CARE**

**The probable costs of complying with the proposed foster care rule governing licensure of Foster Family Settings, Foster Residence Settings and Additional Requirements for Treatment Foster Care, parts 2960.3000 to 2960.3340**

**In 2001, county social service agencies spent \$84 million on child foster care. The proposed rule updates existing licensing standards and regulations. Wherever possible, current practice has been incorporated into this rule. It is anticipated that implementation and enforcement of this proposed rule would have a neutral cost effect on agencies and state revenues. The Federal Title IV-E program of the Social Security Act requires foster care to meet license rule standards to be eligible for federal funds.**

**The estimated cost of complying with the proposed rule is analyzed for those parts that are likely to either increase or decrease the license holder's cost of rule compliance and for those parts which are likely to increase or decrease the cost to local governments. Sections of the rule not itemized in this report are considered to have a no cost effect. This report analyzes the cost of compliance for license holders, child placing agencies and county social service agencies.**

### **2960.3030 CAPACITY LIMITS**

***Subpart 1: Maximum foster children allowed. A foster home must have no more than six foster children. The maximum number of children allowed in a home is eight, including the foster parent's own children. The foster family must maintain a ratio of one adult for each five children.***

***Subpart 2: Capacity limits. The capacity limits in items A to C apply to foster homes.***

***A. A foster home must have no more than three children who are under two years of age or who are non-ambulatory, unless the license holder maintains a ratio of at least one adult***

*present when children are present for every three children under two years of age or non-ambulatory children present.*

**B.** *A foster home must have no more than four foster children at one time if any of the children have severe or profound mental retardation, have severe emotional disturbance or are a medical technology assisted person; or*

**C.** *The number of foster children a foster home may accept must be limited based on the factors in sub items (1) to (5):*

*(1) the license holder's ability to supervise, considering the adult to child ratio in the home;*

*(2) the license holder's training, experience, and skills related to child care;*

*(3) the structural characteristics of the home;*

*(4) the license holder's ability to assist children in the home during emergencies; and*

*(5) the characteristics of the foster children, including age, disability, and emotional problems.*

**Subpart 3. Exceptions to capacity limits.** *A variance may be granted to allow up to eight foster children in addition to the license holder's own children if the conditions in items A to E are met:*

**A.** *placement is necessary to keep a sibling group together, or is necessary because the foster child was formerly living in the home and it would be in the child's best interest to be placed there again;*

**B.** *there is no risk of harm to the children currently in the home;*

*the structure characteristics of the home, including sleeping space, can accommodate the additional foster children; and;*

*the home remains in compliance with applicable zoning, health, fire and building codes: and the statement of intended use states the conditions for the exception to capacity limits and explains how the license holder will maintain a ratio of adults to children which ensures the safety and appropriate supervision of all the child in the foster home.*

#### **Cost Analysis:**

**The current rule allows a family foster home to be licensed to a maximum capacity of 10 children. (see part 9545.0240) There are approximately 79 current family foster homes that are currently licensed for a capacity of eight or more.**

**This change to a maximum capacity of eight children should not require any child currently placed in a foster home to be moved to a different foster home. In subpart 3, item A of the proposed rule an exception to capacity limits is allowed for a child who has previously lived with the foster family. Considering this exception, this capacity change should not affect a placement in any current foster home.**

Although there are 79 child foster homes that are currently licensed for a capacity of eight or more children, data is not available on how many of these homes maintain eight or more placements nor is data available about how many of these homes care for sibling groups.

After the implementation of the proposed rule, the capacity for a child foster home license will be six foster children unless the exceptions in subpart 3 are relevant. Child foster homes that wish to maintain a license for seven children or more would need to apply for a group residential license and would be licensed under proposed parts 2960.0010 to 2960.0220. Minimal standards of a group residential license should not require any physical changes to the home, if the home currently has adequate bedroom and living space for seven or more children. The additional requirements for a group family residential license would be administrative, such as the requirements to develop and maintain program policies for admission, program outcome, measurements and evaluation.

The local county social service agency or private child-placing agency currently licenses family foster homes to care for a maximum capacity of 10 children. Group residential licenses are administered by the state. The change in capacity standards will shift administrative cost of licensure from the county social service agency or private child-placing agency to the state for those homes that choose to maintain a licensed capacity for more than seven unrelated children.

The daily per diem for children placed in facilities licensed as group residential would be established in a host county contract. A home licensed under parts 2960.0010 to 2960.0220, could continue an affiliation with a private foster care agency for support services and the fees for this service could be built into the host county contract. This would allow for a county social service agency to negotiate a rate of payment with foster homes licensed for more than six children. This could be a cost neutral effect or could allow for a more creative approach in offering services to meet children's needs.

#### **2960.3040 FOSTER HOME PHYSICAL ENVIRONMENT.**

*Subpart 2. Sleeping space. A foster child must be provided with a separate bed suitable size for the child, except that two siblings of the same sex may share a double bed. A foster child must not be assigned sleeping space in a building, apartment, trailer, or other structure that is separated from the foster family home or in an unfinished attic, an unfinished basement, or a hall, or any other room that is normally used for purposes other than sleeping. Bedrooms that are used by foster children must have two exits.*

#### **Cost Analysis:**

The current child foster care rule does not establish a standard for bedroom space for foster children. This standard in the proposed rule could require some child foster care providers to make physical changes in their home to provide bedroom space. Estimating the cost of the

rule would require a physical survey of all foster homes. Conducting a survey of the physical characteristics of over 5000 foster homes is not practical. It is likely that few foster homes would experience a remodeling cost or have to change their operation to comply with this requirement. Most foster homes care for children in typical homes with standard bedrooms.

#### ***2960.3060 LICENSE HOLDER QUALIFICATIONS***

##### ***Subpart 3. Personal characteristics of applicants.***

***B. The applicant and household members must provide a signed statement which indicates that they are receiving all necessary medical care and are physically able to care for foster children and indicate any limitations***

##### **Cost Analysis:**

The current child foster care rule requires new applicants, and all household members, to provide a statement from a medical doctor that the applicant is receiving all needed medical care and is able to physically care for children. (see part 9545.0140) The proposed rule allows the applicant or household member to provide a signed statement about their physical health rather than requiring of a doctor's visit. This change would likely result in a cost saving to the applicant.

#### ***ADDITIONAL REQUIREMENTS FOR FOSTER RESIDENCE SETTINGS***

##### ***2960.3200 ADDITIONAL REQUIREMENTS FOR FOSTER RESIDENCE SETTINGS LICENSE HOLDERS***

##### ***2960.3210 STAFF TRAINING REQUIREMENTS***

##### ***2960.3220 STAFF PATTERNS AND PERSONNEL POLICIES***

##### ***2960.3230 COMMUNICATION AND DOCUMENTATION***

##### **Cost Analysis:**

There are over 200 current foster home license holders, who do not reside at the same address as the licensed foster home. These homes are owned and operated by corporations, partnerships or individuals. Most of these homes have shift staff or employ house-parents to provide care and supervision for the child placed in the home. These homes are licensed under the current family foster care rule (see part 9545.0010 to 9545.0260) because they have a residential capacity of less than 10. Most of these homes are licensed for a maximum capacity of four or five to serve children with developmental disabilities.

Currently these homes are licensed by county social service agencies. The proposed rule for foster residence settings will not cause any change in cost to local county social service agencies.

***ADDITIONAL REQUIREMENTS FOR FOSTER FAMILY SETTING THAT OFFER TREATMENT FOSTER CARE SERVICES***

***2960.3300 Additional requirements.***

***Subpart 1. Foster family setting requirements. A foster family setting license holder, who offers treatment foster care services must meet the requirements of parts 2960.3300 to 2960.3340 in addition to the requirements of parts 2960.3000 to 2960.3100.***

**Cost Analysis:**

**Minnesota Statutes, section 256.01 subdivision 2, clause (25), authorized the development of treatment foster care standards. These standards were developed by a workgroup that included representatives from county social service agencies, private social service agencies and foster parents. The workgroup used the program standards from the Foster Family-based Treatment Association as a program model.**

**There are currently nine private child-placing agencies that offer a treatment foster care program. Less than five county social service agencies offer a treatment foster care program. There are over 1400 Minnesota families that are licensed as foster parents with private child-placing agencies. Private child-placing agencies would license a family as a foster family to: adopt a Minnesota waiting child through an adoption program between a public and private agency, or to provide crisis nursery care, or the foster family is providing treatment foster care. About 722 of the 1436 Minnesota families licensed as foster parents by a private child-placing agency are involved in a treatment foster care program. The exact number of treatment foster homes in Minnesota is unknown.**

**Treatment foster care programs have been offered in Minnesota by private and public agencies for approximately 20 years. Some of the agencies who offer treatment foster care currently follow the program standards and are accredited by the Foster Family-based Treatment Association. Treatment foster care providers who now follow the program standards of the Foster Family-based Treatment Association should not experience an increase in costs resulting from following the treatment foster care standards in these rule parts. County social service agencies pay the private agencies an administrative fee for the treatment support services they provide to a treatment foster home licensed by a private child-placing agency.**

**The average cost per day for a child in foster care is \$36. In 2001, the total cost of child foster care was \$82 million. Child foster care is paid by county social service, with a portion of the cost reimbursed by the federal government through the Federal Title IV-E program of the Social Security Act. When a county social service agency places a child with a private foster**

care agency offering treatment foster care services, the county agency pays the foster family the maintenance and difficulty of care rates in the same manner the county agency would pay any child foster home.

The county will also pay the private foster care agency an administrative rate that is based on a negotiated rate under a host county contract. This administrative rate varies from an average of \$22 a day for basic treatment foster care services to an average of \$40 a day for a treatment foster care program offered as an alternative to residential treatment. Counties may receive a portion of the administrative rate paid to the private foster care agency, as well as the maintenance and difficulty of care rate paid to the foster parent, reimbursement by the Federal Title IV-E program of the Social Security Act for eligible children.

This proposed rule section represents the first standardization of treatment foster care in Minnesota. It is not possible to calculate how many of these current child foster care homes licensed by private child-placing agencies or public social service agencies receive and provide services equivalent to the standards proposed in rule parts 2960.3300 to 2960.3340.

#### **2960.3310 ADMISSION, TREATMENT AND DISCHARGE**

*Subpart 1 Generally. Treatment foster care services children and youth whose special needs would place them at risk of placement in more restrictive residential settings such as hospital, psychiatric centers, corrections facilities or residential treatment programs.*

*Subpart 2. Admission. Admission to a treatment foster care home must meet the requirements of items A and B.*

*A. Admission to a treatment foster care program is based on the recommendations of a licensed professional, who is qualified to direct treatment and familiar with the child's individual needs. The recommendation must be based on a diagnostic evaluation and recognize the reasons the child is at risk for placement in a more restrictive residential setting. The recommendation must identify behavioral concerns to be addressed in a treatment plan.*

*B. Upon admission to a treatment foster care placement, a treatment team must be established for the child. Members of the treatment team are parents, treatment foster care parents, county case manager, licensed professional directing treatment, treatment foster care social worker, and other persons identified by the team who are needed to develop and execute a comprehensive treatment plan.*

*Subpart 3. Treatment. The child's treatment plan must be developed within 10 days of admission and meet the requirements in items A to D.*

*A. The treatment goals in the treatment plan must address the child's needs as determined by a licensed professional directing treatment. The treatment plan must be consistent with*

*the placement plans in Minnesota Statutes, section 260C.212 or the case plan in Minnesota Statutes, section 260B.198, subdivision 5, or service plan in Minnesota Statutes, section 256B.092. The child's treatment goals must be measurable and identify desired treatment outcomes. Treatment foster parents shall document daily observations of the desired treatment outcomes.*

*B. The treatment plan must identify treatment strategies to be used by the treatment foster parents with the children.*

*C. The plan must identify specific supports and services the treatment foster parents will use with the child. Substitute and respite care services must be addressed in the plan.*

*D. The treatment team must develop the treatment plan and meet the following requirements:*

*1. The treatment foster care social worker shall lead the development and documentation of the treatment plan.*

*2. The treatment plan must be reviewed and evaluated every thirty days by the treatment foster parents and the treatment foster care social worker.*

*3. The treatment team must reassess the treatment plan every 90 days. The treatment team must report the child's progress in attaining treatment goals, and update the treatment goals as appropriate. A licensed professional directing the treatment, who must be familiar with the child's individual needs, must review the child's treatment plan and consider the child's progress towards meeting treatment goals, and provide recommendations about the treatment plan to the treatment team.*

*Subpart 4. Discharge. The treatment plan must define outcomes and goals that the child needs to meet for discharge from treatment foster care. The unplanned discharge of a child must follow part 2960.3080, subpart 11. If an unplanned discharge is by the request of the treatment foster parents, the treatment foster care licensing agency shall review and evaluate the treatment foster parent's skill to determine if the treatment foster parents and staff had the appropriate skills to care for the discharged child.*

#### **Cost Analysis:**

**Admission into treatment foster care.** Currently no uniform standards of practice exist in Minnesota for treatment foster care. Admission into treatment foster care is often based on the availability of a foster home, and not on the needs of the child. These standards limit the use of treatment foster care to children who are at risk of placement in a more restrictive residential settings such as hospitals, psychiatric centers, corrections facilities or residential treatment programs and require the recommendation of a licensed professional. Creating licensing rule standards for admission will prioritize the service of treatment foster care, so that it would be more likely available for the most needy children. The creation of admission standards could result in a reduction of treatment foster care cost or slow the growth of costs for county social service agencies.

The treatment foster care professionals that are required by these standards are currently available. These standards should not represent additional cost. Treatment foster care social workers are employed by private social service agencies licensed by the state of Minnesota under parts 9545.0755 to 9545.0845. These private social service agencies support their treatment foster care program through the administrative fees paid by county social service agencies placing children in treatment foster homes.

Usually county social workers have access to licensed professionals who can make the admission recommendations for treatment foster care. County social service workers who function as case manager in a placement are responsible to coordinate a complete assessment regarding the child's needs, and this involvement by a licensed professional would not typically represent additional cost. The creation of admission standards that include the recommendation of a licensed professional could result in a reduction of treatment foster care cost or slow the growth of costs for county social service agencies.

**Treatment Plan:** Treatment plans are common practice and recognized as a fundamental element of treatment foster care in the program standards of the National Family-based Treatment Association. Each plan should be an individualized treatment plan for the child. The implementation of the plan should not result in any cost increase.

Currently it is common practice in Minnesota for treatment foster care plans to be written and reviewed every 90 days. It is not common practice for a licensed professional's treatment recommendations to be addressed in the plan. Some treatment foster care agencies may choose to have licensed professionals, but this would not be mandatory. Most often children who require this level of care would have a licensed professional involved in the child's treatment. This rule requirement directs the treatment team to work together on specific, measurable treatment outcomes. The inclusion of a licensed professional in the treatment team should not represent an increase in cost, because children in foster care are eligible for medical assistance, and are usually already receiving these services.

**Discharge Plan:** Without practice standards, discharge planning in treatment foster care agencies has significantly varied throughout the state. This standard requires that goals identify the children's treatment needs, and define outcomes. At this time, a child may enter treatment foster care, and remain in treatment foster care indefinitely. The creation of discharge standards that include treatment goals and outcomes could result in a reduction of treatment foster care cost or slow the growth of costs for county social service agencies.

#### ***2960.3320 TREATMENT FOSTER CARE REQUIREMENTS***

***Subp.1. Treatment foster care provider qualifications: In addition to the qualification set forth in parts 2960.3000 to 2960.3230, treatment foster parents must:***

- A. Have previously been licensed as a foster parent or have equivalent experience for at least 2 years;*
- B. Be able to carry out the treatment plan in the foster home;*
- C. Ensure that the foster family are willing to accept children who need this level of service and are able to accept the increased involvement and supervision of treatment foster care;*
- D. Ensure that the foster family are able to work as part of a treatment team to implement in-home treatment strategies and document the child's progress, as defined by the treatment plan and team; and*
- E. Have the commitment to work with the child, parent, and treatment team to set and implement strategies, which define outcomes that enable the child to live in the treatment foster home.*

*Subp. 2. Intended use. The statement of intended use required by part 2960.3000, subpart 4, must indicate that the foster home will be used as a treatment foster care home. The commissioner must deem the foster home to be a treatment foster care home and consider information from the license holder's statement of intended use in the home study.*

#### **Cost Analysis:**

**Currently no uniform standards of practice exist in Minnesota for treatment foster care; therefore standards for treatment foster care parents vary. Some treatment foster care agencies may have developed provider standards. The proposed qualifications in this rule are minimal, and should not increase the cost of the program.**

#### **2960.3330 TREATMENT FOSTER CARE TRAINING**

*Subp. 1. Initial training required. Each treatment foster parent must complete training requirements in items A to C.*

*A. The treatment foster care social worker in partnership with the treatment foster parents shall write a professional development plan for the treatment foster parent which is based on the training needs of the treatment parents and the child's individual treatment plan requirements.*

*B. Each treatment foster care parent person must complete 30 hours of primary skill development training prior to accepting a treatment foster care placement. Content of this training must be about at least the following topics: grief and loss, attachment, behavioral intervention, child development, discipline, dynamics of child abuse, children's mental health, substance abuse, cultural competency, treatment plan development and documentation, relationship building with primary families and the role of medication in treatment.*

*C. Maintain first aid and cardiopulmonary resuscitation [CPR] certification.*

*Subp. 2. Annual training required. Each treatment foster parent must complete 18 hours of annual training.*

*A. Annual training must be competency-based and emphasize skill development needed by the foster parent to care for the individual child placed in the home.*

*B. The training may be in various formats, including in-home training provided by treatment professionals, or group presentations, or in-service training approved by the placing or licensing agency.*

*Subp. 3. Exemption. Foster parents who provide treatment foster care and meet the training requirements of this part are exempt from the training requirements of parts 2960.3070 and 2960.3210.*

#### **Cost Analysis**

The training standards are consistent with the program standards from the Foster Family-based Treatment Association. Treatment foster care agencies have established orientation and training programs for their providers. This standard should not result in a cost increase for any of the stakeholders.

#### **2960.3340 TREATMENT FOSTER HOME CAPACITY**

*Subp 1. Treatment foster home capacity. The total number of treatment foster care children placed in one home shall not exceed two unless a variance is granted under subpart 3 for special circumstances. At no time shall a foster home exceed the capacity limits in part 2960.3030.*

*Subp. 2. Continuing care. A treatment foster home may continue to provide care for a child after the child has attained the child's treatment goals to support the permanency goals in the child's case plan.*

*Subp. 3. Capacity limit variance. The capacity variance conditions must ensure that the foster home will meet the individual treatment needs of the children in care and address specific vulnerabilities that may occur when children are placed together. The variance must identify added support services that will be offered to the treatment foster family to meet the needs of each child in the home and tell how the additional support services can be obtained. A variance granted to treatment foster care parents must also meet the requirement in part 2960.3020, subpart 9. A variance may be granted to allow the capacity of a treatment foster home to exceed 2 children, if one of the following special circumstances apply:*

- A. There is a need to place a sibling group together in the foster home;*
- B. To keep the child in the child's home community; or*
- C. To place a child with foster parents with which the child had been previously placed*

#### **Cost Analysis:**

The capacity limits in this rule represent a significant change in treatment foster care in Minnesota. A capacity limit of two is consistent with program standards of the National

**Family-based Treatment Association and is uniform with treatment foster care practice in other states.**

**This rule develops standards for admission, treatment and discharge for treatment foster care. Because no admission, treatment or discharge standards currently exist, it is not reliable to compare the number of children currently in treatment foster care to those who would be served by a treatment foster care program that has uniform standards. The treatment foster care agencies have suggested that to limit each home to two children will be extremely costly, and there will not be sufficient foster homes to meet this need. However, this concern does not adequately consider the effect of the admission, treatment, and discharge standards of this rule on the number of children who will qualify for admission to treatment foster care homes. The children served in treatment foster care today are not screened by a standard to determine if they need treatment foster care. Treatment foster care is designed by the standards of the National Family-based Treatment Association to be an alternative to a more restrictive setting and not an alternative to family foster care.**

**From data available from the Minnesota Department of Human Services Licensing Division, about 722 Minnesota families are licensed as foster parents by the private child-placing agency that offers a treatment foster care program. The licensing capacity of these 722 homes totals 1,925 beds. The present average license capacity of each home can be estimated at 2.6 beds. Setting a maximum license capacity at 2 beds will have an insignificant impact on treatment foster care cost and availability.**

**“(6) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”**

**The proposed rules govern the licensure and certification of residential settings for children and juveniles. There are no federal regulations governing the licensure and certification of residential settings for children and juveniles. Chapter 2960 does not differ from federal regulations regarding the licensure and certification of residential settings for children and juveniles because the federal government does not license and certify residential settings for children and juveniles and there are no federal regulations that govern the licensure and certification of residential settings for children and juveniles.**

**Inconsistency with or duplication of federal regulations is prohibited by Minnesota Statutes, section 245A.09, subdivision 1. Chapter 2960 complies with Minnesota Statutes, section 245A.09, subdivision 1.**

## **COMMISSIONER OF FINANCE REVIEW OF CHARGES**

The review of rules by the commissioner of finance which is required by Minnesota Statutes, sections 14.131 and 16A.1285, does not apply the proposed rules because Chapter 2960 does not set or adjust fees or charges.

## **PERFORMANCE-BASED RULES**

While developing Chapter 2960, the departments considered and implemented performance based standards which emphasize superior achievement in meeting the agency's regulatory objectives and allowed the license holder the appropriate flexibility in meeting the agency's regulatory objectives.

Some standards, which are minimum standards intended to protect the health and safety of the residents of programs licensed by this rule, are carried forward into Chapter 2960 from existing rules which license residential programs for children and juveniles. Some rule standards are taken from statutes that set standards for care and these standards specify what a facility must do, or require that persons employed by the license holder have certain qualifications, such as requirements that facility employees have background checks or that employees have professional licenses or credentials.

The rulemaking process began because the departments wanted license holders to have the flexibility to provide multiple program services to children and juveniles who had multiple problems. Laws 1995, Chapter 226, Article 3, section 60 allows the departments to license and certify programs to address the varied problems of the residents at the facility. Granting multiple certifications to an entity licensed by either department is a unique feature of this rule.

In several instances throughout the rule the departments allow the license holder to determine how to meet goals specified by the rule.

- In part 2960.0040 the license holder is granted flexibility to determine what kind of program the license holder will operate.
- In part 2960.0050, subpart 2, the license holder is allowed flexibility to develop policies and procedures to meet the requirements of subpart 1.
- In part 2960.0060, the license holder is given broad flexibility to meet the goals and produce the outcomes established in this part. In subpart 1 the license holder is allowed flexibility to create policies and procedures that meet the desired outcome. In subpart 6 the license holder is also given flexibility to meet the specified goals of representing the interests of the community.
- In areas such as employee training and orientation, the license holder is required to provide certain basic information to employees and allowed to determine what additional training is appropriate for license holder's employees.

## **ADDITIONAL NOTICE**

**The departments' Notice Plan includes giving notice required by statute. We will mail the rules and Notice of Hearing to everyone who requested a copy of the notice and the rule. We will mail a copy of the notice to everyone who has registered to be on the departments' rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116. We will give a copy of the notice and rule and an excerpt from the Statement of Need and Reasonableness about the fiscal impact of the rule to the chair of every county board in Minnesota, according to Minnesota Statutes, section 256E.05, subd. 3, (c).**

**In addition to the notice required by law the department will send a copy of the Notice of Hearing:**

- **members of the rule advisory committee and persons who are on the mailing lists for the advisory committee meetings;**
- **persons and groups who are known to advocate for facility residents and their families;**
- **Minnesota Disability Law Center;**
- **persons who attended an informational meeting about the rule during the rule development process that signed in at the meeting using a legible name and address;**
- **persons who contacted the department and asked to be notified about the adoption Chapter 2960 when it goes to hearing;**
- **Minnesota Association of Community Corrections Act Counties;**
- **Minnesota Association of County Probation Officers;**
- **State and county probation officers;**
- **Public defenders;**
- **Association of Minnesota Counties;**
- **Members of the Minnesota Association of County Social Services Administrators, Rules Sub-committee;**
- **Minnesota Foster Parent Association;**
- **Persons and entities [approximately 100] currently licensed by the Minnesota Department of Correction to provide detention, treatment and other residential care to juveniles and extended jurisdiction juveniles;**
- **Persons and entities [more than 100] currently licensed by the Minnesota Department of Human Services to provide residential care and treatment to children, juveniles and extended jurisdiction juveniles;**
- **Persons and entities [46] currently licensed by the Department of Human Services as child placing agencies, who place children in foster care;**
- **County licensors [approximately 650] who license foster care homes and other home-based care;**
- **The Minnesota Council of Child Caring Agencies;**
- **The Association for Residential Resources in Minnesota;**
- **The Minnesota Association of Rule Eights [DHS-licensed group home operators].**

## **LIST OF WITNESSES**

**If these rules go to a public hearing, the departments anticipate having the following witnesses testify in support of the need for and reasonableness of the rules:**

- 1. Ms. Theresa Meinholz Gray, Assistant Attorney General, will introduce the exhibits and testify about legal matters related to the proposed rule which arise during the hearing.**
- 2. Mr. Larry Burzinski will testify about rules for programs currently licensed by DHS.**
- 3. Mr. David Johnson will testify about rules for programs currently licensed by DOC.**
- 4. Mr. Robert Klukas will testify about the rulemaking process.**

**Other department staff will be available at the hearing to answer questions about program areas during the hearing. No outside experts will be employed by the departments to testify at the hearing.**

## **RULE-BY-RULE ANALYSIS**

**Proposed Permanent Rules Governing the Licensure and Certification of Residential Treatment and Detention Facilities, and Family Foster Homes for Children and Juveniles**

**PARTS 2960.0010 to 2960.0120**

### **2960.0010 PURPOSE AND APPLICABILITY**

**Subpart 1. Purpose. This subpart is necessary to advise interested persons of the purpose of parts 2960.0010 to 2960.3340, so that interested persons will understand what the departments intend the rule to accomplish and what kinds of programs are regulated by the rule.**

It is also necessary and reasonable to require license holders to follow statutory requirements and cooperate with the placing agency's permanency planning activity, because the placing agency must follow the law regarding permanency planning for a child and the license holder cares for and influences the child and controls the child's whereabouts on a day-to-day basis. The requirements of this subpart are necessary and reasonable, because they allow the commissioner to take action against a license holder who was trying to obstruct the placing agency's permanency placement activity or was not cooperating with or working against the placing agency's permanency placement activity.

**Subpart 2. Scope.** This subpart is necessary to specify which entities require licensure. It is reasonable that these entities understand that certain rule parts apply to them. It is also reasonable to advise persons who are not licensed under this rule that they are excluded from licensure.

**Subpart 3. Exemptions from Chapter 2960.** . Several DHS rules governing residential programs that serve persons with developmental disabilities were consolidated in Minnesota Statutes, Chapter 245B in 1998. Rule requirements in Chapter 2960 were modified, with the advice of providers and other persons familiar with the needs of persons with developmental disabilities, during the rule drafting process to meet the goals of Minnesota Statutes, Chapter 245B. It is reasonable that home and community-based waived service providers licensed under Chapter 245B are exempt from the requirements of Chapter 2960, because persons with developmental disabilities have special needs which can be better met by programs licensed under Minnesota Statutes, Chapter 245B which is designed to allow care providers to meet the special need of persons with developmental disabilities. The exemptions from rule requirements noted in subpart 3, are intended to allow the rule to fit properly into a system of regulation for providers of care to persons with developmental disabilities who need to be licensed under Minnesota Statutes 245B. It is necessary and reasonable to draft rules which are in keeping with related statutes.

Item B is necessary and reasonable because it explains that only certain portions of Chapter 2960 are applicable to shelter and transitional services residential programs. The requirements of parts 2960.0010 to 2960.0120 are reasonable because they provide sufficient requirements, when a program is also governed by either the certification requirements of parts 2960.0500 or 2960.0510 to 2960.0530, to ensure the proper care of program residents. Shelter care services programs are intended to provide short term stays which may not include treatment and should not be reasonably expected to follow rules which are intended for longer term stay programs which probably provide some type of treatment. Likewise, transitional services programs are comparatively short term stay programs which are not intended to provide treatment services to residents. The requirements of Minnesota Statutes, section 245A.22, subdivision 7, require that the general licensing requirements of Minnesota

Statutes, Chapter 245A apply to providers of independent living assistance. The general licensing requirements of Chapter 2960 are contained in parts 2960.0010 to 2960.0120.

**Subpart 4. Exemptions from parts 9543.1000 to 9543.1060.** It is necessary and reasonable to clarify that group residential facilities that are licensed or certified under parts 2960.0010 to 2960.0710 are exempt from the requirements of parts 9543.1000 to 9543.1060, because the programs previously licensed by DHS would be accustomed to meeting the requirements of 9543.1000 to 9543.1060. Parts 9543.1000 to 9543.1060 do not currently apply to DOC licensed programs. The requirements of parts 9543.1000 to 9543.1060 have generally been restated in parts 2960.0010 to 2960.0710. It is necessary and reasonable to use the licensing standards in Chapter 2960 that apply to all licensed programs, including programs licensed by both DHS and DOC.

**Subpart 5. Certification.** It is necessary and reasonable to explain that a program must be licensed to be certified, because programs need to know the requirements for licensure. It is reasonable to require licensure of certified programs because the license requirements contain minimum standards which are necessary to protect the health and safety of residents and ensure that license holders meet the requirements of Minnesota Statutes, Chapter 245A, and section 241.021, which are contained in the license requirements of chapter 2960.

**Subpart 6. Juvenile sex offender treatment programs.** It is necessary and reasonable to advise interested persons that the juvenile sex offender treatment programs certification rules which were adopted in 1999 [See 23SR 2001] will be used to certify programs licensed under Chapter 2960. It is reasonable to certify sex offender programs under the adopted rules cited in this subpart, because the rules are recently adopted and therefore are considered current. It is necessary and reasonable to license juvenile sex offender treatment programs under parts 2960.0010 to 2960.0220, because the rules which license sex offender treatment programs will be repealed as of the effective date of Chapter 2960, and certified sex offender treatment programs are required to be licensed.

**Subpart 7. Statutory authority.** It is necessary and reasonable to tell interested persons about the statutory authority that serves as the basis for this rule. It is reasonable for interested persons to know about the statutory authority for this rule so that they can read the underlying statutes and better understand the purpose of the rule.

## **2960.0020 DEFINITIONS**

This part defines words or phrases that have a special meaning in parts 2960.0010 to 2960.0710. The definitions are necessary so that interested persons can understand the meaning of the rule and interpret correctly the various standards and requirements contained

**within the rule. Incorporations by reference, of other definitions from statutes is reasonable because the meaning of a term should be consistent in both statutes and rules to avoid confusion. It is also reasonable because the statutory definition of a term may change over time and so the meaning of the term in rule should change to conform with the meaning of the term in statute.**

Subpart 1. Scope. It is necessary and reasonable to clarify that the definitions used apply only to parts 2960.0010 to 2960.710 and not to any other rule, and to promote a clear understanding of the limits of the definitions in the rule.

Subpart 2. Adolescent. This subpart defines the term “adolescent”. The definition is necessary and reasonable because it incorporates the statutory definition of “child” from a statute that relates to care of children in out-of-home placement. It is necessary and reasonable to use a term in a manner which is consistent with the usage of the term in related rules and statutes. It is necessary to define “child” in this rule because the rule licenses programs that provide residential care and treatment for a child.

Subpart 3. Applicant. This subpart is necessary and reasonable because it incorporates the definition of “applicant” contained in one of the statutes which is an enabling statute for this rule.. The subpart is necessary and reasonable, because it clarifies which entities are considered to be the “applicant.”

Subpart 4. Assessment. “Assessment” is the process whereby qualified individuals identify and evaluate a resident’s needs, strengths, weaknesses and problems. The definition is necessary and reasonable because it is consistent with the meaning of the term as it is used in the residential care field.

Subpart 5. Aversive procedure. **This subpart incorporates the definition of “aversive procedures” at part 9525.2710, subpart 4. It is reasonable and necessary to incorporate this definition because parts 9525.2700 to 9525.2810 governs the use of aversive procedures with individuals who have mental retardation or a related condition and who are served by a program licensed by the commissioner under Minnesota Statutes 245A.**

**It is necessary and reasonable that the term be included in the rule because Laws, 1995, Chapter 226 Article 3 section 60, subdivision 2 paragraph (2), (viii), requires that the standards developed by this rule have the capability to respond to persons with disabilities.**

Subpart 6. Basic Services. “Basic services” are those services provided by the license holder, on-site, that are fundamental to the resident’s health, and well being, including spiritual and religious practice. It is necessary and reasonable that basic services be provided to residents as they are essential and integral to the resident’s welfare. This definition is reasonable because the services described would be considered the basic services a program must provide to residents to ensure that residents are properly cared for.

Subpart 7. Caregiver. “Caregiver” is a person who provides services to the resident at a residential facility. It is necessary and reasonable to use a common term to describe such individuals. The definition is needed and reasonable because it is consistent with the use of the term in the residential care field.

Subpart 8. Case manager. “Case manager” is the supervising agency or its representative who is responsible for developing, implementing, and monitoring the resident’s case plan. It is necessary and reasonable to use a single term which refers to the entity that makes decisions

about the child's placement and care plan. The definition is reasonable because it is consistent with the use of the term in the residential care field.

**Subpart 9. Case plan.** "Case plan" is the plan of care used by the casemanager to monitor the resident's progress while placed in the residence. It is necessary and reasonable that a plan be developed and in place for the casemanager to oversee the resident's progress and the license holder to follow and, depending on the nature of the program, use in developing a treatment plan for the resident. The definition is reasonable because it is consistent with the use of the term in the residential care field.

**Subpart 10. Certification.** "Certification" means the commissioner's approval which allows license holders to provide services under the terms of certification. It is necessary and reasonable to define the term by reference to the term's definition in an enabling statute, because the use of the term in the rule should be similar to the use of the term in the enabling statute.

**Subpart 11. Chemical.** "Chemical" means any mood altering substance, including alcohol, solvents or other drugs, and controlled substances, as defined in Minnesota Statutes, Chapter 152, to alter the resident's mood, affect or consciousness. It is necessary and reasonable that license holders know the definition of the term "chemical" in the context of caring for residents, because residents may have problems with use or abuse of chemicals. The use of a statutory definition of the term "chemical" is necessary and reasonable to ensure that the term has same definition in rule as it does in relevant law.

**Subpart 12. Chemical abuse.** "Chemical abuse" means a pattern of inappropriate and harmful use. It is necessary and reasonable for license holders to understand how the term "chemical abuse" is used in the rule in order to recognize it in a resident under their care. The definition of the term is necessary and reasonable, because it is consistent with the use of the term in the field.

**Subpart 13. Chemical dependency.** "Chemical dependency" means a pattern of pathological abuse and related physical manifestations. It is necessary and reasonable for license holders to understand how the term "chemical dependency" is used in the rule, in order to recognize chemically dependency in a resident. The definition of the term is necessary and reasonable, because it is consistent with the use of the term in the field.

**Subpart 14. Chemical dependency treatment services.** "Chemical dependency treatment services" means therapeutic and treatment services provided to a resident to alter the resident's dependence on mood altering substances. It is necessary and reasonable to clarify the meaning of "chemical dependency treatment services" so license holders can identify those services. The definition of the term is necessary and reasonable, because it is consistent with the use of the term in the field.

**Subpart 15. Chemical irritant.** It is necessary and reasonable to define the term "chemical irritant" so that an interested person knows the meaning of the term and a distinction can be made between the broad group of chemicals which may irritate a person and the chemicals used on correctionally licensed program residents to control the resident. The definition of the term is reasonable because it is consistent with the use of the term in the correctional field.

**Subpart 16. Child in need of protection or services or CHIPS child.** The term “child in need of protection or services or CHIPS child” is defined as having the same meaning given in statute. Defining this term is necessary and reasonable so that interested persons know that the term has a special meaning in the rule and because many of the children in residential care are “CHIPS” children. Incorporating the statutory definition of the term in this rule is reasonable and necessary because Minnesota Statutes, Chapter 260C governs child protection and is directly related to caring for children, including children in residential settings licensed under this rule Chapter.

**Subpart 17. Child with a disability.** It is necessary that license holders understand the meaning of the term “child with a disability” so that license holders can identify the needs of children in their care, and to provide or arrange to have provided, needed care for residents. The definition is reasonable because it is the statutory definition of the term. It is reasonable to have the definition in the rule agree with definition in statute dealing with special education, because residents with a disability are entitled to special education services according to law and the definition is generally accepted.

**Subpart 18. Child with severe emotional disturbance.** This subpart incorporates the definition of "child with severe emotional disturbance" at Minnesota Statutes, section 245.4871, subdivision 6. It is necessary and reasonable to use the term in a manner consistent with the Minnesota Statutes, sections 245.461 to 245.486, the Minnesota Comprehensive Children’s Mental Health Act, because the act contains statutory criteria for admission to a residential mental health treatment program certified under this rule. It is reasonable to define terms in a manner which is consistent with a related statute. The requirements of this subpart are similar to the requirements of part 9545.0925, subpart 6, which is the rule part which defines the term “child with severe emotional disturbance” in the current rule governing licensure of residential children’s mental health treatment programs. **The definition of the term is reasonable because it is consistent with the use of the term in the treatment field.**

**Subpart 19. Clinical supervision.** This subpart clarifies the meaning of “clinical supervision” as it is used in the rule. It is necessary and reasonable to include this reference in the rule, to acknowledge the importance of “clinical supervision” of staff who provide services to residents. The definition of the term “clinical supervision” is reasonable because it is similar to the definitions of the term in Minnesota Statutes, section 245.4871, subdivision 7, and part 9545.0925, subpart 7. It is necessary and reasonable to use rule definitions which are similar to statutory definitions, because it promotes consistency with related statutes and the intent of those statutes. The definition of the term is reasonable because it is consistent with the use of the term in the treatment field.

**Subpart 20. Clinical supervisor.** It is necessary and reasonable that there be a “clinical supervisor” assigned to make sure that “clinical supervision” is provided to staff who care for residents. The definition of the term is reasonable because it is consistent with the use of the term in the treatment field. **Subpart 21. Commissioner.** This subpart explains the term “commissioner” as it is used in the rule, includes both the commissioner of the Minnesota Department of Human Services (DHS) and the Minnesota Department of Corrections (DOC). It is necessary to define the term in this rule because the use of the term as referring to

either one or two commissioners is unusual and needs to be made clear. The definition of the term is reasonable because Chapter 2960 is jointly adopted by DHS and DOC, so the administrative responsibilities required in the rule are the duties of both commissioners.

**Subpart 22. Correctional program services** This subpart clarifies the meaning of “correctional program services” as it is used in the rule. It is necessary to define “correctional program services” so that the license holder and others understand which methods and services distinguish correctional program services from other types of services. The definition is reasonable because it is similar to the commonly understood contemporary meaning of the term “correctional program services”.

**Subpart 23. Criminal sexual behavior**. This subpart clarifies the meaning of “criminal sexual behavior” as it is used in the rule. It is necessary to define the term “criminal sexual behavior” because the term includes criminal acts which involve sexual behavior as an aspect of the crime, but does not include every crime in which sexual behavior may be involved. The definition is reasonable because it is similar to the definition of the term in 2955.0020, subpart 12.

**Subpart 24. Critical incident**. This subpart clarifies the meaning of “critical incident” as it is used in the rule. It is necessary and reasonable that license holders understand the meaning of the term so they will recognize a “critical incident”, and respond. It is necessary and reasonable to define the term, because certain rule requirements, such as reporting requirements, are linked to the designation of an occurrence as a “critical incident”

**Subpart 25. Cultural competence or culturally competent**. This subpart clarifies the meaning of “cultural competence or culturally competent” as it is used in the rule. It is necessary and reasonable that the term be included in the rule because Laws, 1995, Chapter 226, Article 3, section 60., subdivision 2, clause (2), (v), (vi), and (vii), require that license holders employ staff who have training in cultural sensitivity, and who reflect the ethnicity of the clients served, whenever possible.

In addition DHS sponsored a task force to explore issues associated with cultural needs of residents and other persons served by DHS. The task force’s definition of the term “cultural competence” is similar to the definition in this subpart.

**Subpart 26. Deprivation procedure**. This subpart incorporates the definition of “deprivation procedure” at part 9525.2710, subpart 12. It is reasonable and necessary to incorporate this definition, because part 9525.2700 to 9525.2810 governs the use of deprivation procedures with person who have mental retardation or a related condition and who are served by a license holder licensed by the commissioner under Minnesota Statutes, Chapter 245A. License holders governed by Chapter 2960 may serve persons with disabilities whose behavior might be managed by using various techniques, including deprivation procedures. It is necessary and reasonable that the term be included in the rule because Laws, 1995, Chapter 226 Article 3 section 60, subdivision 2 clause (2), (viii), requires that the standards developed by this rule ensure that the license holder will have the capability to serve persons with disabilities.

**Subpart 27. Detention setting.** This subpart clarifies the meaning of “detention setting” as it is used in the rule. It is necessary to differentiate between pre-dispositional settings and post-dispositional settings, because license holders do not provide the same services to residents in these two types of settings. Pre-dispositional settings, which include detention settings, are usually short-term settings and provide custodial-type of services to residents and do not provide treatment or therapeutic services to residents. The definition of “detention setting” is reasonable because it is consistent with the use of the term in the corrections industry.

**Subpart 28. Direct contact.** This subpart clarifies the meaning of “direct contact” as it is used in the rule. It is necessary and reasonable that a definition of the term “direct contact” be included in the Rule because program employees who have “direct contact” with residents must meet certain rule requirements, such as training requirements, that other types of employees are not required to meet. Also, Minnesota Statutes, section 245A.04, subdivision 3, requires persons employed by the program who have direct contact with residents to have a background study.

**Subpart 29. Disability.** This subpart clarifies the meaning of “disability” as it is used in the rule. It is necessary and reasonable to include a definition of “disability” in the Rule in order to be certain that the requirements of Laws, 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (2), (vii) and (viii), which require programs to provide care and services to persons with a disability, are met. It is reasonable to use the statutory definition of the term “disability” to ensure that rules and statutes are in agreement.

**Subpart 30. Disciplinary room time.** This subpart defines the meaning of the term “disciplinary room time” as it is used in this rule. It is necessary and reasonable to define “disciplinary room time” because it is a unique restrictive procedure which is used as a consequence for the behavior of a resident. The definition is reasonable because it is similar to the way the term is defined in the corrections field.

**Subpart 31. Discipline.** This subpart clarifies the meaning of “discipline” as it is used in the rule. It is reasonable to define the term “discipline”, in order to distinguish it from other forms of behavior control, such as punishment. The definition of “discipline” is reasonable because it is similar to the way the term is defined in the residential treatment industry. The advisory committee discussed the definition of “discipline” and generally agreed with the definition.

**Subpart 32. Education.** It is necessary and reasonable to include a definition of “education” in the Rule so that license holders are aware of its meaning in relationship to the types of services they are required to provide in a residential setting, and to clarify their responsibility to either provide educational services to residents on-site, or to facilitate the resident’s admission to an appropriate school in the community. The definition of “education” is reasonable because it is a general description of educational services for residents and children.

**Subpart 33. Eight-day temporary holdover facility.** This subpart clarifies the meaning of “eight-day temporary holdover facility” as it is used in the rule. The definition is needed and

reasonable because it accurately describes a unique type of facility which is licensed by this rule.

**Subpart 34. Emotional disturbance. This subpart clarifies the meaning of “emotional disturbance” as it is used in the rule and incorporates by reference the statutory definition of the term contained in Minnesota Statutes, section 245.4871, subdivision 15. It is necessary and reasonable to use the term in a manner consistent with the Minnesota Statutes, sections 245.461 to 245.486, the Minnesota Comprehensive Children’s Mental Health Act, because the act contains statutory criteria for admission to a residential mental health treatment program certified under this rule. It is reasonable to define terms in a manner which is consistent with a related statute. **The requirements of this subpart are similar to the requirements of the current rule governing the licensing of residential treatment programs, at part 9545.0925, subpart 13.****

**Subpart 35. Extended jurisdiction juvenile or EJJ. This subpart clarifies the meaning of “extended jurisdiction juvenile or EJJ” because this is a requirement for admission and continued stay for residents who are eighteen and older. It is necessary and reasonable to define “extended jurisdiction juvenile” in a manner which is consistent with related statutes, to ensure that the term has a common meaning in statute and rule.**

**Subpart 36. Family or household members. This subpart clarifies the meaning of “family or household members” as it is used in the rule. It is reasonable and necessary to define “family or household members” by incorporating by reference the definition of the term which is found in Minnesota Statutes, Chapter 260, because the statute is related to the care and custody of children and juveniles who may be residents in a licensed program. The use of the statutory definition is reasonable because it was reviewed and generally agreed to by the rule advisory committee. The definition is also reasonable because it defines family and household members broadly and recognizes the importance of significant adult relationships for children who may come from backgrounds with untypical family structures.**

**Subpart 37. Foster care. This subpart clarifies the meaning of “foster care” as it is used in the rule. It is reasonable and necessary to define “foster care” by incorporating by reference the definition of the term, which is found in rules that govern the provision of foster care to children. The placing agency plays a key role in the foster care system and key terms should be used in a similar way by the placing agency and the commissioner to promote rule compliance. The definition of the term is reasonable because it is consistent with the use of the term in the foster care field.**

**Subpart 38. Gender-specific. This subpart clarifies the meaning of “gender-specific” as it is used in the rule. It is necessary to define “gender-specific” because the rule requires that the license holder must provide certain services to residents based upon the resident’s gender and that some services be provided to residents by staff of a specific gender. The definition of the term “gender specific” is reasonable because it is similar to common use of the term in the residential treatment field.**

**Subpart 39. Group residential setting. This subpart clarifies the meaning of “group residential setting” as it is used in the rule. It is necessary and reasonable to define “group residential**

setting” to differentiate this setting from other settings licensed under Chapter 2960. The definition is reasonable because it was reviewed and generally agreed to by the advisory committee for this rule.

Subpart 40. House parent model. This subpart clarifies the meaning of “house parent model” as it is used in the rule. This subpart is necessary and reasonable because it defines a type of care setting licensed by the rule. The definition is reasonable because it was favorably reviewed by the Minnesota Council of Child Caring Agencies. The definition of the term is also reasonable because it is similar to common use of the term in the residential treatment field.

Subpart 41. Inappropriate and harmful chemical use. This subpart clarifies the meaning of “inappropriate and harmful use” as it is used in the rule. It is necessary to define “inappropriate and harmful use” because there are rule requirements which the license holder must meet regarding the inappropriate and harmful use of chemicals. The definition is reasonable because it is similar to a national standard in the chemical dependency treatment field for determining whether a person is inappropriately and harmfully using chemicals.

Subpart 42. Individual treatment plan. This subpart clarifies the meaning of “individual treatment plan” as it is used in the rule. It is reasonable to incorporate the definition of the term “individual treatment plan” contained in Minnesota Statutes, sections 245.4871, subdivision 21, into this rule, because the statutory definition of the term is similar to the use of the term in the treatment field. It is necessary to advise persons to refer to this statute for the definition of “individual treatment plan” because the definition in statute is complex and it is important to assign consistent meanings to terms used in this rule. It is reasonable to define the term “individual treatment plan,” because the resident’s “individual treatment plan” is the plan which guides the treatment the resident will receive.

Subpart 43. Legal guardian. This subpart clarifies the meaning of “legal guardian ” as it is used in the rule. Using a statutory definition of “legal guardian” is necessary and reasonable, because it ensures that the rule is consistent with statutes. It is necessary to define “legal guardian” in the rule because many license holders care for residents who have a legal guardian, and the rule has requirements that a license holder must meet for residents who have a legal guardian.

Subpart 44. License. This subpart clarifies the meaning of “license” as it is used in the rule. It is necessary and reasonable to define the term “license” so that interested persons will understand the meaning of the term in this rule and be able to comply with the rule. This subpart is necessary and reasonable because it is similar to the definition of the term “license” contained in Minnesota Statutes, section 245A.02, subdivision 8. It is reasonable to use a definition of “license” which is similar to the definition of the term contained in statute, because this rule derives part of its statutory authority from Minnesota Statutes, Chapter 245A, and its purpose is, in part, to implement Chapter 245A, therefore the rule needs to use terms related to administrative licensing matters which have meaning consistent with Chapter 245A.

Subpart 45. License holder. **This subpart clarifies the meaning of “license holder” as it is used in the rule. The definition of the term is necessary and reasonable because it is similar to the definition of the term “license holder” contained in Minnesota Statutes, section 245A.02, subdivision 9. It is necessary and reasonable to define the term “license holder” so that interested persons will understand the meaning of the term in this rule and be able to comply with license requirements. It is reasonable to use a definition of the term “license holder” which is similar to the definition contained in Minnesota Statutes, Chapter 245A, because this rule derives part of its statutory authority from Minnesota statutes, Chapter 245A, and its purpose is to implement Minnesota Statutes, Chapter 245A, therefore, the rule needs to use terms related to administrative licensing matters which have meanings consistent with Minnesota Statutes, Chapter 245A. It is necessary and reasonable to include a reference to Minnesota Statutes, Section 241.021, because some license holders will be licensed by DOC, using Chapter 2960, and to note that Commissioner of Corrections has statutory authority to license foster care homes.**

Subpart 46. Mechanical restraint. This subpart defines what is meant by "mechanical restraint" in this rule. It is necessary and reasonable to define the term “mechanical restraint” because some of the residential programs governed by this rule include mechanical restraint devices as a possible intervention which may be used to restrain a resident. It is necessary to define "mechanical restraint" because the imprecise use of the term could cause confusion with another restrictive techniques and to differentiate it from splints and braces employed for medical purposes rather than as a behavioral intervention. The definition of the term “mechanical restraint” is consistent with the use of the term in the field.

Subpart 47. Medication assistance. **This subpart explains what is meant by “medication assistance” in this rule. It is necessary and reasonable to define “medication assistance” so interested persons understand its meaning in the rule. This subpart is reasonable because it uses a definition that is clear and easily understood by laypersons and medical personnel, and it is consistent with the use of the term in the field. The definition of “medication assistance” in this subpart is reasonable because it is similar to the definition of “medication assistance” in Minnesota Rules, part 9555.9600.**

Subpart 48. Mental health professional. **This subpart clarifies the meaning of “Mental health professional” as it is used in the rule.** This subpart incorporates the definition of the term "mental health professional" in Minnesota Statutes, section 245.4871, subdivision 27, into this rule. It is necessary and reasonable to use the term "mental health professional" in this rule in a manner consistent with its use in the Minnesota Comprehensive Children's Mental Health Act (the act), Minnesota Statutes, sections 245.487 to 245.4888, because this rule derives its statutory authority in part from the act and needs to be consistent with the act. It is reasonable to refer interested persons to the definition of "mental health professional" in the act because the definition is complex and lengthy and may be subject to change in statute. The requirements of this subpart are similar to the requirements of part 9545.0925, subpart 27, which currently governs licensing of residential mental health treatment programs for children with severe emotional disturbance.

Subpart 49. Mental health treatment services. This subpart explains what is meant by “mental health treatment services” in this rule. It is necessary and reasonable to define “mental health treatment

services” to clearly differentiate services provided for the purpose of treating emotional disturbance or the effects of emotional disturbance from other services covered under this rule so that separate and appropriate standards may be applied to each type of service. This subpart is reasonable because it defines “mental health treatment services” according to the intended outcomes of the service and in a manner congruent with common understanding and practice in the treatment field.

Subpart 50. Nighttime hours. **This subpart clarifies the meaning of “Nighttime hours” as it is used in the rule. It is necessary and reasonable to define “nighttime hours” in order to differentiate it from other parts of the day, and because there are rule requirements which the license holder must meet during “nighttime hours”. The definition of the term “nighttime hours” is reasonable because it is similar to common use of the term in the corrections field.**

Subpart 51. No eject policy. **This subpart explains what is meant by a “no eject policy” in this rule. It is necessary and reasonable to define “no eject policy” because having a “no eject policy” is a requirement of the enabling legislation for this rule [Laws, 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (2), (iii)]. Therefore, a license holder needs to know what is meant by the term “no eject policy”. This subpart is reasonable because it embraces the likely legislative intent and reflects the consensus of the advisory committee about what is meant by the term and what is realistic policy in an out-of-home care facility.**

Subpart 52. Pathological use. **This subpart clarifies the meaning of “pathological use” as it is used in the rule. It is necessary and reasonable to define “pathological use” because the license holder must meet rule requirements when it is determined that there is pathological use of chemicals. The definition of “pathological use” is reasonable because it is similar to the definition of the term found in a national standard for chemical dependency treatment programs.**

Subpart 53. Physical escort. **This subpart clarifies the meaning of “physical escort” as it is used in the rule. It is necessary and reasonable to define the term “physical escort” because some of the residential programs governed by this rule include physical escort as a possible intervention which may be used with a resident. The definition of the term “physical escort” is reasonable because it is similar to common use of the term in the residential care field.**

Subpart 54. Physical holding. This subpart explains what is meant by the term "physical holding" in this rule. It is necessary and reasonable to define "physical holding" because “physical holding” is a procedure which must meet rule requirements when it is used. This subpart is reasonable, because it is consistent with treatment practices in the residential care field. This subpart is reasonable because it is consistent with requirements of Minnesota Statutes, section 245.826. The definition of this term is needed and reasonable because it is similar to the definition in current licensing standards at part 9545.0925, subpart 28.

Subpart 55. Placement critical. **This subpart clarifies the meaning of “placement critical” as it is used in the rule. It is necessary to define “placement critical” in the rule because the rule includes requirements that the license holder must meet regarding resident care if an aspect of the resident’s condition is considered “placement critical”. The definition of the term is**

reasonable, because it is similar to the definition of the term on page 10 of the Juvenile Out-of-Home Placement Task Force Report, dated January 2001.

Subpart 56. Program completion. **This subpart clarifies the meaning of “program completion” as it is used in the rule. It is necessary to define “program completion” in the rule because the rule includes requirements that the license holder must meet regarding the resident’s “program completion”.** The definition of the term is reasonable, because it is similar to the definition of the term on page 10 of the Juvenile Out-of-Home Placement Task Force Report, dated January 2001.

Subpart 57. Program director. **This subpart is necessary because it clarifies the meaning of “program director” as it is used in the rule. The definition is reasonable because the definition of “program director” in the rule is similar to the use of the term in the residential care field.**

Subpart 58. Psychotropic medication. **This subpart explains what is meant by the term “psychotropic medication” in this rule. It is necessary and reasonable to define “psychotropic medication” in this rule to distinguish medications given to children to treat physical ailments from medications given to a children to treat a mental health condition, because “psychotropic medications” require specific informed consent procedures in the rule that may not apply to other types of medications. The definition of “psychotropic medication” is reasonable because it provides a sufficiently broad description of medications that would be considered “psychotropic” by mental health professionals. The requirements of this subpart are similar to the requirements of Minnesota Rule parts 9545.0925, subpart 32.**

Subpart 59. Resident. **This subpart clarifies the meaning of “resident” as it is used in the rule. It is necessary and reasonable to define “resident” in the rule because interested persons need to know that there are several classes of persons who are eligible to be a “resident” such as persons with an extended jurisdiction juvenile [EJJ] designation. The definition is reasonable because the definition of the term “resident” in the rule is similar to the use of the term in the residential care field.**

Subpart 60. Resident district. **This subpart clarifies the meaning of “resident district” as it is used in the rule. It is necessary to define resident district in the rule because the rule includes requirements that the license holder must perform with the resident’s “resident district”.** The definition is reasonable because it includes by reference the definition of the term in related rules of the Minnesota Department of Children Families and Learning.

Subpart 61. Residential juvenile sex offender treatment program. **This subpart clarifies the meaning of “residential juvenile sex offender treatment program” as it is used in the rule. It is necessary to define “residential juvenile sex offender treatment program” because the rule contains requirements for license holders who wish to operate a juvenile sex offender treatment program. The definition is reasonable because it is consistent with the definition at part 2955.0020, subpart 23.**

Subpart 62. Residential program. **This subpart clarifies the meaning of “Residential program” as it is used in the rule. It is necessary to define “residential program” because it is important to distinguish residential from non-residential programs. It is also necessary to define “residential program” because Chapter 2960 is intended to govern the licensure of residential programs. The definition of “residential program” is reasonable because it is similar to the definition of the term in Minnesota**

Statutes, section 245A.02, subdivision 14, and is similar to the use of the term in the residential care field.

Subpart 63. Restrictive procedure. **This subpart clarifies the meaning of “restrictive procedure” as it is used in the rule. It is necessary and reasonable to define “restrictive procedure”, because some residential programs for children may use a “restrictive procedure” as a possible intervention that may be used in treatment of a child. The definition of “restrictive procedure” is reasonable because it is consistent with the use of the term in the treatment field.**

Subpart 64. Screening. **This subpart clarifies the meaning of “screening” as it is used in the rule. It is necessary and reasonable to define “screening” in the rule, so that the term is not used to describe another type of examination. The definition of “screening” is reasonable because it is consistent with the use of the term in the treatment field.**

Subpart 65. Seclusion. **This subpart defines what is meant by “seclusion” in this rule. It is necessary and reasonable to define the term “seclusion” because some residential programs for children include “seclusion” as a possible intervention that may be used in treatment of a child. It is necessary to define “seclusion” because the term could cause confusion with other restrictive techniques, such as “time-out”. The definition of “seclusion” is reasonable because it is consistent with the use of the term in the treatment field.**

Subpart 66. Secure program. **This subpart clarifies the meaning of “secure program” as it is used in the rule. It is necessary to define “secure program” in order to differentiate them from nonsecure programs. The definition of the term “secure program” is reasonable because it is similar to common use of the term in the corrections field.**

Subpart 67. Sex offender. **This subpart clarifies the meaning of “sex offender” as it is used in the rule. It is necessary to define the term “sex offender” because license holders are required to provide different care to persons who are sex offenders and maintain the safety of others if a resident, such as a sex offender, has a history of sexually abusive behavior. The definition of the term “sex offender” is reasonable because it is similar to common use of the term in the corrections field.**

Subpart 68. Sex offender treatment. **This subpart clarifies the meaning of “sex offender treatment” as it is used in the rule. It is necessary to define the term “sex offender treatment” because the license holder must meet rule requirements if the license holder claims to offer sex offender treatment. The definition is reasonable because it is similar to the definition of the term in part 2955.0020, subpart 27.**

Subpart 69. Sexually abusive behavior. **This subpart clarifies the meaning of “sexually abusive behavior” as it is used in the rule. It is necessary to define the term “sexually abusive behavior” because the license holder must meet certain rule requirements if residents are likely to exhibit sexually abusive behavior. The definition is reasonable because it is similar to the definition of the term in part 2955.0020, subpart 28.**

Subpart 70. Shelter care services. **This subpart clarifies the meaning of “shelter care or emergency shelter care services” as it is used in the rule. It is necessary to define “shelter care services” so that interested persons may know which programs are governed by this rule. The definition**

of “shelter care services” is reasonable because it is very similar to the definition of the term in the existing rule at part 9545.0925, subpart 37.

Subpart 71. Target population. **This subpart clarifies the meaning of “target population” as it is used in the rule. It is necessary to define the term “target population” because the license holder must meet rule requirements which mandate that the license holder identify the target population for the program. The definition is reasonable because it is similar to the definition of the term as it is used in the residential care field.**

Subpart 72. Temporary holdover facility. **This subpart clarifies the meaning of “temporary holdover facility” as it is used in the rule. It is necessary to define “temporary holdover facility” in order to differentiate them from other types of programs. The definition of the term “temporary holdover facility” is reasonable because it is similar to common use of the term in the corrections field.**

Subpart 73. Time-out. **This subpart explains what is meant by the term “time-out” in this rule. The definition is necessary and reasonable to clarify the meaning of “time-out” in this rule and to differentiate this type of intervention from more restrictive behavioral interventions, such as seclusion. The definition is reasonable because it accurately and simply describes this behavior management and intervention method as it is appropriately applied in a residential setting. The definition of the term “time-out” is reasonable because it is similar to common use of the term in the residential care field.**

Subpart 74. Transitional housing. **This subpart clarifies the meaning of “Transitional housing” as it is used in the rule. It is necessary to define the term “transitional housing” because the rule requires the license holder to meet certification requirements if the license holder offers transitional housing services. The definition is reasonable because it includes by reference the statutory definition of “transitional housing” which should promote continuity between the rule and its underlying statute.**

Subpart 75. Transitional services plan. **This subpart clarifies the meaning of “Transitional services plan” as it is used in the rule. It is necessary to define “transitional services plan” because the license holder is required to prepare a transitional services plan for a resident, therefore it is important to indicate what the plan must include. The definition is reasonable because it is consistent with the use of the term in the residential care field and the definition was reviewed by the advisory committee and found to be acceptable.**

Subpart 76. Treatment plan. **This subpart clarifies the meaning of “treatment plan” as it is used in the rule. It is necessary and reasonable to define “treatment plan” in the rule so the license- holders who must follow a treatment plan for a foster child will know the meaning of the term. It is reasonable to define the term “treatment plan”, because the plan guides all the recommended treatments a child may receive. The definition is also necessary, because using the treatment plan is an essential part of providing care. The definition of “treatment plan” is reasonable, because it is consistent with the use of the term in the treatment field.**

Subpart 77. Twenty-four hour holdover facility. **This subpart clarifies the meaning of “twenty-four hour holdover facility” as it is used in the rule. It is necessary to define “twenty-four hour holdover facility” in order to differentiate them from other correctional programs which hold**

residents for a different length of time and must meet other conditions. The definition of the term “twenty-four hour holdover facility” is reasonable because it is similar to common use of the term in the corrections field.

Subpart 78. Variance. This subpart clarifies the meaning of “variance” as it is used in the rule. This subpart incorporates into the rule the definition of the term “variance” contained in Minnesota Statutes, section 245A.04 subdivision 9. It is necessary and reasonable to incorporate the statutory definition of the term “variance” into the rule, because the statute governs the granting of a variance and incorporating the definition by reference ensures that the definition in this rule will continue to be consistent with statute in the future.

Subpart 79. Victim. This subpart clarifies the meaning of “victim” as it is used in the rule. This subpart incorporate the definition of the term “victim” contained in Minnesota Statutes, section 611A.01. It is necessary and reasonable to advise license holders of the statute for a comprehensive definition of the term “victim” so that license holders are aware of requirements of law that relate to juveniles who may be considered victims or whose crimes caused others to be considered a “victim”. The definition of the term “victim” is reasonable because it is consistent with Minnesota Statutes, section 611A.01, paragraph (b).

## **2960.0030 ADMINISTRATIVE LICENSING**

Subpart 1. Scope. It is reasonable and necessary to state the scope of part 2960.0030, because license or certificate holders and others need to know which programs will be governed by part 2960.0030. It is reasonable to apply this part to the license and certificate holders governed by parts 2960.0010 to 2960.0710, in order to comply with the rule’s enabling statute, Laws 1995, Chapter 226, Article 3, section 60, subdivision 1.

Subpart 2. Application and license requirements. This subpart is necessary and reasonable to include in the rule because it clarifies which entities that must be licensed as residential programs to serve children and youth.

This subpart specifies the information that prospective license holders must submit to the appropriate state commissioner prior to the issuance of a program license and program certifications. Requiring that this information be given by the applicant to the commissioner is needed and reasonable because the commissioner needs the information to determine if and how the applicant may be licensed, and which program certifications apply. It is also necessary and reasonable to require the applicant to submit all the information required in subpart 2 and sign the license application, because the commissioner needs the information to make a judgement about the application and this is the existing procedure which has worked well.

**Subpart 3. Criteria for licensure and certification by the Department of Corrections.** It is necessary and reasonable to inform prospective license holders who intend to serve children and youth about whether they would be likely to be licensed by the DOC. The criteria listed in this subpart are reasonable because they are the criteria that have been traditionally used to determine if a program is licensed by DOC.

**Subpart 4. Criteria for licensure and certification by the Department of Human Services.** It is necessary and reasonable to inform prospective license holders who intend to serve children and youth about whether they would be likely to be licensed by DHS. The criteria listed in this subpart are reasonable because they are the criteria that have been traditionally used to determine if a program is licensed by DHS .

**Subpart 5. Multiple program certifications.** It is necessary and reasonable to inform prospective license holders who intend to provide more than one type of treatment service that they may be licensed or certified by only one of the two licensing agencies. It is reasonable to have one agency license and certify a program to avoid duplication and inefficiency during the licensing and certification process.

**Subpart 6. Variance standards.** It is necessary and reasonable to tell applicants and license holders and certificate holders about the standards that must be met to obtain a variance. The variance standards are also reasonable because they are similar to the variance standards in part 9543.1020, subpart 5 and are consistent with the requirements of Minnesota Statutes, section 245A.04, subdivision 9.

**Subpart 7. County notification.** It is necessary and reasonable to tell applicants and interested parties, such as county officials, that the applicant must tell the county board of the county in which the program will be opened that the applicant intends to operate a program and advise the county about the intended use of the program, because the county is the local agency which administers welfare programs in the state of Minnesota. It is reasonable and necessary to require that the license holder let the county where the program will be located know about the intention to open a licensed program, because the residents of the program may need social services and the county is the local provider of social services.

**Subpart 8. Denial of application.** It is necessary and reasonable to tell applicants and the public about the conditions for denying an application for licensure. The denial of applications standards are also reasonable because they are similar to the standards in part 9543.1030, subpart 1, and meet the requirements of Minnesota Statutes, section 245A.05.

It is necessary and reasonable to require that the decision to deny a license by one department be effective for both departments, because both departments use the rule requirements in chapter 2960 to make the determination to deny a license. It would be

wasteful and inefficient to allow a licence holder or applicant seek licensure from the other department after being denied by the first department applied to, because the rule standards are the same for both departments. It is necessary and reasonable to require a denied prospective applicant to wait two years before re-applying, because the departments should avoid being harassed by unsuccessful applicants who might frequently apply as a means of harassing the departments. The prohibition against frequent application is also reasonable, because it allows an applicant to re-apply if there is new information which amounts to a significant change in the conditions which were the basis for previous denial.

**Subpart 9. Drug or alcohol use, prohibited.** It is necessary and reasonable that applicants or license holders understand that they must develop a policy that prohibits staff as well as volunteers, and subcontractors from abusing prescription medications as well as being under the influence of a chemical when directly responsible for residents, because the residents rely on the employees and others who are responsible for the care of residents. The drug and alcohol policy standards are also reasonable because they are similar to the standards in part 9543.1020, subpart 14.

**Subpart 10. Policy and procedure review.** It is reasonable and necessary to require the license holder to make the program's policies and procedures available to the commissioner for review, because the commissioner should review those documents to determine if the license holder is complying with the rule and to determine if the license holder has sufficient management controls in place to ensure that the program will operate within license requirements. It is reasonable to require the program to provide policy documents to the commissioner for review, because Minnesota Statutes, sections 241.021, subdivision 1, and 245A.04, subdivisions 4 to 6, require the commissioner to inspect management and policy documents prior to issuing a license to an applicant.

**Subp. 11. License and certification terms.** It is necessary and reasonable to require that the commissioners of DOC and DHS issue a license document which states what the terms of the license are, because the license holder and interested persons need to know who the license holder is and what services the program is licensed or certified to provide. The requirements of this subpart are necessary and reasonable, because they are a continuation of current DOC and DHS licensing practices.

**Subp. 12. Licensing actions.** It is necessary and reasonable to require that the commissioners of DHS and DOC follow the requirements of their respective statutes when the departments take a licensing action. It is also necessary and reasonable to advise interested persons about the laws which will be followed if there is a need to take a licensing action.

## **2960.0040 STATEMENT OF INTENDED USE**

This part is necessary and reasonable to ensure that license holders declare the types of services they will provide, so that referring agencies will be aware of the license holder's areas of expertise. The statement of intended use for the program should increase the probability that children will be referred to a program that will best meet their care and treatment needs. It is reasonable to require the program to write a statement of intended use so that the commissioner can review the statement to determine if the program is likely to be able to serve the population according to the terms of the program's license and certification.

## **2960.0050 RESIDENT RIGHTS AND BASIC SERVICES**

**Subpart 1. Basic rights.** This subpart is necessary to clarify the basic rights each resident has while in the care of the license holder. This subpart is reasonable because it requires the license holder to protect the rights of a resident to reasonable treatment while in a licensed program. This subpart is also reasonable because many of the rights in this subpart are similar to the rights stated in Minnesota Statutes, section 144.651. This subpart is also reasonable because the requirements of this subpart have been reviewed and recommended by the public advisory committee for this rule.

**Subpart 2. License holder duties.** It is reasonable and necessary to require the license holder to develop policies which correspond to the rights in subpart 1 and to provide basic services, because the license holder is required to meet the needs of the resident in the program. The license holder must meet the needs of the resident, because the license holder has control over the residents and the residents are often unable to meet their own needs except by using the goods and services provided by the license holder. Minnesota Statutes, sections 245A.09, subdivision 2, paragraph c, and 241.021, subdivision 1, require that licensing rules include basic licensing standards such as those standards required by this subpart.

**Subpart 3. Basic rights information.** It is reasonable and necessary to require the license holder to give basic rights information to the resident and those who are responsible for the resident, because the license holder has custody of the resident and the license holder is able to easily supply the resident with the basic rights information. It is reasonable to make the information about resident rights available to resident and interested persons in a language that the resident can understand, so that they know what kind of treatment to expect while staying at the program, and can request adequate treatment for the resident. It is reasonable to require that the license holder give the information to a resident in a language that the resident can understand, because licensed programs care for residents who may have limited English language skills and it is important that residents with limited English language skills also understand what kind of treatment to expect from the program and understand what is expected of the resident. It is reasonable to require the license holder to advise the resident about contacting a state-appointed ombudsman, because the license holder should know about

appropriate ombudsman services for residents and should be able to assist a resident who wishes to contact an ombudsman.

## **2960.0060 PROGRAM OUTCOMES MEASUREMENT, EVALUATION AND COMMUNITY INVOLVEMENT**

**Subpart 1. Statement of program outcomes.** This subpart is necessary to ensure that the license holder has policies that identify program outcomes and promote the health of residents. It is necessary and reasonable to require program outcomes, to meet the requirements of Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1), (iii). It is reasonable to require a way of evaluating the program's success in achieving the desired treatment outcomes for individual residents.

**Subpart 2. Outcome measures.** It is necessary and reasonable that license holders measure the outcomes of their services to residents in order to ensure that they have provided necessary care and treatment to residents, because Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1), (iii), requires that license holders "collect demographic information on clients served and outcome measures relative to the success of services.

**Subpart 3. Program evaluation.** It is necessary and reasonable to require license holders to evaluate the strengths and weaknesses of the program as part of an ongoing internal program evaluation and quality assurance effort, because it is consistent with chapter 2960's enabling legislation. Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1), (iii) requires that the department develop rules which require license holders to monitor the program effectiveness and guide the improvement of services provided, and evaluate client and family satisfaction with each facility's services.

**Subpart 4. Use of findings.** It is necessary and reasonable to require programs to use the program evaluation reports required by subpart 3 as a basis for making program improvements, because Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1), (iii) states that the rules must require programs to use internal evaluation and quality assurance efforts to guide improvement of service at the program. It is also reasonable to require that the license holder use findings from internal program evaluation reports as a basis for program improvements because it is a good way to get useful information about the program. The requirements of this subpart were reviewed by the advisory committee for this rule and determined to be reasonable.

**Subpart 5. Independent program audit.** It is necessary and reasonable that license holders comply and cooperate with program audits conducted by the commissioner so that the commissioner may determine whether the license holders "continue to meet the standards established in statute and rule and the needs of the clients and community." according to the

rule's enabling legislation, Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (3). Discussion with the authors of the enabling legislation indicated that the program audits were supposed to be done by the commissioner. It is reasonable to meet the legislative intent of the Laws' authors by using the department to conduct an independent program audit of license holders.

**Subpart 6. Community involvement.** It is necessary and reasonable to require that license holders create a board of directors or advisory committee, that "represents the interests, concerns and needs of the clients and community being served." according to Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1), (i). It is reasonable to require the license holder to meet the requirements of this subpart because the facility is licensed to provide a service to the community and to the residents at the facility. Requiring representation of residents and the community served by the facility is a way to ensure that the facility has a method to continually ascertain the needs of residents and community served by the facility.

#### **2960.0070 ADMISSION POLICY AND PROCESS**

**Subpart 1. Exemptions.** It is necessary and reasonable to inform prospective license holders interested in providing transitional housing services that they are exempt from a part and subpart, so that they conform to only germane parts of the rule. The transitional services programs are exempt from the admission criteria because they serve a population who do not need all of the services of a traditional residential program and are governed by statutorily determined admission criteria as noted in part 2960.0630, subpart 10. In addition, transitional housing programs do not inventory the resident's belongings and the program does not necessarily purport to offer treatment to the resident for problems that would be determined through screening.

**Subpart 2. Admission criteria.** This subpart requires that license holders establish criteria for admitting residents to their program. It is necessary to require that the license holder have criteria for admitting residents to ensure that the license holder considers the condition of the person to be admitted, including the person's disabilities, gender and cultural heritage, so that the license holder evaluates whether or not the license holder can meet the person's needs. It is reasonable to expect the license holder to have resources to respond to the needs of persons admitted to the program so that services might be provided to the resident soon after admission. It is necessary and reasonable to have admission criteria to meet the requirements of Minnesota Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (2), (I).

**Subpart 3. Resident admission documentation.** The requirements of this subpart are necessary to ensure that there is documentation of relevant referral information, including the authority under which the resident was placed, as well as basic demographic information about the resident including characteristics unique to a particular resident which are placed in a

resident's record. It is reasonable to require such documentation because written reports must be submitted by the license holder to outside agencies, including the courts, counties, and the appropriate state licensing authority. The information in this is also needed by the license holder to determine the identity of the resident and the appropriate care for the resident.

**Subpart. 4. Inventory and handling of resident property.** This subpart is necessary to ensure that the resident's property and funds stored or otherwise accounted for while the resident is in placement. It is reasonable and necessary to require an inventory to decrease the likelihood that the resident's property will not be accounted for during the resident's stay in the program, and to help ensure that residents will get their property back when they leave the program and have use of their property during their stay at the program. Requiring the license holder to document the receipt and disbursement of resident property and requiring the license holder to periodically account for resident funds are reasonable because documentation provides a written record which may be reviewed by the commissioner and checked for accuracy by the resident.

It is also needed and reasonable to require that the resident's property be separated from the license holder's and the license holder's agents' property during the resident's stay to avoid the misappropriation of the resident's property or other forms of abuse of the resident which may involve money or property. The restrictions on the buying and selling of property between the resident and those who control the resident is reasonable because it avoids situation which could be considered abuse or exploitation of the resident.

The rule advisory committee reviewed the timing requirements of this subpart regarding reasonableness and agreed with the timing requirements and found this subpart to be reasonable.

**Subpart 5. Resident screening.** It is necessary that all residents admitted to a program be screened in the areas addressed in items A, subitems 1 through 6. Requiring the license holder to determine the resident's physical, mental, educational, chemical dependency or chemical abuse, cultural and sexual abuse history and condition, and vulnerability to abuse, and needs is necessary and reasonable because these characteristics affect the resident's behavior and may identify problems which need to be addressed by the program, either directly at the program or by referrals to other professionals in the community. It is reasonable that these assessments be conducted because the assessments measure areas of importance to the resident.

It is reasonable and necessary to require the license holder to determine the cultural and gender-based needs of residents, because Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (2), (v) requires programs to have cultural sensitivity. It is necessary to

**determine which cultural groups clients identify with, so that the program can meet the culturally-based needs of residents.**

**The time limits regarding screening in item C, were reviewed by the rule advisory committee and were found to be reasonable and necessary. It is necessary to screen the resident promptly to determine which services to provide to the resident and to determine if the resident has a condition which requires prompt treatment.**

**It is also reasonable to use a recent screening instead of conducting a new screening because it is efficient and provides the program with the information needed to care for a resident, if the resident's condition has not changed since the last screening. In addition residents are believed to dislike repeated screening when transferred or re-admitted to a program.**

**It is reasonable and necessary to ensure that the opinions of the resident and family members who take an active interest in their child are sought, in order to integrate the expectations of the resident and the resident's parents regarding their child's treatment goals at the program. It is a standard of practice in Minnesota to have residents and their families involved in treatment planning. Family involvement during treatment encourages family reunification and community involvement when the resident makes the transition to living in the community following treatment.**

**It is reasonable that the screening contain relevant up-to-date information in significant areas of the resident's life, so that a meaningful treatment plan can be developed for the resident.**

**It is necessary and reasonable to require the license holder to comply with the requirements of item E to ensure that the resident gets services which match the resident's needs. It is necessary that this be done in concert with the resident's county case plan manager to ensure that the resources of the county are available to the resident, and to ensure that the treatment provided by the license holder is in keeping with the treatment provided through the case plan manager.**

**If the screening points to the need for an assessment, it is necessary that the license holder take steps to see that the resident is referred to appropriate professionals for the purpose of assessing the resident in areas where the screening pointed to the need for an assessment so that the resident's health will be treated appropriately.**

**It is reasonable to expect the license holder to arrange for the assessments to be conducted to ensure that the assessments occur. If the screening points to the need to hospitalize the resident, it is necessary that the license holder transport the resident to the hospital in a way that takes into consideration the resident's safety, because the license holder is responsible for the health and safety of a resident.**

**It is necessary and reasonable to require license holders to contact case managers or other appropriate agencies if a screening points up the need for the resident to receive mental health services, to ensure that resident gets the needed services. The case manager is responsible for coordination of services according to Minnesota Statutes, section 245.4873, subdivision 4. The resident and the resident's legal guardian must be informed that the screening of the resident concluded that the license holder requires mental health services, so that they know about the resident's condition and can help the resident. The requirement that the mental health professional may determine whether to not inform the resident's guardian of the resident's need for mental health services, if necessary to protect the resident, is reasonable because the interests of resident are a primary concern.**

**It is necessary to require that a license holder contact the case manager and recommend a chemical use assessment if the resident's chemical health screening points out the need for a chemical use assessment, to ensure that an appropriate determination will be made regarding the resident's need for treatment services. It is reasonable to require the license holder to contact the case manager regarding the results of the resident's chemical use screening, because the license holder has the results of the screening and the case manager is responsible for updating the resident's case plan and needs to know about the resident's care plan.**

## **2960.0080 FACILITY OPERATIONAL SERVICES, POLICIES, AND PRACTICES**

**Subpart 1. Exemptions. It is necessary and reasonable to exempt transitional services programs from the subparts noted in this subpart because transitional services programs are different from other programs licensed by this rule. Transitional services programs prepare residents for independent living and do not provide all services to a resident, because they are encouraging residents to obtain many of their own services as the resident would do after leaving the program. The services that a resident in a transitional services program would receive are specific for each resident and listed in an agreement between the license holder, the party paying for services and the resident, which states which services the resident will get. Transitional service programs do not use discipline techniques such as seclusion and physical holding with residents.**

**Subpart 2. Basic services. It is necessary and reasonable for license holders to provide basic services to residents that fulfill the resident's basic rights identified in the rule because the resident relies on the program for the minimum level of care and services. The program has control over the resident and the resident's activities and the program must act to permit the resident to exercise or enjoy the rights granted by part 2960.0050.**

**It is necessary and reasonable for the license holder's services to a resident to have a stated measurable outcome to meet the requirements of Minnesota Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clauses (1) (iii) and (2) (ii).**

**It is necessary and reasonable to require that the license holder ensure that residents get a needed service from a source outside of the program, if the program does not directly provide the service, because appropriate services must be provided to residents according to Minnesota Laws 1995, Chapter 226, Article 3, section 60, subdivision 1.**

**Subpart 3. Cooperation in treatment and basic service delivery. It is necessary and reasonable to require that the license holder cooperate with the resident's case plan manager and other appropriate agencies to develop and deliver basic services and services identified in the resident's screening to the resident and arrange assessments for the resident. It is reasonable to require the license holder to cooperate with the case plan manager and other appropriate agencies, to develop and provide services to residents, because residents need the services and the license holder is in a good position to deliver the services, because the resident lives at the licensed program and the program is required to care for the resident.**

**It is necessary and reasonable to require that the license holder work with the resident, the resident's parents or guardian, case plan manager, treatment plan as well as other professionals and agencies involved in providing services to the resident, to implement the resident's care plan to ensure that the persons who are important in the resident's life and the persons who are responsible for the resident's care are working in a similar way to help the resident by implementing the resident's case plan. The advisory committee for this rule commented that it was important to have people who are a part of the resident's life, while the resident is in treatment and after treatment, work together to support the resident's treatment plan and treatment goals. Working together during and after treatment will increase the likelihood that the treatment plan will be followed and the resident will benefit from the treatment plan.**

**It is necessary and reasonable that the license holder share treatment information with persons and groups who have an appropriate lawful interests in the resident's treatment, to ensure that there is a common understanding of the anticipated outcomes for the resident. This item assumes that other parts of the rule will be adhered to, which require the license holder to follow data privacy laws regarding the release of information about a resident.**

**It is necessary and reasonable to require the license holder to communicate with the resident's former and current school, because education is an important part of the resident's life while in a program and following the resident's release from the program. Using the resident's case plan as a guide for communication with the resident's current and former**

**school ensures that a uniform plan for the resident's care will be followed by the persons who are working together to care for the resident.**

**It is necessary and reasonable for the license holder to report resident's behavior to the appropriate parties so that the care plan may be developed and adjusted to address the resident's inappropriate behaviors. Likewise, positive behaviors, addressed in the resident's treatment or service plan can be acknowledged and enhanced.**

**It is necessary and reasonable to require the license holder to recommend changes in the resident's case plan to the placing agency as needed, because the license holder is familiar with the resident's condition and knows whether the case plan is producing the desired changes in the resident's condition.**

**It is necessary and reasonable to require the license holder to share relevant information about the resident and resident's family with the appropriate professionals and agencies that work with the resident to optimize the resident's care while in the facility and after discharge from the facility. The persons and agencies that work with the resident need information about the resident and the resident's family to provide care and treatment for the resident.**

**It is reasonable to require that information be promptly provided by the license holder to the requesting agency, parent, guardian or professional, because the information may be needed by the requestor who is providing or planning the care of the resident. Unreasonable delays providing needed information could result in duplicative unnecessary costs to the person that needs the information, because the person would have to again gather the information from the original sources if the information was not forthcoming from the license holder in a timely fashion.**

**Subpart 4. Facility rules and due process system for residents. It is necessary and reasonable to require that license holders communicate to residents the ways in which due process is handled while in the care of the license holder. It is reasonable to require that the license holder address topics in items A through E, because the topics were reviewed and approved by the public advisory committee for the rule and the topics are similar to the current practice for communicating due process and facility rules to residents.**

**Subpart 5. Discipline policy and procedures required. It is necessary and reasonable to require license holders to have discipline policies and procedures that require the license holder to consider the resident's background and condition when deciding what disciplinary action to take with a resident, because certain resident behaviors may be symptomatic of underlying mental health issues or may be a cultural or gender related behavior which needs to be recognized as not meriting discipline of the resident.**

It is also necessary and reasonable to reference a list of punishments that the license holder must not subject residents to, because many of the punishments would be considered abuse or neglect under Minnesota Statutes, section 625.556, subdivision 2, or would be forbidden under Minnesota Statutes, sections 144.651, and 245.826, and part 9545.0995.

The requirements of item B, which mandates that no resident or group of resident may punish a resident or group of residents, is reasonable and necessary to protect the safety of residents and to prevent the license holder from shifting the power and responsibility for the care of residents to other residents of the licensed program. The advisory committee for this rule reviewed and approved the prohibition against residents disciplining residents.

**Subpart 6 Daily resident activities.** It is necessary and reasonable to require license holders to develop a schedule of the resident's daily activities because the schedule will inform the resident, their parents, and placing agencies, what the resident's day will generally entail. The description of daily activities may indicate whether the program is pursuing the resident's treatment plan.

It is also reasonable to require the license holder to know the resident's whereabouts, because the license holder is responsible for providing supervision and guidance to residents and is also responsible for residents' safety. Knowing the whereabouts of a resident is also important because the license holder must be able to determine if the resident has run away or is missing. If the license holder does not know where a resident is supposed to be, it will be difficult for the license holder to establish that the resident is in the correct place, rather than missing.

**Subpart 7. Culturally appropriate care.** It is necessary and reasonable to require license holders to document the provision of culturally appropriate care to each resident, because Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, paragraph (2), clauses (v), (vi) and (vii), require that rules be developed which include providing interpreters and English language skill development, cultural sensitivity, staff which reflect the ethnicity of clients served wherever possible, and that training be provided staff in the area of cultural sensitivity. It is necessary and reasonable to follow the requirements of the enabling legislation for this rule. Programs admit children who are from a variety of cultural backgrounds and who may not speak English well enough to understand what the child is expected to do or why the child is in the program. It is reasonable to expect that the program be able to communicate with a resident in a language that the resident can understand, because the program is responsible for the child and the child must be able to speak to staff and be understood as well as hear and understand what is said.

The rule advisory committee reviewed and generally approved the culturally appropriate standards in subpart 7. Feedback on culturally appropriate care standards was also given at

public forums and representative of the communities of color that sat on the rulemaking committee provided feedback during 1997 and 1998. Members of minority councils, persons who represented organizations and agencies serving persons of color, and other individuals in the community, testified that license holders should provide culturally appropriate care to residents.

**Subpart 8. Spirituality services and counseling.** It is necessary and reasonable to require the license holder to afford residents the opportunity to participate in spirituality services, activities and counseling on a voluntary basis, because religious freedom is a personal freedom that may not be restricted by government and is a constitutionally protected right of persons living in the United States of America. Many residents are in out-of-home placement because of government decisions, and license holders are caring for residents at the request of government agencies, so it would not be proper to restrict the religious freedom of residents who are in placement because of government action. It is reasonable to require the license holder to assist the resident to get spiritual services and counseling, because the license holder has control over the many aspects of resident's life and has the resources to contact persons and groups who could provide spiritual services and counseling.

At public forums held regarding the rule many persons emphasized the importance of spirituality in the lives of children in general and of children of color. It was stressed that spirituality should not be limited to religious worship at traditional places of worship, and that spiritual services and counseling ought to be allowed to be consistent with the resident's background and be meaningful to the resident. Several representatives of the Native American community, including Native American children who had been in out-of-home placement, asked that the rule protect their right to pursue traditional Native American religious practice as well as Christian religious practice.

A person's spiritual well-being is often being viewed by the mental health profession as an important component of a person's overall emotional health, and 12-step recovery programs also recognize the importance of a person's spiritual life.

Members of the public and the Umbrella Rule rulemaking advisory committee, as well as DHS and DOC have taken the position that care should be exercised by license holders to ensure that spirituality services and counseling are consistent with the resident's treatment needs, and not allow residents to participate in cults or organizations which would be detrimental to the resident or others in the program.

**Subpart 9. Educational services.** It is necessary and reasonable to require license holders to ensure that residents have educational services, because education is a very important part of a resident's development and children are required to attend school by law. Some programs such as shelter care and detention care for residents for a brief period and may be subject to

laws which govern providing education to residents in short-term care programs. Some programs care for residents which are younger than the mandatory age for providing education to children, so the rule does not impose an obligation on programs to educate residents who are not of school age.

**Item A.** It is necessary and reasonable to require that the license holder ensure residents get an appropriate education in whatever educational setting the resident is placed for instruction, because the license holder has general control of the resident's activities and is in a position to help the resident get an appropriate education. It is reasonable to require the license holder who provides educational services on the grounds of the facility to meet the requirements of laws regarding education, because the license holder is required to meet the requirements of all applicable laws and because the laws regarding education are intended to promote the resident's development.

It is necessary and reasonable to require the license holder to provide year-round educational services to residents if required by law, because Laws, 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (2), (ix), requires year-round instruction. Some members of the rule advisory committee and member of the public have testified that residents often have not attained the educational level of children their age and need year-round education to promote the children's improved learning. Some members of the rule advisory committee and members of the public have also testified that year-round education is not available in all areas of the state and it is not required by other laws, which means that it will not be available to residents in some areas of the state unless all the school districts in the state are required to provide educational services on a year-round basis.

**Item B.** It is necessary and reasonable that license holders facilitate the resident's school attendance in order for the resident to participate in instruction and continue to progress toward graduation or attainment of an equivalent degree. It is reasonable to require the license holder to enroll the resident in the resident's district, if appropriate, because the resident's district may be nearby and the resident may benefit from continued instruction at a school that is familiar with resident.

**Item C.** It is necessary and reasonable that the license holder make periodic inquiries about the resident's progress in school to determine if the resident is receiving the special and regular education services which the resident should receive.

**Item D.** It is necessary and reasonable to require the license holder to provide chemical health education to residents who have inappropriate chemical use problems, because it is believed that chemical use problems can be limited by education about the problems which arise from chemical abuse. The license holder is in a position to provide chemical health education services because the license holder has general control of the resident. The rule is

reasonable because it requires the license holder to “provide” chemical health education to those residents who need it, but allows the license holder the flexibility to determine who will deliver the chemical health education information to the resident and how much chemical health education the resident should have.

**Subpart 10. Exercise and recreation.** It is necessary and reasonable to require the license holder to develop and implement a plan that provides exercise and recreation for all residents in order to promote health and fitness and enhance the physical, and emotional well-being of the resident.

**Subpart 11. Health and hygiene services.** It is necessary and reasonable that license holder meet the conditions in items A through F regarding the residents health and hygiene.

**Item A.** It is necessary and reasonable that license holders provide residents with access to basic, emergency and specialized medical care, including mental health and dental care and treatment, because the license holder assumes the responsibility for the general care of the resident. The license holder also has the resources to contact providers of health care services as needed

**Item B.** It is necessary and reasonable to require the license holder to maintain records of illnesses reported by the resident as well as the license holder’s response to the report of illness, including the date that medical, psychological or dental care were provided, because the licensing agency and other regulators need the record to determine whether the services were provided. The record is also reasonable because it provides information to other care providers about the health of the resident and which treatments were provided to the resident so that the care provider can determine which additional or continued health services the resident needs.

**Item C.** It is necessary and reasonable to prohibit the license holder’s stockpiling of prescription drugs at the facility , because the license holder may only store prescription drugs for those residents for whom the drugs are prescribed. It is dangerous and illegal to give prescription drugs to anyone except the person to whom the drug was prescribed.

**Item D.** It is necessary and reasonable to require license holders to consult with a physician, registered nurse, nurse practitioner, or pharmacist to develop a plan for the safe storage and delivery of medicine, because medication can be dangerous if incorrectly administered, and drugs may become ineffective or be used by the wrong person if not stored properly. It is reasonable to require that medicine be correctly stored to keep the medicine from being used by the wrong person or used in the wrong way. It is necessary to keep the medicine in the original bottle, because the original bottle contains useful information such as a description of

the medicine and instructions for the proper administration of the medicine and phone numbers to call if there are questions about the medicine.

**Item E.** It is necessary and reasonable to require the license holder to maintain records of all prescription drugs, including the quantity of medication initially received, the amount of medication administered, the dosage and the time administered to the resident, because this is consistent with contemporaneous and prudent health care practices and it provides a record for review by those who regulate the license holder.

**Item F.** It is necessary and reasonable to require license holders to provide the resident's parent or legal guardian with the any unused medications, because the medication may be needed to treat the resident following discharge and may not lawfully be given to another resident. It is reasonable to require that any unused medications, must be disposed of according to plan approved by a pharmacy, to ensure that the medicine is not given to the wrong person or used in the wrong way. It is reasonable to require that disposition of medications must be noted in the resident's file, because noting the disposition in the file will provide a record for review by those who regulate the license holder.

**Subpart 12. Food and nutrition.** It is necessary and reasonable to require license holders to ensure that foods and beverages provided to residents are nutritious, palatable, of an appropriate quantity and variety, because the license holder supplies the food which residents need to maintain good health and the residents do not typically have an option of getting food from sources outside of the program to supplement their diet. It is also reasonable to require that the food have quality characteristics, such as that the food is palatable and is appropriately prepared and served.

It is necessary and reasonable to require the license holder to provide a medically prescribed diet if ordered by a resident's physician, or recommended or ordered by a prenatal care provider, because the diet is an important to maintain the resident's health and avoid illness. Examples of medically prescribed diets include diets which exclude foods that a resident is allergic to and diets which accommodate the needs of residents with diabetes.

It is necessary and reasonable that the license holder provide a diet which does not conflict with the resident's religious or cultural beliefs, because it would not be appropriate to force a resident to choose between eating and following the resident's religious beliefs or practices regarding food.

**Subpart 13. Resident clothing, bedding, and laundry.** It is necessary and reasonable to require license holders to ensure that residents have adequate clean clothing that is appropriate to the season, because the resident relies on the license holder for clothing, and Minnesota weather changes to the extent that warmer clothing is needed in the winter and

lighter weight clothing is needed in the summer. The rule advisory committee felt that it was reasonable to require that bedding be cleaned at least once per week, and it was also noted that it was a common practice in the field to change linens at least weekly. The requirement that the mattresses be fire-retardant is reasonable because it is the current practice in the field. It is reasonable and necessary that the license holder ensure adequate clean bath towels and washcloths, because the residents need these items to maintain good hygiene practices and the license holder is the entity that is in a good position to supply towels and washcloths to residents. The requirements of this subpart are common practice in the out-of-home care field at this time.

**Subpart 14. Emergency plan.** It is necessary and reasonable to require the license holder to develop a written comprehensive emergency plan which reflects advice from fire and law enforcement agencies, because the emergency plan will help protect the safety of the residents. Fire and law enforcement agencies can inform the license holder about local emergency response services and give the license holder advice about the emergency plan. It is the license holder's responsibility to protect the health and safety of resident.

Developing a written emergency plan will allow the license holder to inform everyone at the facility what to do in an emergency, which will ensure that people will know what to do if an emergency occurs. It is necessary and reasonable for the plan to include specific responsibilities of staff to help all residents, including resident's who have disabilities and require special care. Laws 1995, Chapter 226, Article 3, section 60, Subd. 2, clause (2), (viii), requires that programming standards include the license holder's "capacity to respond to persons with disabilities."

**Subpart 15. Communication and visitation.** It is necessary and reasonable that license holders develop a written policy about resident communication and visitation so that residents are allowed the freedom to communicate and visit with persons of their choice, with restrictions imposed that are justified by the resident's case plan, statute, or court order. It is also reasonable that parents be allowed to visit the resident at times convenient to the resident's parent because parental involvement with the resident is important to the resident's treatment and should be encouraged by allowing the parent to visit the resident at a time which fits the parent's schedule. Some parents work at times which may not allow them to take advantage of typical visiting hours and may be unable to visit a resident unless an alternate time is agreed upon by the parent and the program.

**Subpart 16. Resident records.** It is necessary and reasonable to require that license holders maintain sufficient documentation on residents so that the regulatory authorities may review the records for compliance with regulatory standards. It is also necessary and reasonable to require the license holder to use forms and collect and maintain data as required by Laws, 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1), (iii).

**Subpart 17. Critical incident and maltreatment reports.** It is necessary and reasonable that license holders report maltreatment, because it is required by Minnesota Statutes, sections 626.556 and 626.557. Reporting critical incidents is necessary and reasonable because it will ensure that the designated state licensing authority is able to review the incident to determine whether residents were harmed as a result of the critical incident and whether the residents involved in the incident were given appropriate medical and psychiatric care, and review the license holder's actions. It is also necessary and reasonable to require that the license holder review and possibly change the license holders policies about maltreatment, if reviews of incident reports and quality assurance reports indicates change is needed, because these reports are intended to help the license holder determine whether the existing policies are appropriate. The review of critical incidents and maltreatment are part of the license holder's program evaluation process at part 2960.0060, subpart 3, which are used to determine the need for program improvements.

**Subpart 18. Resident and family grievance procedures.** It is necessary and reasonable to require license holders to develop and follow grievance procedures according to Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1), (ii), which states that the rule standards must require that programs have "appropriate grievance and appeal procedures for clients and families." It is reasonable that the grievance procedure include a requirement that the program provide the necessary forms and assistance so that a complainant may properly submit a formal grievance, because many residents and their parents may have limited education or may require assistance for other reasons. It is also reasonable to require the license holder to explain who will resolve the complaint and the appeal process to be used if the complaining party wants to appeal the initial resolution of the complaint. The five day time period for license holder's response to the complainant is reasonable because it allows enough time for the license holder to review the matter, while ensuring that the resident receives a timely response.

**Item B.** It is necessary and reasonable that documentation of the grievance must remain on-site for two licensing periods, so that the commissioner may review the number, nature, and resolution of the grievances, as a part of the overall review of the license holder's program to determine compliance with statutes and rule. In addition, the review of grievances is part of the license holder's program evaluation process at part 2960.0060, subpart 3, which is used to determine the need for program improvements.

## **2960.0090 DISCHARGE AND AFTERCARE**

**Subpart 1. Exemption.** It is reasonable and necessary to exempt transitional services programs from the requirement to return the resident's property at the time of discharge

because transitional services programs do not inventory or take custody of a resident's property at admission, so there is no need to return the property at discharge.

**Subpart 2. No eject policy.** It is necessary and reasonable to require license holders to comply with the provisions of Minnesota Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (2) (iii), which requires "a no-eject policy by which youths are discharged based on successful completion of individual goals and not automatically discharged for behavioral transgressions."

It is necessary and reasonable to require that the license holder confer with relevant individuals before discharging residents who have not met their goals, because it is believed that residents benefit from stability in relationships and it is believed to be harmful to the resident to move the resident from place to place without resolving the problem that led to the resident's placement in out-of-home care. Discharge from a facility without a complete review of the reasons for the resident's discharge, may lead to subsequent out-of-home placements. Subsequent and multiple placements, are frequently a sign that either the placement is not appropriate to meet the needs of the resident or that the treatment of the resident is not effective.

When the discharge of a resident is imminent, it is necessary and reasonable to require that the license holder determine whether it is in the best interest of the resident or others in the facility for health and safety reasons, to temporarily remove the resident from the facility. It is necessary that the removal of the resident not exceed five days, because the resident may need active care and treatment without the loss of time during an excessively lengthy decision making interim. It is necessary to require that the license holder document the alternatives to discharge which were considered and rejected so that there is a record which may reviewed by the commissioner to determine compliance.

**Subpart 3. Return of resident's property.** It is necessary and reasonable to require license holders to return the resident's property at discharge, unless the license holder is prohibited to do so by law, because the license holder has no right to hold the resident's property after discharge. It is also reasonable to require that any discrepancies between the inventoried property turned over to the facility at the time of the resident's admission and the property returned to the resident at discharge, must be documented by staff, because the facility is responsible for the property that it takes from the resident.

A system of inventorying residents' property upon admission will assure the resident that the resident will leave the facility with the resident's personal property. Furthermore, it will provide the resident with documentation of the resident's property which can be used to question the license holder, if the resident's personal property is not returned.

## **2960.0100 PERSONNEL POLICIES**

**Subpart 1. Staffing plan.** With the exception of family foster settings, it is necessary and reasonable to require license holders to develop staffing plans that are approved by the commissioner to ensure that the requirements of Chapter 2960 are met. It is reasonable to require that the staffing plan include information which identifies staff assignments, and to the extent permitted by law, meets the cultural and ethnic needs of each resident served by the facility, because Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (2), (vi).

Qualified and trained staff are crucial to the efficient operation and effectiveness of a residential program that cares for and treats residents. It is reasonable that the staff are scheduled in a manner that will assure that residents receive staff attention so that the residents plan of care is delivered in the correct way.

**Subpart 2. Recruitment of culturally balanced staff.** It is necessary and reasonable that license holders actively recruit, hire and retain full time staff who are responsive to the diverse population served by the program to the extent permitted by law, because it is required by Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause 2, (v) and (vii). This approach should be used by license holders so that children of color may receive care from individuals who are aware of and better able to relate to children of color. In addition, persons of color who served as members of the Umbrella Rule Advisory Committee, professionals, concerned parents and private citizens, testified and provided feedback to DHS and DOC during public forums and hearings held throughout the State, during the summer of 1997, and early winter of 1998 that the requirements of subpart 3 are important to the proper care of children of color.

Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (2), (vi), requires that the rule contain standards mandating that license holders “use staff who reflect the ethnicity of the clients served, whenever possible.” It is necessary and reasonable that this provision of state law be carried out without causing a conflict with other laws which bar discrimination. It is also reasonable to require the license holder to provide a resident with opportunities to associate with role models with similar racial and cultural backgrounds, because it provides the resident with an opportunity to see people who the resident may more readily identify with in a positive way.

**Subpart 3. Orientation and in-service training.** It is necessary and reasonable to require the license holder to provide training to staff which is modified on an annual basis to include new changes to laws, rules and professional standards regarding important aspects of training for staff, because staff need to be given current information about the work that they do and laws or standards which must be met when caring for residents. It is reasonable to require orientation and training of staff because orientation and training are required by existing rules. The public advisory committee for the rule also felt that orientation and training were

important to maintain the quality of care given to residents and the services given to families of residents.

Training in cultural sensitivity and disability awareness is required by Laws 1995, Chapter 226, Article 3, section 60., subdivision 2, clause (2), (v). It is also important that staff receive orientation in areas that will aid in the prevention of or reduce the likelihood that residents will be harmed during emergency situations. In addition, it is important the staff receive an orientation in all policies and procedures that relate to the operation of the program, so that staff will be better able to meet the needs of the target population served by the program and to achieve the program's outcomes. Staff must also be aware of all pertinent data practices regulations in order to understand the regulations regarding the release of data about residents to staff, because the improper release of information is not lawful and may harm the resident or the resident's family.

It is also necessary and reasonable that staff who provide direct contact with residents, receive on-going training which will develop staff's skills in order to provide residents the best quality care services.

**Subpart 4. Specialized training.** It is necessary and reasonable to require license holders to provide staff with specialized training so that they may better serve residents whose behavior or other characteristics require that staff possess special skills or a different kind of knowledge or competencies than is normally required.

The Umbrella Rule Advisory Committee members stressed the importance of license holders and staff being aware of the needs of residents, and that staff should have enough skill and training to address the resident's needs.

**Subpart 5. Documentation of Training.** It is necessary and reasonable to require that in-service training be documented so that a thorough and up-to-date record of each staff person's in-service training record will be retained for review by the commissioner to determine compliance with part 2960.0100. The documentation of training will also provide a useful record for review by the license holder, when the license holder plans future staff training.

**Subpart 6. License holder and staff qualifications.**

**Item A.** It is necessary and reasonable to require that license holders and staff have sufficient experience and education in order to provide residents with the proper level and type of care and services. It is necessary and reasonable to require that the license holder be a mature adult because some of the residents will be older teens who need the guidance and help of a mature adult and maturity is a desirable quality for a license holder to have. It is also necessary and reasonable to require that the license holder and staff have the ability to

carry out their obligations and meet the resident's needs identified in the resident's case plan or otherwise identified, because meeting the resident's needs is a duty of the license holder and staff who have control of the resident.

**Item B.** It is necessary and reasonable that staff who work with female residents be trained in gender-based issues, because there was testimony during the development of the rule that female residents should have their needs met in a different way than male residents regarding some aspects of treatment.

**Item C.** It is necessary and reasonable that license holders be at least 21 years of age, so that they will possess the experience, knowledge, maturity and ability to operate a residential program serving residents in need of residential care and services. Umbrella Rule Advisory Committee members generally agreed that a license holder should be at least 21 years of age to obtain a license to provide residential care to children.

**Subpart 7. Background study.** It is necessary and reasonable that license holders and their employees use the background study processes required by law, for staff who have direct contact with residents. Minnesota Statutes, Chapter 245A sets forth the process that DHS license holders must follow regarding employee background studies, and the process for disqualifying employees if warranted by the results of the study. It also directs the DHS in how it will carry out the provisions of law, including the due process for employees who have been disqualified from direct care.

DOC will follow the relevant statutory requirements when it conducts a background study of license holders and their staff.

## **2960.0110 PHYSICAL ENVIRONMENT AND EQUIPMENT**

**Subpart 1. Physical environment and equipment.** It is necessary and reasonable that license holders equip and maintain the physical plant in ways that are in keeping with the intended outcomes of the program, because the physical plant should be in keeping with the objectives of the program. It is also necessary and reasonable to require the license holder to keep the resident's surroundings well maintained to show regard for the resident and other persons who are at the facility and to promote the resident's self-esteem.

**Subpart 2. Comfort, privacy, and dignity.** It is necessary and reasonable to require that license holders ensure that the physical environment provide for the comfort, privacy and dignity of individuals as part of an overall plan of care for the residents and to provide residents with a model for living that emphasizes respect for the residents.

**Subpart 3. Adequate facilities for services.**

**Item A.** It is necessary and reasonable to require that license holders ensure that food services, storage, housekeeping laundry and maintenance is handled or otherwise carried out in ways that will promote the health of residents, because that is a part of the license holder's duties. It is also necessary to require that the license holder promote the health of residents because residents need to be healthy in order to feel good and achieve treatment goals, because the absence of good health limits the resident's ability to be functional.

**Item B.** It is necessary and reasonable to require that if license holders contract with an outside food vendor that the vendor meet all federal, state and local health standards so as to promote the health and well-being of all residents and guard against bad food handling practices and resulting food-borne illness.

**Item C.** It is necessary and reasonable to require that, if license holders provide educational services on-site, then the class rooms must provide an atmosphere that is conducive to learning and that it meets the resident's special physical, sensory and emotional needs, because many children in out-of-home placement have special needs or disabilities which would require an appropriate environment.

**Item D.** It is necessary and reasonable to require that license holders provide special adaptive equipment and furnishings to meet the unique needs of residents served by the license holder, because residents with special needs may require equipment which is adapted to meet the resident's needs to allow the resident to function appropriately.

**Subpart. 4. First aid kit.** It is necessary and reasonable to require that license holders have a first aid kit supplied for use by residents and staff to respond to a medical emergency or circumstance requiring first aid care, because first aid kits are a useful collection of medical supplies which will enable staff to respond to a medical emergency until a qualified first-responder can aid the injured person. It is reasonable that the kit be in a place which is available to staff and residents so that the maximum number of persons would be able to assist an injured person in an emergency.

## **2960.0120 PHYSICAL PLANT STANDARDS**

### **Subpart 1. Exemptions.**

**Item A.** It is necessary and reasonable to exempt transitional services programs from in subpart 2, item C, because transitional services programs do not always provide housing to clients and some housing provided by a transitional services program are not at the program's address, but are in various kinds of housing in the community. Transitional services programs are exempt from the requirements of subpart 2, item C, because transitional services programs do not serve young children who need room for outdoor recreation.

**Subpart 2. Code compliance.** It is necessary and reasonable to require license holders to comply with all applicable fire, health, zoning, and building codes and items A to J, because health, fire, zoning, and building codes are laws which the license holder must obey. In addition, health, fire, zoning, and building codes are intended to protect the health and safety of residents and others and to protect property values and control land use.

**Item A.** It is necessary and reasonable to require that no sleeping room accommodate more than four residents at any one time, that multi-bed bedrooms provide a minimum of 60 square feet per resident of useable floor space, with three feet between each bed, that are placed side by side, and one foot between beds placed end to end to maintain a safe environment which affords residents a reasonable degree of comfort. These space considerations are required to assure residents the opportunity to safely and quickly exit the bedrooms in the event of a fire or some other emergency or event requiring an immediate evacuation from the bedroom; and to afford residents with a minimum level of privacy and comfort. Non-ambulatory residents must be assured of at least 80 square feet of useable floor area, to accommodate special adaptive equipment in order to assure ease of movement into, within and exiting the bedroom in a manner that assures ease of movement, and in the event of an emergency or event requiring an immediate evacuation from the bedroom, that it be done in as expedient manner as possible in order to protect the resident from harm.

**Item B.** It is necessary and reasonable to require license holders to provide each resident with adequate space for clothing and personal possessions along with furnishings to store the clothing and other personal possessions, because the resident may need their Articles of clothing and other personal possessions and the resident should be afforded access to the items.

**Item C.** It is necessary and reasonable to require the license holder to provide adequate outdoor space for resident recreation, because people need adequate space to exercise. Exercise is believed to be important to maintaining physical health and maintaining a good mental outlook.

**Item D.** It is necessary and reasonable to require the license holder to provide toilet facilities required in this item, because the residents must have an opportunity to go to the bathroom and to maintain good hygiene. The rule advisory committee reviewed these standards and felt that they were the minimum acceptable standards for bath and toilet facilities.

**Item E.** It is necessary and reasonable that the license holder assure that the heating plant be sufficient to maintain a temperature of 70 degrees Fahrenheit, in all rooms used by residents, because this is thought to be comfortable for most people.

**Item F. It is necessary and reasonable that each license holder provide sufficient natural as well as electrical lighting to achieve “reasonable” light levels for the function of each given area, because it is important to have enough light to see well in order to use a given area appropriately.**

**Item G. It is necessary and reasonable to require the license holder to provide enough space indoors for quiet or group activities, because residents need both types of space to do both types of activities. Programs typically afford both types of space so that residents can engage in diverse activities such as quiet homework or group activities including play.**

**Item H. It is necessary and reasonable to require a license holder who provides education services on-site, to conform to the physical plant and equipment requirements of the Minnesota Department of Children Families and Learning, because those standards are appropriate for operating a facility which offers educational services.**

**Item I. It is necessary and reasonable that license holders who provide intake and admission services, have sufficient space to conduct intake and admission functions in a private and confidential manner, because residents are required to divulge private information during admission. The license holder is required keep private information about residents from persons who are not entitled to the information, therefore the license holder should have a place to conduct admission or intake where private information may not be overheard by persons who are not entitled to the information.**

## **ADDITIONAL STANDARDS FOR GROUP RESIDENTIAL SETTINGS**

### **2960.0130 PURPOSE AND APPLICABILITY**

**Subpart 1. Purpose. Subpart 1 is reasonable and necessary because it states which parts of Chapter 2960 license holders must meet if they want to be licensed to provide group residential services in their program. It is reasonable to advise persons who operate a group residential program for children that this rule sets forth the minimum standards which apply to their program.**

**Subpart 2. Applicability. Subpart 2 is reasonable and necessary because it indicates which parts of Chapter 2960 apply to applicants who wish to operate group residential programs. It is reasonable to inform applicants which standards they must meet to obtain a group residential license.**

**Subpart 3. Certification option. Subpart 3 is reasonable and necessary because it informs applicants that they need not apply to obtain a treatment certification if they do not wish to be**

certified to provide treatment services. It is reasonable to inform all applicants of this policy so that they will know that there are different types of care that they could offer to residents.

**Subpart 4. Exemptions.** The requirements of subpart 4 are reasonable and necessary to ensure that applicants are aware that transitional and shelter services programs are exempt from having to meet the standards for group residential programs. This subpart is reasonable because residents placed in transitional programs are preparing to live independently and generally need basic care services and do not require a highly structured environment that the group residential standards require. Shelter care programs are intended to be short term care providers and should not have to provide the same services that a provider would be expected to provide to residents who will be in the program for a longer period.

#### **2960.0140 QUALITY ASSURANCE, IMPROVEMENT, AND PROGRAM OUTCOMES**

**Subpart 1. Resident and family satisfaction survey.** The requirements of subpart 1 are reasonable and necessary to ensure that license holders receive feedback from each resident and persons interested in the resident's care, regarding the impact that the program services had on the resident during the resident's stay. The feedback could be used to improve the delivery of services to residents. It is reasonable to require license holders to obtain feedback data and information in item A, subitems 1 to 7, because the services are important to residents and feedback from residents will help the license holder maintain or improve the quality of services. It is necessary to require the license holder to gather documented information about services so that documentation is available to substantiate what residents and parents said about the services. This subpart is reasonable because the enabling legislation for this rule requires ongoing internal program evaluation at Laws 1995, Chapter 226, Article 3, section 60, subdivision. 2, clause (1) (iii).

**Subpart 2. Treatment plan compliance.** The requirements of subpart 2 are reasonable and necessary to ensure that residents' treatment plans are reviewed and evaluated to determine whether or not the objectives identified in the residents' treatment plans were met. It is reasonable to require the license holder to document which services were provided to the resident by the license holder and which services were provided by someone other than the license holder so that the services can be evaluated to determine the effectiveness of license holder provided services apart from services provided to the resident by other providers. It is reasonable to have the license holder document the extent to which the services provided to the resident contributed to achieving the goals and objectives identified in the resident's treatment plan because such information is needed to properly determine whether the services were effective and whether the license holder met the objectives of the resident's treatment plan.

## **2960.0150 PERSONNEL POLICES**

**Subpart 1. Job descriptions.** The requirements of subpart 1 are reasonable and necessary, because staff persons need to know what is expected of them and how their duties relate to other staff member's duties. This rule part is also necessary because it requires the license holder to identify the minimum qualifications necessary to perform the assigned tasks, so a prospective employee will know if they are qualified to perform the tasks that are listed in the job description. The requirements of subpart 1 are necessary and reasonable, because they are similar to parts 2930.1900 and 2935.1000.

**Subpart 2. Professional licensure.** The requirements of subpart 2 are reasonable and necessary because, this subpart requires the license holder to demonstrate that staff who perform job duties that require a professional license or certificate, have valid credentials, such as a license or certificate. It is reasonable to require proof of valid credentials, because credential issuing authorities will readily provide evidence of licensure or certification

**Subpart 3. Staffing plan.** The requirements of subpart 3 are reasonable and necessary to ensure that group residential programs have enough staff on duty at all times to provide residents with necessary care and supervision and enough staff to achieve the outcomes indicated on the facility license and certification application form. It is reasonable to require that the commissioner use the criteria and guidelines in items A through J to determine whether the license holder's staffing plan is acceptable, because the license holder should know which criteria will be used to determine whether the license holder's staffing plan is acceptable.

The requirements of items A and B are reasonable and necessary, because it is important that staff on duty have immediate access to someone in charge of the facility who will make necessary decisions about situations that need a well informed, quick decision. It is reasonable that the person in charge be available to direct and supervise staff who carry out the person in charge's decision. It is reasonable to require that the license holder designate a staff person at the facility as the person in charge at the facility, because a person at the facility who is in charge is likely to have current accurate information about what is going on at the facility. The requirements of items A and B are necessary and reasonable because they are similar to parts 2930.1700, subpart 2, item A and 2935.0600, subparts 2 and 3.

The requirements of item C are reasonable and necessary to ensure that all social services provided to residents in the facility are coordinated by a program coordinator in a consistent and orderly manner. It is reasonable to assume that services would be coordinated when the responsibility to coordinate services is given to one person. The rule advisory committee felt that a full-time program director would be needed if the facility population exceeded 24

residents to ensure proper coordination of all social services in a consistent manner,. The requirements of item C are necessary and reasonable because they are similar to part 2935.0500, subpart 13.

The requirements of item D are reasonable and necessary to ensure that same sex staff are readily available within the facility at all times to prevent situations from occurring that will invade the privacy of residents or would embarrass or diminish the dignity of residents by opposite sex staff performing certain duties; i.e. strip searches, witnessing or assisting in internal body searches, etc. Many residents in residential treatment facilities have been either emotionally, physically or sexually abused. Having a staff member of the same gender supervise residents during strip searches, internal body searches, supervision of showering and lavatory use, dressing and undressing, assisting with personal hygiene activities and or medical concerns that involve a resident's buttocks, genitals or breasts may diminish the resident's embarrassment, loss of dignity and perceived risk of harm. The requirements of item D are necessary and reasonable because they are similar to parts 2935.0600, subpart 5 and 2930.1700, subpart 2, item C.

Residents in DHS licensed programs are seldom subjected to strip searches, internal body searches, and direct supervision while toileting or bathing. Some residents of DHS licensed facilities need assistance toileting or bathing, because of their young age or a handicap. Currently, these residents may be assisted by facility staff without regard to the staff's gender, unless there is a need to have same gender staff assist the resident. The Department of Human Services believes that a resident's sense of privacy and dignity should be respected and that the resident should not be subjected to embarrassment.

The requirements of this item should not be construed to prevent the continuation of the practice of staff of either gender assisting residents at DHS licensed facilities who need help with toileting and bathing if the resident is not embarrassed, and the resident's dignity is not diminished, nor is the resident's privacy invaded. Residents of DHS licensed facilities who need assistance toileting or bathing should be allowed to choose to be bathed or assisted with toileting by staff without regard to gender, if the resident is capable of choosing. The license holder must follow the request of a parent or guardian of a resident who is not capable of making a decision about the gender of staff who assist the resident with toileting or bathing. Some DHS licensed shelter programs accept young children who need assistance bathing or toileting. It would be unreasonable to require that a young male resident of a shelter, such as a toddler, who needs help toileting or bathing, would be required to wait for help from a male staff person. It is unlikely that the young resident's privacy would be invaded, dignity diminished, or that the child would be embarrassed.

The requirements of item D regarding a contingency plan that ensures an immediate response by an on-call staff of the same gender are reasonable and necessary to ensure that female

residents feel emotionally and physically safe during nighttime sleeping hours. Most of the residential facilities in Minnesota are co-educational. Most of these facilities have a majority population of boys. There are many facilities where very few females are residents at any given time. The majority of girls who end up in residential care have experienced sexual abuse, many of these girls have experienced sexual abuse multiple times, and many at the hands of different perpetrators, the majority of whom have been male. Girls who experienced sexual abuse are often times hypersensitive to the potential for further victimization. This perception can become exacerbated in conditions of confinement for girls where they feel little control over what happens to them. Girls who have been abused, especially those that have been abused during the nighttime sleeping hours, often times have difficulty falling asleep, may experience nightmares, and some of these girls experience flashbacks. When girls experience nightmares, flashbacks and difficulty falling asleep, and assistance is required from a staff person, this would best be done by female staff rather than male staff. In general, most girls, especially those who have experienced sexual abuse by males, will feel more comfortable having female staff supervise them at night.

The requirements of item E are necessary and reasonable, because it is a common practice to provide medical services to persons without regard to the gender of a medically licensed professional staff person. It is also necessary and reasonable to require medically licensed persons of the same sex provide an internal body search in item D, subitem (2), because these searches are typically provided by a medically licensed person of the same gender. The internal body search procedure is much more likely to occur in a DOC licensed program. The requirements of this item regarding the gender of the medically licensed person performing an internal body search are reasonable because they are similar to current practice in the correctional field.

The requirements of item F are necessary and reasonable, because they require the license holder to have at least the minimum number of staff necessary to safely care for children in a residential program. The requirements are reasonable, because they are similar to the current practices in the residential care field in Minnesota. Other parts of the rule which specify the conditions for license holders to be certified to provide certain types of care or treatment may require that more staff be present, because that type of care or treatment typically requires more staff.

The Minnesota Council of Child Caring Agencies [MCCCA], a group representing providers of out of home care for children and juveniles, asked that the rule allow group homes that are staffed according to the house-parent model be allowed to let house-parents sleep at night while children are asleep, unless there was a situation that would require the house-parents to be awake. The house-parent model is characterized by staff who are hired to provide care for children in out of home placement by acting as parents to the children in care at the group home. House parents are typically at the group home most of the time, but are relieved by

other staff from the agency that operates the group home, so that house-parent has time off from work.

The home-like atmosphere of a group home operated by house- parents is considered to be effective for treating some residents and is now used in Minnesota. The departments would like to continue to have this mode of treatment available as a placement option and believes that a rule caveat regarding awake staff at night is necessary to continue to have house-parent model group home care available without substantially increasing the cost of care.

Unless there is a problem or a special concern, parents commonly sleep at night when children are asleep. Similarly, it is reasonable to allow house-parents to sleep at night when residents are asleep, if there is no situation which would require the house-parents to be awake and aiding a resident or awake and providing supervision to a resident or safeguarding the resident.

It is reasonable and necessary to require that the license holder ensure that enough staff are always available and capable of responding to an emergency. It is reasonable to require that the license holder have enough staff to protect and ensure the safety of residents, because the license holder has assumed responsibility for the care of the resident. The requirements of item F are necessary and reasonable because they are similar to parts 2930.1700, subpart 2, item B and 2935.0600, subpart 9. The staff to resident ratios of this item have been reviewed by the advisory committee and found to be generally reasonable.

The requirements of item G are reasonable and necessary to ensure that all statutory educational requirements relating to residents will be met during a resident's stay. It is reasonable and necessary to require that the license holder make an effort to ensure that the resident's educational needs are met, because education is very important for residents, because education is a part of the resident's preparation for life as an adult. License holders who provide education services to residents at the licensed program are required to use teachers who are certified by the Department of Children, Families, and Learning, because certified teachers have demonstrated their ability and there are teachers available who have been certified by the Department of Children, Families and Learning.

The requirements of item H are reasonable and necessary because they ensure that staff will coordinate treatment services for residents and ensure that residents receive the activities and services stated in their treatment and case plans. It is reasonable to expect that the license holder will have enough staff to supervise and coordinate treatment services required in the residents' treatment and case plans. A ratio of one staff to 25 residents is reasonable because it is similar to the ratio in part 2935.0600, subpart 13.

The requirements of item I are reasonable and necessary because it is important to identify and register all volunteers so staff can identify the volunteers and for insurance purposes. This identification should include a photograph, address, and telephone number at which the volunteer can be reached and other job-related information. The license holder may use a simplified identification system for one-time volunteers. One time volunteers who do not have unsupervised contact with residents may require only the approval of the facility administrator. The requirements of item I are necessary and reasonable because they are similar to parts 2935.0600, subpart 12.

The requirements of item J are reasonable and necessary because each facility should have enough staff to perform the duties and responsibilities which are necessary to meet the physical, emotional and safety needs of residents and ensure the safety of staff and the community.

If the program's target population tends to be comprised of residents with characteristics that require added staff efforts, then it is necessary and reasonable to require that the program have more staff to provide the appropriate supervision of residents. It is also necessary and reasonable to require that the license holder consider the physical plant characteristics of the facility when assigning staff, because the design of the facility may require more staff to adequately supervise and care for residents. It is necessary and reasonable to require the license holder to consider the kind of services that the program will offer residents when the license holder makes the staffing plan, because some services must be delivered by staff with professional licenses and some services may require a higher staff to resident ratio be available.

**Subpart 4. Personnel training** The requirements of subpart 4 are reasonable and necessary to ensure that staff are adequately trained to care for and supervise residents. It is necessary and reasonable to require at least 24 hours of training, because current licensing rules governing DOC licensed [see 2930.1800, subpart 3] programs and DHS licensed treatment and shelter care [see part 9545.1105, subpart 2] programs require at least 24 hours of staff training. It is necessary and reasonable to require that the license holder determine whether staff need additional training, based on the criteria listed in item A, because the license holder knows the characteristics of the target population, program services provided and the outcomes expected from the services.

Staff training is intended to help staff develop and demonstrate interpersonal communication skills and an awareness and appreciation of, and sensitivity for the cultural background and needs of the residents. Staff training about the care of residents who have different cultural backgrounds or have a disability is needed and reasonable, because it meets the requirements of Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, paragraph (2), (vii). Staff must also understand basic concepts of adolescent development, and have general knowledge of

chemical use problems, physical and sexual abuse and learn suicide prevention techniques. It is reasonable to require staff to participate in on-going training regularly throughout the year, so that they know how to perform their job in a manner consistent with program policies.

The requirement that the license holder have an annual training plan for staff is necessary and reasonable because it is similar to existing juvenile facility licensing rules. The requirements of subpart 4 are necessary and reasonable because they are similar to parts 2930.1800 and 9545.1105.

## **2960.0160 ADMISSION POLICIES AND PROCESS**

**Subpart 1. Admission criteria.** The requirements of subpart 1 are reasonable and necessary to ensure that the license holder will admit residents for care and treatment that the program is able to care for. This subpart is necessary because the enabling legislation for Chapter 2960, Laws 1995, Chapter 226, Article 3, Section 60, Subdivision 2, clause(2) (i), requires admission criteria.

**Subpart 2. Ability to meet resident needs.** The requirements of subpart 2 are reasonable and necessary to ensure that the resident's stay in the facility is appropriate because the services offered by the facility will meet the resident's identified needs. It is reasonable to require the license holder to review the placing agency's information about the resident's needs because the facility must care for the resident and meet the resident's needs and the facility knows which needs it can meet.

The requirements of item A are reasonable and necessary to ensure that the license holder is aware of the degree of a resident's suicide risk and whether the resident may endanger the resident's others. It is reasonable to require the license holder to take steps to ensure that the resident and others are safe in the facility, because the license holder controls the facility.

The requirements of item B are reasonable and necessary because the license holder should determine which assessments were done for the resident prior to admission. The information gathered through assessments will help the license holder determine what the resident's needs are and whether additional assessments will be needed to develop a treatment plan. It is reasonable to require the license holder to document the assessments, because placing agencies have such information readily available and it is a logical step to take to begin the treatment plan development process.

The requirements of item C are reasonable and necessary to ensure that the programs offered by the facility will meet the resident's needs. It is necessary to require the program to meet the resident's needs, because the resident must rely on the program for care and treatment and it is the responsibility of the program to care for the resident. It is reasonable

to require the license holder to document the program's ability to meet the resident's needs, because the document is a record which can be reviewed by the commissioner to determine compliance with the requirements of Chapter 2960.

The requirements of item D are reasonable and necessary because caring for a resident considered likely to engage in sexually abusive behavior, should merit special precautions by the license holder to ensure the safety of residents and staff. It is reasonable to require that the license holder take special measures to care for a resident who is likely to engage in sexually abusive behavior because the resident may act out sexually with other persons while in the facility. It is important to consider the vulnerability of other residents because a resident with sexually abusive behavior may attempt to be sexual with a vulnerable resident. It is commonly believed that single occupancy sleeping rooms are the best room arrangement for housing sex offenders in a manner which limits their likelihood of having sex with other residents.

The requirements of item E are reasonable and necessary to determine if a resident has a chemical abuse or dependency problem. Chemical abuse and chemical dependency problems are common in children entering of out-of-home care facilities. Information about the resident's chemical use status are useful in the development of an appropriate treatment plan. If the license holder does not offer chemical dependency treatment, it is important to refer the resident to an appropriate program that meets the resident's needs. It is reasonable to require that license holders document a resident's chemical use status, because chemical abuse and dependency screening and assessment tools are readily available.

**Subpart 3. Privacy.** The requirements of subpart 3 are reasonable and necessary to ensure that confidential information about a resident is protected during the admission process. This rule is also necessary because admission procedures in DOC licensed programs often require the removal and search of the resident's clothing and personal items. It also is a very stressful and emotional time for newly admitted residents which might be aggravated by distractions from other program residents or activities. The requirements of subpart 3 are necessary and reasonable because they are similar to parts 2930.6800, subpart 3.

**Subpart 4. Information to residents.** The requirements of subpart 4 are reasonable and necessary to ensure that residents know the facility's rules and disciplinary process and what is expected of them. It is necessary that all residents be told how to obtain hygiene and other personal items, and that residents know the policies and procedures governing visiting, correspondence, bathing, laundry, grievances, clothing, bedding exchange, and other operational procedures, because the facility rules and procedures will govern the residents during their stay in the facility. A resident's failure to follow the rules could result in a penalty for the resident. Requiring the facility rules and program information to be read to those residents incapable of understanding written documents or who are unable to read is

necessary to ensure that residents who can't read the rules will have information they need to act appropriately while residing in the program. The requirements of subpart 4 are necessary and reasonable because they are similar to parts 2930.3100, subpart 2 and 2935.2200.

#### **2960.0170 CLASSIFICATION AND SEPARATION OF RESIDENTS**

**Subpart 1. Classification of residents.** The requirements of subpart 1 are reasonable and necessary to provide for the safety, protection and security of staff, residents, and the community. It is reasonable to require the license holder to develop a classification plan, because it provides staff a means to determine what type of behavior to expect from residents. The requirements of subpart 1 are necessary and reasonable because they are similar to parts 2930.3000, and 2935.2100, Subpart 1. Classification of residents has been a requirement since the first juvenile detention and residential standards were promulgated.

**Subpart 2. Separation of residents by gender.** The requirements of subpart 2 are reasonable and necessary to ensure that each facility licensed under this rule is in compliance with Minnesota Statutes, section 641.14. It is reasonable to expect that residents be housed separately according to their sex to ensure the residents' privacy from intrusion by residents of the opposite sex. The requirements of subpart 2 are necessary and reasonable because they are similar to parts 2930.3000, and 2935.2100, Subpart 1.

#### **2960.0180 FACILITY OPERATIONAL SERVICE POLICIES AND PRACTICES**

**Subpart 1. Policy manuals.** The requirements of subpart 1 are reasonable and necessary in order to ensure a uniform daily operation of the facility's programs. [(Dave the requirements in the next sentence are not in Subpart 1. Are the requirements supposed to be in subpart 1?) "The policy and procedure manual should be of sufficient detail and cover all aspects of a facility's operation and programs".] It is reasonable to require that all staff have access to a copy of the policy manuals to ensure that staff will provide equal treatment to residents and ensure continuity of services. The requirements of subpart 1 are necessary and reasonable because they are similar to parts 2930.2300, and 2935.1300.

**Subpart 2. Facility programs.** The requirements of subpart 2 are reasonable and necessary to ensure that staff use written program policies and procedures to implement facility programs. Staff need written program descriptions and policies and procedures to consistently implement facility programs, because policies and procedures passed on verbally would be likely to be erroneously changed as they were re-told. It is necessary and reasonable to have measurable program outcomes to measure the success of the services and programs, because they are required by Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1) (iii) . The requirements of subpart 2 are necessary and reasonable because they are similar to parts 2930.2300, 2930.8800, 2935.1200 and 2935.2000, subpart 1.

**The requirements of item A are reasonable and necessary to ensure that a resident's educational needs are met, and that all residents receive needed help from appropriate, trained staff to meet the resident's treatment plan goals. The requirements in subpart 2 are reasonable because they are required by Laws 1995, Chapter 226, Article 3, section 60, subdivision 2.**

**The requirements of item B are reasonable and necessary to ensure that residents will receive the services needed to meet the residents' needs. It is necessary to expect license holders to develop individual treatment plans for residents who get mental health services, because it is required by Minnesota Statutes, section 245.4876, subdivision 3. The term "mental health services" has the meaning given in Minnesota Statutes, section 245.4871, subdivision 28. It is reasonable to require the license holder to have a treatment plan for all residents, because a treatment plan provides a written summary of the resident's needs and strategies to meet the resident's need, which staff can use to care for the resident.**

**The requirements of subitem (1) are reasonable because it is reasonable to require the license holder to begin developing an individual treatment plan within ten working days of admitting a resident. It is reasonable to allow some time for the resident to be observed at the program before the resident's treatment plan is written. It is reasonable to allow time for the license holder to develop the plan in cooperation with the resident and the resident's family. Ten working days is the time limit in Minnesota Statutes, section 245.4876, subdivision 3, for residents who get mental health services. The requirements of this subpart are reasonable because the requirements are a part of accepted practice within the care industry and are noted in care industry publications.**

**CASSP recommends, "Treatment plans are individualized and regularly revised . . . it is important that treatment needs be individualized, based on assessments of each child. These plans are shared with the child, all staff involved in any aspect of the child's life, parents and others." (CASSP, 1985, 34)**

**The requirements of subitem (2) are reasonable and necessary because a resident's needs may change over time, which could merit a change in the resident's treatment plan. It is also necessary to establish a minimum standard for the timely review and revision of individual treatment plans to allow staff to note possible treatment plan changes. The monthly review of the plan is frequent enough to ensure that the license holder will note gradual changes in the resident's condition often enough to keep the treatment plan relevant to the resident's needs. It is also reasonable to require changes in the treatment plan more often than monthly if necessary, because the treatment plan guides the resident's treatment and the treatment plan should be appropriate to meet the resident's current needs. The requirements of subpart 1 are necessary and reasonable because they are similar to part 2935.2300, subparts 1 and 2.**

**The requirements of subitem (3) are necessary and reasonable because a plan for transition to the community is required by Minnesota Statutes, Section 245.4882, subdivision 3, and by Laws, 1995, Chapter 226, Article 3, section 60, Subdivision 2.**

**The requirements of subitem (4) are reasonable and necessary to show the license holders efforts to implement the resident's treatment plan, and, if applicable, the resident's case plan. It is reasonable to require documentation of the license holder's efforts to provide services to the resident, because the documentation indicates compliance with the Chapter 2960.**

**The requirements of subitem (5) are reasonable and necessary to ensure that residents receive individual attention on issues related to the resident's treatment plan. The requirements of subitem (1) are necessary and reasonable because they are similar to part 2935.2000, subpart. 2.**

**The requirements of subitem (6) are reasonable and necessary to ensure that resident's parents or legal guardian are properly informed of the resident's progress while in the program . Progress should be explained in terms of the resident's progress toward meeting the goals in the resident's treatment plan, or case plan. It is reasonable to require progress reports from the license holder so that parents or legal guardians can evaluate the facility's effectiveness in working with the resident as required by Laws 1995, Chapter 226, Article 3, Sections 60, Subdivision 2, clauses (1) (iii) and (2) (iii) .**

**The requirements of subitem (7) are reasonable and necessary to ensure that all significant information about the resident's educational status and needs are shared with the school district of residence when a resident returns to their school district of residence from a residential program that had a educational program on site. The requirement of subitem 7 is reasonable because it would enable the school district of residence to continue the resident's educational program that was established by the facility. It is reasonable to require an educational progress report because residents must have a transitional plan that includes an educational component. It is reasonable to expect that resident's school district of residence would need to be contacted because the resident will be enrolled in a school in that district.**

**Subpart 3. Records and reports. The requirements of subpart 6 are reasonable and necessary to ensure that all data required by Minnesota Statutes, section 253C.01 is submitted, because the information is needed to measure the effectiveness of care and treatment. Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1) (iii) requires that rules include a requirement to collect information about residents.**

**It is reasonable to expect all license holders to gather and store data according to the requirements of Minnesota Statutes, section 253C.01, because the statute is currently used to**

successfully gather information on residents in residential treatment programs. The extension of the reporting requirements to other types of residential programs would allow a comparison of other types of programs under similar reporting requirements. The continued use of Minnesota Statutes, section 253.01 will allow longitudinal studies of facility populations regarding the effectiveness of treatment modes over time.

It is also reasonable to expect the license holders to keep records and data on subitems (1) to (11), because the documentation for each subitem is already required in Chapter 2960.

The requirements of item C are reasonable and necessary to ensure that the license holder's records are organized, stored and retrievable, in manner that ensures data privacy and other legal requirements are met regarding both the confidentiality and accessibility of the records.

Subpart 4. Audio or visual recording of resident. The requirements of subpart 7 are reasonable and necessary to protect residents from exploitation by use of the residents' image or voice for publicity and to protect residents from unlawful invasions of privacy. The requirement to consider a photograph or other recording of a resident to be a resident record is reasonable, because the designation of the recording as a resident record affords the resident a reasonable expectation that the recording will not be circulated, published or used for a non-therapeutic purpose. Some program residents receive mental health or chemical dependency treatment and their records must be confidential according to applicable law. It is reasonable to allow residents to refuse to be recorded except when it is required by law or needed to enhance therapy, staff supervision, or security, because the resident should be allowed to refuse non-therapeutic activities and the noted exceptions to the resident's right to refuse to be recorded are needed to allow the program to properly care for the resident.

#### **2960.0190 DISCHARGE AND AFTERCARE**

Subpart 1. Discharge. The requirements of subpart 1 are reasonable and necessary to ensure that the progress made during the resident's stay in the facility will continue to be reinforced in the community by a system that will support the resident when the resident returns to the community. It is reasonable and necessary to specify the contents of the transition plan so that minimum standards of practice are clear to all parties who will implement the transitional plan. Requiring a transitional plan is reasonable and necessary because it is similar to the requirements for transitional planning in Minnesota Statutes, section 245.4882, subdivisions 3 and 4. Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (2) (iv) also require that rules include standards for transitional plans similar to the requirements of subpart 1.

The requirements of item A are reasonable because it is reasonable to require the transition plan to identify the resources which will assist the resident and the resident's family to make the transition from residential treatment to less restrictive community based services, so that

license holder, resident, resident's parent or guardian, and interested persons will know what to expect and what their role will be regarding the support of the resident. It is reasonable to require the license holder to help develop the transition planning component of the individual treatment plan and recommend strategies for getting the needed services for the resident after the resident is released, because it is an industry standard that, "transition should be a part of the ongoing treatment process, not an isolated occurrence." (CWLA, 1991, 46).

It also is necessary to ensure that the education and other service systems are coordinated. It is reasonable to require the resident's individual education plan and the individual treatment plan be coordinated with the transitional plan because the plans for the resident identify related concerns.

For a resident with a disability, it is reasonable to require the transition services plan to address the resident's need for transition from secondary education services to post-secondary education and training, employment, recreation and leisure and the home living situation according to M.S. Section 120.17, subdivision 3a..

The requirements of item B are reasonable and necessary because they ensure that the persons in subitems (1) to (4) will know about the resident's discharge so that they can carry out their responsibilities for the resident's care and education following discharge. It is reasonable to require that a written notice of the resident's discharge be sent, so that compliance is documented. It is reasonable to require the license holder to notify the significant parties who are involved with the resident of the resident's discharge from the facility program because the parties helped to develop the resident's transitional plan and may continue to be involved with the resident.

**Subpart 2. Treatment plan compliance.** The requirements of subpart 2 are reasonable and necessary to ensure that there is a record of the services provided to each resident, and information about who provided the services, and which services were not provided, but were recommended in the resident's treatment plan or case plan. The required documentation allows the license holder to indicate the extent to which goals and objectives of the resident's treatment plan or case plan were met by the program. It is reasonable to require license holders to document the extent to which the resident's goals were met, because Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (2) (ii), requires written measurable goals for each resident. Laws 1995, Chapter 226, Article 3, section 60, subdivision 1, clause (1) (iii), also requires license holders to establish outcome measures relative to the success of services offered in the facility, which would require measurement of the result of the effect of the services provided by the program.

## **2960.0200 PHYSICAL PLANT AND ENVIRONMENT**

The requirements of items A to D are reasonable and necessary because they set standards for the physical plant structure, fixtures, equipment, furnishings which ensures that those things are maintained adequately to protect health and safety of residents and staff.

The requirements of item B are reasonable and necessary to prevent and avoid fires and to deal with a fire in the facility should a fire occur. The requirement to have policies and procedures to prevent and avoid fires or deal effectively with a fire are reasonable and necessary because the most dangerous and deadly incident that could occur in a facility is a fire. It is reasonable to require the facility to be inspected by fire officials because fire officials are experts in recognizing fire hazards and may make useful suggestions to the license holder about reducing fire risks. The requirements of item B are necessary and reasonable because they are similar to parts 2930.4900, 2935.3900 and 2950.0895.

The requirements of item C are reasonable and necessary to ensure that the facility is properly maintained. The requirement that facility policy direct staff to report unsanitary and unsafe conditions is reasonable because it allows the greatest number of staff to report unsanitary and unsafe conditions.

The requirements of item D are reasonable and necessary because requiring the license holder to have written smoking policies that apply to staff and residents ensures that policy will be known to everyone at the facility. It is also reasonable and necessary to require the policy to comply with Minnesota Statutes, Sections 144.411 to 144.417, and Public Law Number 103-227, title X, section 1043, because those laws apply to smoking in facilities governed by Chapter 2960.

## **2960.0210 FACILITY AND EQUIPMENT CODES**

**Subpart 1. Facility codes.** The requirements of subpart 1 are reasonable and necessary to ensure that the facility meets all code requirements, because the code requirements are intended to protect the health and safety of all persons in and around the facility. License holders are required by existing rules to meet code requirements.

**Subpart 2. Equipment codes.** The requirements of subpart 2 are reasonable and necessary to ensure that the facility's fixtures and equipment conform to health, sanitation and safety codes and regulations, because the code requirements are intended to protect the health and safety of all persons in and around the area where the equipment is used. It is reasonable to require the license holder to use and maintain the fixtures and equipment as the manufacturers intended because making the equipment function properly promotes efficiency and protects the health and safety of persons in and around the facility.

**Subpart 3. Safety reports maintained.** The requirements of subpart 3 are reasonable and necessary to document that the facility is properly covered by appropriate insurance and that the facility is operating in a safe, healthy manner. It is reasonable to require this standard of all license holders because facility insurance policies generally require such inspections and safety checks to be completed prior to initiating coverage. Maintaining a permanent file on all inspection reports and other incidents reports is also reasonable because it is required in existing licensing rules.

## **2960.0220 NEW CONSTRUCTION STANDARDS**

**Subpart 1. New construction standards.** The requirements of subpart 1 are reasonable and necessary to ensure consistent construction standards for secure juvenile facilities. It is reasonable to require all license holders who wish to build a secure juvenile facility to meet secure construction standards to , because the standards ensure the safety, security and protection of staff and residents, and because adhering to the construction standards is normal practice in the corrections industry.

**Subpart 2. Nonsecure construction standards.** The requirements of subpart 2 are reasonable and necessary to ensure that nonsecure residential facilities meet at least state and local building codes and the physical plant requirements in part 2960.0120, which are intended to protect the health and safety of persons in the facility. In addition, it is necessary for all license holders who wish to construct a nonsecure correctional group residential facility to have their design plans and schematics reviewed by DOC prior to letting bids for the construction of the facility, because the DOC has experience and expertise regarding the design of correctional program facilities. DOC review and approval of juvenile facility plans is reasonable to ensure that correctional group residential facilities are constructed to meet building and safety codes and the design is consistent with proper practices in design and juvenile facility architecture. It is reasonable to have DOC perform the review, because they already have staff assigned to this responsibility and Minnesota Statutes, section 241.021 requires the review.

## **ADDITIONAL STANDARDS FOR DETENTION SETTINGS**

### **2960.0230 PURPOSE AND APPLICABILITY**

**Subpart 1. Purpose.** This subpart is reasonable and necessary because it tells interested persons which parts of Chapter 2960 an applicant for licensure under parts 2960.0230 to 2960.0290 must meet if they desire to provide juvenile detention services at their facility. This subpart is reasonable and necessary because it tells that entities are required to comply with the requirements of parts 2960.0230 to 2960.0290, as well as 2960.0010 to 2960.0120. It is

reasonable to advise persons who operate or wish to operate a detention program for children awaiting court action that the purpose of parts 2960.0230 to 2960.0290 is to set forth the minimum standards which apply to their program and the services that they wish to provide.

**Subpart 2. Applicability.** It is reasonable and necessary to advise interested providers that compliance with parts 2960.0230 to 2960.0290 fulfills the requirements of Minnesota Statutes, section 241.021, subdivision 1, for programs that provide eight-day and 24-hour temporary holdover facilities and secure or non-secure detention services. It is necessary to tell detention program providers which rule parts are applicable to detention facilities.

## **2960.0240 PERSONNEL POLICIES**

**Subpart 1. Job descriptions and staff qualifications.** The rule part is reasonable and necessary because it requires the license holder to make job information available so that staff who are assigned given tasks know what is expected of them and how their responsibilities relate to the responsibilities and tasks of other employees. This subpart is reasonable and necessary because it is similar to existing rule standards at part 2930.1900.

It is necessary and reasonable to require license holders to identify the minimum qualifications necessary to perform the assigned tasks, because staff and others need to know what qualifications are required to a particular job. It is reasonable to list the tasks and responsibilities in the job description so that the employee doing this job and other interested persons know the specific duties of the job. It is reasonable to list the degree of authority to execute job responsibilities in the job description so that the employee and others know the extent to which the employee can make discretionary decisions. It is reasonable to list the standards of job performance related to specified job responsibilities in the job description so that the employee and other interested persons know what outcome measure will be applied to individual job duties.

It is reasonable that a minimum age of 21 be established because a detention program provides legal custodian services to minors and should not have minor-aged employees supervising minor-aged residents. It is reasonable require that detention program employees have at least a high school diploma or its equivalent, because a high school education is the standard minimum education in Minnesota. A high school diploma requires a person to demonstrate that they know how to read, write and do basic math, which are essential to perform the basic tasks such as reading instructions and information about the care of residents and writing reports or other documents.

**Subpart 2. Professional licensure.** This subpart is reasonable and necessary because it requires that the license holder provide evidence that employees who perform certain professional services that must be performed by licensed professionals be licensed or have

other valid credentials. It is reasonable to require professional licensure or other valid credentials because authorities who license professionals typically provide certificates or other evidence of professional licensure to the qualified persons they regulate.

**Subpart 3. Staffing plan.** It is reasonable and necessary to require the license holder to have a staffing plan so the commissioner can determine that each facility is staffed with enough employees to perform all duties and discharge all responsibilities and meet the physical, emotional and safety needs of staff and residents. Requiring the license holder to address items A to J when developing a staffing plan is reasonable because addressing those items helps to ensure the safety and security of residents detained in the program. The requirement of this subpart are needed and reasonable because they are similar to the requirements of the current rule at part 2930.1700.

**Item A.** This item is needed and reasonable because it is similar to requirements in the current rule at part 2930.1700, subpart 2, item A.

**Item B.** This item is reasonable and necessary because it allows staff on duty to have access to a person at the facility who is in charge and can make necessary decisions. It is reasonable to expect someone to be designated as being in charge at a facility and accessible to staff at all times. The requirements in item D is reasonable because it is similar to the requirements of part 2930.1700, Subpart 2, item A.

**Item C.** Item C is necessary and reasonable to ensure that sufficient appropriate supervision is available in programs with more than 24 residents. The requirements of the this item are reasonable, because they are similar to the requirements of part 2930.1700.

**Item D** is reasonable and necessary to ensure that same sex staff are readily available within the facility at all times to prevent situations from occurring that will invade the privacy of residents or would embarrass or diminish the dignity of residents by opposite sex staff performing certain duties; i.e. strip searches, witnessing or assisting in internal body searches, etc. The requirements in item D are reasonable and necessary because they are similar to the requirements of part 2930.1700, Subpart 2, item C. The requirements in items B and C are reasonable due to the large number of residents entering into detention programs who have been emotionally and sexually abused by adults of the opposite sex. Some of the effects of child abuse are feelings of blame and shame, blurred boundaries, depression, isolation or withdrawal, low self-esteem, negative body image, feelings of inadequacy, fear, to name a few (Sgroi, Suzanne M.D. Handbook of Clinical Intervention in Child Sexual Abuse Edited by Suzanne Sgroi, M.D., Lexington Books 1981)

The requirements of item D are reasonable and necessary to ensure that female residents feel emotionally and physically safe during the nighttime sleeping hours. Most of the

residential facilities in Minnesota are co-educational [co-ed]. Most of these co-ed facilities have a majority population of boys. There are many facilities where very few females are residents at any given time. The majority of girls who end up in residential care have experienced sexual abuse, many of these girls have experienced sexual abuse multiple times, and many at the hands of different perpetrators, the majority of whom have been male (Chesney-Lind, Meda. The Female Offender: Girls, Women, and Crime Sage Publications, 1997). Girls who experienced sexual abuse are often times hypersensitive to the potential for further victimization. This perception can become exacerbated in conditions of confinement for girls where they feel little control over what happens to them. Girls who have been abused, especially those that have been abused during the nighttime sleeping hours, often times have difficulty falling asleep, may experience nightmares, and some of these girls experience flashbacks (Bass, Ellen & Davis, Laura. The Courage to Heal: A Guide for Survivors of Child Sexual Abuse, Harper Collins Publishers, Inc. 1994). When girls experience nightmares, flashbacks and difficulty falling asleep, and assistance is required from a staff person, this would best be done by female staff rather than male staff. In general, most girls, especially those who have experienced sexual abuse by males, will feel more comfortable having female staff supervise them at night.

It is reasonable to require same sex staff supervision during night time hours because of the following precedents:

#### **Various States Policies Regarding Gender Staffing in Juvenile Facilities:**

##### **STATE OF NEW YORK**

The state of New York has had a policy regarding gender staffing in juvenile facilities since 1987.

##### **Summary of state policy on gender staffing:**

**Title: Guidelines for assignment of male & female YDAs (youth division aide) and other staff having supervisory responsibility over DFY (Division For Youth).**

#### **24. INTRODUCTION**

With respect to the assignment of staff, the Division is mindful of its duty to balance its various obligations under the law including:

- 1. the Division's obligation to maintain the security and safety of its facilities and to provide a safe and secure place for its employees, residents and visitors to the Division's facilities;**
- 2. the Division's obligation to ensure its employees equal rights to employment in any position in its facilities regardless of gender consistent with the provisions of this policy;**

3. the Division's obligations to protect the privacy of its residents consistent with safety and security considerations.

4. **SCOPE**

Except as otherwise noted, this policy shall apply only to facilities in level I through IV.

5. **POLICY**

1. It is the policy of the Division that all level I through IV facilities and consistent with authorized staffing patterns, at least one YDA or other direct care title providing coverage in this capacity per shift, per living unit, will be of the same gender as the youth for whom they are responsible. Where a facility has a facility control center (central services unit), at least one facility control center staff per shift must be of the same gender as the youth served.
2. It is the policy of the Division to promote a proper balance of qualified male and female staff at all DFY programs and operations. This includes YDA staff and other staff having supervisory responsibilities over youth at DFY residential facilities. Each facility director and its administration of that facility will be responsible for implementing this policy in the interests of facility needs and within the constraints of laws, regulations and employee contracts related to employee hiring.
3. All youth division aides (II-IV) at all level I through IV facilities will perform the duties that are assigned to them regardless of gender, provided however, that the following assignments will not be made to YDAs who are not of the same gender as the residents:
  - a. frisk searches and strip searches;
  - b. witnessing or assisting at internal body searches
  - c. the supervision of residents during showers, lavatory use and bedtime preparation, night time supervision and wake-up;
  - d. the care and / or treatment of personal hygiene problems which require the assistance of non-medical staff.

The result of the implementation of this gender specific staffing policy is that for certain shifts/assignment when coverage is provided by a single YEA in a living unit, a YDA of the opposite sex as the residents of the living unit is not allowed to bid for that shift/assignment.

**KENTUCKY**

Two cases:

1. Civil action taken in the case of Doe VS. Younger in 1996:

**“Effective August 1, 1996, the Kenton County Detention Center shall have on duty a minimum of two (2) guards – one male and one female (when there are females detainees) – at all times:”**

- 2. T.Y., a minor, et al. VS Board of County Commissioners, et al.  
Settlement Agreement and Consent Decree:  
In part: XIII. ADEQUACY OF STAFF**

**“1. The facility shall provide adequate male and female staff to directly supervise and interact with the juveniles at all times and to provide for their physical, social and emotional well being.”**

**CALIFORNIA**

**1997 Minimum Operational Standards for Juvenile Facilities**

**Section 1321. Staffing (in part)**

**Each juvenile facility shall:**

- (D) at least one male and one female child supervision staff member on duty whenever both male and female minors are housed in the facility.**

**Guideline: Section 1321**

**“Staffing included the concern for cross gender supervision and searches. Pat down searches, strip searches, and privacy of minors are important considerations when designing a staffing plan. There must be at least one male and one female child supervision staff member on duty whenever both male and female minors are housed in the facility.”**

**MICHIGAN**

**The Muskegon County youth home (for boys) was granted a BFOQ for same sex staff in 1979 by the Michigan Department of Civil Rights.**

**EXISTING MINNESOTA STATE RULES PERTAINING TO ISSUES OF GENDER STAFFING IN JUVENILE RESIDENTIAL FACILITIES IS AS FOLLOWS:**

**2935.0600 STAFFING REQUIREMENTS.**

**Subpart 5. Sex of Staff. Staff members shall not be placed in positions of responsibility for the supervision and welfare of residents of the opposite sex in circumstances that can be described as invasion of privacy, degrading, or humiliating to the resident.**

**DOC Policy:**

**3-155.0 INMATE AND JUVENILE CLIENTS’ RIGHTS**

- .1 It is the policy of the department of corrections to ensure offender’s rights. To that end:**

- a. All adult inmates and juvenile clients shall be ensure of:**

- (1) protection against abuse;**
- (2) the provision of a safe and healthful living environment;**
- (3) those services conducive to maintaining physical and mental health;**
- (4) access to courts, legal representatives, information and material adequate to enable them to pursue legal recourse.**

**American Corrections Association: Institutional Operations**

**3-JTS-3A-07 Written policy, procedure, and practice require that when both males and females (Ref. New) are housed in the facility, at least one male and one female staff member is on duty at all times.**

**Item E. Item E is reasonable and necessary to ensure that staff are always present and available and capable of responding to an emergency. The requirements of item E are reasonable to ensure the safety and protection of residents. The requirements in item E are reasonable and necessary because they are similar to the requirements of part 2930.1700, Subpart 2, item B.**

**Item F, subitem (1) is reasonable and necessary to ensure that staff are always present and available and capable of responding to an emergency. The requirements of item E, subitem (1) are reasonable to ensure the safety and protection of residents. The requirements in item E, subitem (1) are reasonable and necessary because they are similar to the requirements of part 2930.1700, Subpart 2, item B.**

**Item F, subitem (2) is reasonable and necessary to protect each resident's right to privacy. This subitem is reasonable because it's consistent with Minnesota Statutes, section 642.08, which prohibits the detention of a person of one sex without the presence of a staff member of the same sex. This item is consistent with Minnesota Rule 2911.0900, Subpart 10.**

**The requirements of item F, subitem (3) are reasonable and necessary to ensure that sufficient staff are available to respond to the needs of residents and respond to emergencies in an efficient and effective manner. This subitem is reasonable to protect the safety of residents in a non-secure detention facility.**

**The requirements in item F, subitem (3) are reasonable and necessary because they are similar to the requirements of part 2950.0300, Subpart 2, item C.**

**The requirements of item F, subitem (4) are reasonable and necessary to ensure that juveniles are not left in a secure 24-hour temporary holdover facility without supervision. It is reasonable to expect staff to document resident's behavior every 30 minutes to prevent and defend litigation against the facility in case of a lawsuit for "failure to protect" a resident. The**

requirements in item F, subitem (4) are reasonable and necessary because they are similar to the requirements of part 2950.0300, Subpart 2, item F.

The requirements of item F, subitem (5) are reasonable and necessary to ensure that residents are continuously supervised while detained in an 8-day temporary holdover facility. The requirements are reasonable because they provide a safe and secure environment for the residents. The requirements of subitem (5) are reasonable because juveniles who are placed in detention are generally in a crisis state and need to be protected from themselves as well as others. The requirements in item E, subitem (5) are reasonable and necessary because they are similar to the requirements of part 2950.1700, Subpart 2, item D.

If a program's target population tends to be comprised of residents with challenging aspects of the characteristics in subitems (1) to (6), the program would need to be staff intensive or that the physical plant features should be designed to allow for appropriate supervision of the resident population. Subitems (7) to (9) would call for staff with specific qualifications to be present or for staff to have special training to supervise and work with the type of population being served.

**Subpart 4. Personnel training.** The requirements of this subpart are reasonable and necessary to ensure that staff are trained in the care and supervision of juveniles, develop interpersonal communication skills, understand basic concepts of adolescent development, have an awareness and appreciation of, and sensitivity to the cultural backgrounds and needs of the residents being served in the facility and have a general knowledge of the effects of chemical use, physical and sexual abuse and know techniques for suicide prevention. The need for trained staff is supported by existing juvenile facility licensing standards, thus, it is reasonable for detention program staff to complete orientation training prior to working alone with residents and to participate in on-going training throughout the year. The requirements of this part are similar to the requirements of the current rule at part 2930.1800.

Current DOC licensing rules at part, 2930.1800, Subpart 2, require at least 40 hours of orientation training and 40 hours of in-service training per year. The reduced number of hours of training and orientation for employees of certain types of detention facilities in this subpart is intended to be a minimum amount needed to ensure that facility staff can do their jobs correctly.

#### **2960.0250 ADMISSION AND RELEASE POLICY AND PROCESS**

**Subpart 1. Personal privacy.** The requirements of subpart 1 are reasonable and necessary because detention admission procedures require the removal and searching of clothing and of personal items. Admission is a very stressful and emotional time for residents and providing personal privacy reduces the resident's stress during admission. Any distractions from other

program residents or activities may result in negative or problematical behavior on the part of the newly admitted resident. The requirements in subpart 1 are reasonable and necessary because they are similar to the requirements of part 2930.6800, subpart 3.

**Subpart 2. Admission criteria.** The requirements of subpart 2 are reasonable and necessary because Minnesota Statutes, sections 260B.175 to 260B.185 requires detention program providers and others to adhere to detention admission statutes.

**Subpart 3. Information to residents.** The requirements of subpart 3 are reasonable and necessary for the safe, orderly and healthy operation of a detention program. Items A and B are reasonable because they are basic services required of all detention and treatment programs. Requiring the licence holder to give the information to the residents in written form and present them to each newly admitted resident, in a language the resident can understand, within 24 hours is reasonable, because the resident needs to know about the facilities rules and what is available at the facility. Providing a copy of the information to a resident admitted into a 24-hour temporary holdover facility at the time of admission is reasonable because there is usually only one child in residence at the facility and staff have enough time to accomplish the task immediately. Items D and E are necessary and reasonable because Minnesota Statutes, section 260B.176, subdivision 3, require both items to be accomplished. The requirements of Item D are similar to the requirements of part, 2930.3100, Subpart 2.

**Subpart 4. Search.** The requirements of subpart 4 are reasonable and necessary because of the need to remove items from the resident that if not taken away, could result in residents hurting themselves or others. Accounting for all items removed is necessary to ensure the protection of the resident's property and to prevent items from being misplaced or stolen. The search of a resident by a person of the same sex is necessary to protect the privacy of the resident. These rule parts are reasonable because the license holder should respect the resident's property and privacy rights. It is reasonable that the resident's legal personal property should be inventoried and returned to the resident when the resident leaves, because the property belongs to the resident and the safety and health of the resident and others at the facility are not endangered after the resident is discharged.

**Subpart 5. Resident clothing.** The requirements of subpart 5 are reasonable and necessary because license holders need authority to deal with "gang" clothing, symbols and colors, which if not dealt with could directly impact the culture of the detention program and have an impact on the health and safety of residents and staff. The requirement to consider the resident's culture is necessary because the cultural customs of the resident is a part of resident's identity. This rule is reasonable because the provider must provide sufficient clothing during a resident's stay regardless of what clothing customs are relevant to the residents, which recognizes the resident's cultural customs through the program's clothing policy.

**Subpart 6. Discharges and releases.** The requirements of items A and B reasonable and necessary to ensure that a resident released from the detention program is not released in a unsafe and unhealthy situation and that appropriate transportation is evident to ensure that the resident will arrive at the approved destination safely. The requirements of items A and B are similar to the requirements of part 2930.6900 subparts 2 and 3.

**Subpart 7. Transitional services plan.** The requirements of subpart 7 are reasonable and necessary because residents who have been in detention for an extended period of time generally require the case manager or referring agency to arrange or coordinate services for the resident once released. Having the license holder facilitate and expedite the development of a plan of action with the entity that will be supporting the resident when they are released is reasonable because such efforts should increase the likelihood that the resident would not need further detention services.

**Subpart 8. Case Plan Compliance.** The requirements of subpart 8 are reasonable and necessary and apply to license holders who care for residents who have case plans. The need to continue addressing the resident's previously identified needs is important because it promotes continuity of care and consistency and a positive outcome for the resident. It is reasonable to require the license holder to direct appropriate staff to respond to the resident's identified needs with the resources available in the facility and document what services could be rendered. It is understood that not all of the resident's identified needs would be addressed by the license holder, but rather that the license holder would address and document those needs that they can meet with the resources available in the detention facility.

## **2960.0260 CLASSIFICATION, SEPARATION, AND SEGREGATION OF RESIDENTS**

**Subpart 1. Classification of residents.** The requirements of subpart 1 are reasonable and necessary because it provides for the safety, protection and security of the staff and residents in the facility and the community. Similar requirements have been in rules since the first detention rules were promulgated. The requirements are reasonable because they provide a system by which staff and the residents can interact with one another with a reasonable idea of what type of behavior to expect from one another. The requirements of subpart 1 are reasonable because they are similar to the requirements of parts 2930.2900, regarding separation of residents, and 2930.3000, regarding classification.

**Subpart 2. Separation of residents by gender.** The requirements of subpart 2 are needed and reasonable to ensure that facilities licensed under this rule are in compliance with Minnesota Statutes, section 641.14. It is reasonable to expect that residents be housed separately according to their sex to ensure privacy from residents of the opposite sex. The requirements of subpart 3 are reasonable because they are similar to the requirements of part 2930.3000.

**Subpart 3. Residents who may have sexually abusive behavior.** The requirements of subpart 3 are reasonable and necessary for the protection of the resident and other residents. It is reasonable to require the license holder to provide a separate living unit for an individual who is known to have sexually abusive behavior or if there is reason to believe that the resident may sexually assault another resident, because the license holder controls the facility and must protect residents from sexual abuse.

## **2960.0270 FACILITY OPERATIONAL POLICIES AND PROCEDURE REQUIREMENTS, SERVICES, AND PROGRAMS.**

**Subpart 1. Administrative structure.** The requirements of subpart 1 are reasonable and necessary to ensure that staff supervision occurs and that the facility is never left unsupervised or in the care of a staff person incapable of making the necessary decisions in an emergency. Requiring the license holder to have continuous supervision of the staff and residents is reasonable because it ensures the safety of residents by requiring that the license holder maintain control of the facility. The requirements of subpart 1 are reasonable because they are similar to the requirements of parts 2930.1700, subpart 2, item A.

It is also necessary for the license holder to provide a list of names and titles of the members of the governing body so that the department will know who is legally responsible for the facility. It is reasonable to require that the list be submitted to the commissioner so that the information will be readily available when the department needs to contact the facility's governing body.

**Subpart 2. Policies and procedures manual.** The requirements of subpart 2 are reasonable and necessary to ensure uniform daily operation of the facility. The policy and procedure manual should be detailed and cover all aspects of a facility's operation so that staff can use the manual as a guide to determine what to do in a given situation. Using a manual is reasonable because it ensures that residents will be treated equally and the quality of services to residents will be consistent. The requirements of subpart 2 are reasonable because they are similar to the requirements in the current rule at part 2930.2300.

**Subpart 3. Posting of medical, dental, and emergency resources.** The requirements of subpart 3 are reasonable and necessary to ensure that staff are informed of medical, dental and emergency resources and can readily identify which resource is available at a given time, and do not have to search a phone book or other source material for the telephone numbers during an emergency. The requirements of subpart 3 are reasonable because they are similar to the requirements in the current rule at parts 2930.7700.

**Subpart 4. Medical services.** The requirements of subpart 4 are reasonable and necessary to ensure that residents receive medical attention by a properly trained person within a

reasonable time. The requirements of subpart 4 are reasonable because they are similar to the requirements of parts 2930.7400 to 2930.8300.

**Subpart 5. Visitation.** The requirements of subpart 5 are reasonable and necessary to ensure that facility visiting policies are equally applied to residents' visitors. It is reasonable to require the license holder to develop a plan so that staff, residents and visitors are aware of the requirements. The requirements of subpart 5 are reasonable because they are similar to the requirements of part 2930.4500.

The requirements of item A are reasonable and necessary to meet the facilities uniform visiting provisions for persons visiting residents. Residents should not be denied access to visitation by persons of their choice, unless the administrator has clear and convincing evidence that such visits jeopardize the security of the facility, or the safety of a resident or visitor, or the referring agency states that the visit would be detrimental to the general welfare of the resident.

Item B is necessary and reasonable to ensure that residents, visitors, and staff know when visiting is permitted. It is also reasonable and necessary to allow visitor to be monitored to enable staff to respond to an undesirable situation that may occur between a resident and a visitor. To protect resident and visitor privacy, it is reasonable to require a notice be posted in the visitation area explaining that the area is being monitored. Posting a notice is a reasonable means to let all concerned parties know that what is being said may be monitored because a written or printed notice will make visitors and resident consistently aware of possible monitoring..

This standard is needed to ensure that parents or significant others in a resident's life can have access to the resident at times that fit to the visitor's work or activity schedules. It is reasonable to have a variety of visitation periods because staff and residents are available at all times.

Item C is needed and reasonable to ensure that the attorney-client privilege is not breached. It is also reasonable to allow the resident to have confidential meetings with a spiritual counselor to discuss the resident's spirituality-related issues which is a part of the resident's right to practice a chosen religion.

Item D is needed and reasonable to keep an accurate list of visitors for each resident, in the event that there is a need to know the identity of a visitor and to determine if the resident has a relationship to persons outside of the facility. It is also necessary and reasonable to require that denial of visiting privileges be document to ensure that visits are not being denied by staff for arbitrary or capricious reasons.

**Subpart 6. Discipline plan. The requirements of subpart 6 are reasonable and necessary to ensure that the license holder and staff treat residents in a fair, equitable and objective manner when residents do not comply with facility rules. The requirements of items A to F are reasonable because they are similar to the requirements of parts 2930.3100 to 2930.3700.**

**The requirements of item B are reasonable and necessary to bring uniformity to the type of consequence or disciplinary action given to a resident for a certain type of behavior. At present, significantly different consequences are allowed to be meted out by different facilities to residents for a given type of behavior or offense. It is reasonable for a resident in one detention facility to be disciplined in a similar manner in another detention facility for a similar violation of a rule or expected behavior. It is also reasonable that the licensing authority is an entity that can achieve such uniformity in disciplinary practices through review and approval of the due process system.**

**The requirements of item C are reasonable and necessary because explaining the rules so that they are understood allows a resident to know and understand what is expected of the resident regarding the rules of conduct of the facility. It is reasonable to require the license holder to explain the rules of conduct to all residents in a way that ensures that the resident will understand the rules of conduct of the facility, because some residents may need translation or other assistance to understand the rules of conduct and the rules must be understood if they are to be followed.**

**The requirements of item D are needed and reasonable because the deprivation of freedom should be applied after due process to ensure that the situation warrants removal of a resident from the general population. It is reasonable to expect a due process system to be applied when disciplinary segregation is used because all parties involved would welcome a vehicle or a process whereby they would present information that would be helpful in resolving the situation that necessitated segregation. It is reasonable to expect that the time a resident spends in disciplinary segregation be as short as possible if the circumstances that precipitated the segregation are no longer evident or that the problem has been resolved. It is necessary that a due process hearing be held as soon as practical after the incident occurred that precipitated the segregation of a resident, so that a resident is not held in segregation for a long time if segregation is not warranted and to ensure that all facts and circumstances surrounding the incident are fresh in the mind and that the issues involved can be readily addressed.**

**The requirements of item E are reasonable because they are similar to the requirements of parts 2930.3500.**

**The requirements of item F are reasonable because they are similar to the requirements of parts 2930.3700 It is necessary and reasonable to require the license holder to retain the records of infractions and punishment administered to substantiate compliance with subpart 6.**

**Subpart 7. Education program.** The requirements of subpart 7 are reasonable and necessary because it requires the license holder to adhere to all education statutes and regulatory requirements governing the educational screening and needs of the residents. It is reasonable to require the license holder to facilitate residents' educational screening and school attendance, because the license holder is responsible for the resident's custody on a 24 hour-a-day basis. If evidence indicates that the resident has a learning disability, it is reasonable to require the license holder to facilitate the educational screening of the resident by a trained person, because there would typically be an inter-agency agreement or understanding with the educational entity to screen residents.

**Subpart 8. Exercise and recreation.** The requirements of subpart 8 are reasonable and necessary to ensure that all residents are given sufficient opportunities to meet their physical exercise needs and enjoy the benefits of sufficient exercise, such as improved mental health. The requirements of subpart 8 are reasonable and necessary, because they are similar to the requirements of part 2930.4300.

**Subpart 9. Correspondence and telephone.** The requirements of subpart 9 are reasonable and necessary to ensure that resident's rights regarding correspondence and the use of a telephone. It is reasonable to require that the license holder have a plan for the handling of resident correspondence and resident telephone use, because a plan allows the staff and resident to know the program's rules regarding written and phone communications. The requirements of subpart 9 are reasonable and necessary, because they are similar to the requirements of part 2930.4600.

**Subpart 10. Juvenile clothing, bedding, and laundry services.** The requirements of subpart 10 are reasonable and necessary to ensure that all residents have appropriate, clean, clothing and bedding that are appropriate for the season. The requirements of this subpart are reasonable because residents often are confined with little clothing in their possession and with limited funds or resources available to provide clothing. The requirements of subpart 10 are reasonable and necessary, because they are similar to the requirements of part 2930.4700, subparts 1 to 3.

The requirements of item B are needed and reasonable because there are occasions when clothing or bedding should be removed from residents for either the safety and welfare of the resident or the security of the facility. The filing of a critical incident report is necessary and reasonable because it allows the review of the removal of clothing and bedding and prevents arbitrary, capricious or unreasonable removal of the resident's clothing or bedding by facility staff.

**Subpart 11. Emergencies.** The requirements of subpart 11 are reasonable and necessary to ensure that staff, particularly supervisors, on all shifts are familiar with steps to be taken in an emergency. The requirements of this subpart are reasonable because emergency plans are required by law in most jurisdictions. The requirements of subpart 11 are reasonable and necessary, because they are similar to the requirements of part 2930.4900, subparts 1 and 3.

**Subpart 12. Reporting critical incidents.** The requirements of subpart 12 are reasonable and necessary to ensure that the commissioner is made aware of critical incidents so that inquiries about the incidents can be effectively handled by the commissioner. It is reasonable and necessary to inform the license authority, so that the license authority may assess such situations and assist where appropriate in the prevention of similar incidents. Practitioners in the field of juvenile detention facilities operations generally recognize critical incidents listed as being of a serious and unusual nature. The requirements of subpart 12 are reasonable and necessary, because they are similar to the requirements of part 2930.5000, subparts 1 and 2.

**Subpart 13. General requirements for food service.** The requirements of subpart 13 are reasonable and necessary to ensure that food service concerns, such as nutrition, quantity and variety, sanitary preparation and serving temperature are addressed by license holders. This subpart is also necessary to ensure that Minnesota Department of Health requirements for food service are met. The requirements of subpart 13 are reasonable and necessary, because they are similar to the requirements of parts 2930.5200 and 2930.5300.

**Item D** is needed to ensure that medically prescribed resident diets are provided to residents as prescribed. This item is reasonable because residents with prescribed diets need to follow those diets to remain healthy.

**Item F** is needed to ensure that food is transported in a sanitary manner and to ensure that food temperatures are maintained at required levels during transport from the preparation area to the serving area.

**Subpart 14. Housekeeping, sanitation, and plant maintenance.** The requirements of subpart 14 are reasonable and necessary to ensure that the facility maintains high standards of cleanliness and sanitation. Keeping the facility in a good state of repair is necessary to prevent unnecessary deterioration of buildings and equipment, safety hazards and breaches of security.

Daily inspections of the facility by staff are needed to ensure that housekeeping, sanitation and plant maintenance needs are promptly met.

Rules which require the development of policies and procedures to detect and correct building and equipment deterioration and unsanitary conditions and require their repair and correction

are needed to ensure that the facility's governing body or similar entity responsible for the facility knows about facility housekeeping, sanitation and maintenance needs as they develop and can make decisions concerning needs.

The requirements of subpart 14 are reasonable and necessary, because they are similar to the requirements of part 2930.8700, subparts 1,2, and 5.

**Subpart 15. Physical plant and environment.** The requirements of subpart 15 are reasonable and necessary to ensure that all physical plant features of a detention facility meet health and fire and safety codes.

The requirements of items A to C are reasonable because they require the license holder to comply with Minnesota Statutes and DOC juvenile detention facility licensing rules, including Chapter 2911.

The requirements of items D to F are reasonable and necessary to ensure that appropriate physical plant features, space and adequate equipment are available in short-term temporary holdover facilities to meet residents' immediate needs and protect the public until the resident is transported to court or to a long-term detention facility. The requirements of subpart 15 are reasonable and necessary, because they are similar to the requirements of part 2950.0200.

**Subpart 16. Information reporting required.** The requirements of this subpart are necessary and reasonable because the commissioner needs to have data to evaluate programs. The requirements of this part are necessary and reasonable because they are consistent with Minnesota Statutes, section 241.021, subdivision 1, (1), which allows the commissioner to require that the license holder, "furnish all information and statistics the commissioner deems necessary...". It is necessary and reasonable to require that license holders meet statutory requirements by providing data about programs licensed or certified by DOC in the manner requested by DOC.

## **2960.0280 NEW CONSTRUCTION STANDARDS**

The requirements of this part are reasonable and necessary to ensure that all new juvenile detention facilities are constructed according to the physical plant construction standards developed by DOC. The construction standards developed by DOC are intended to protect the safety of residents and staff and ensure the security of the persons at the facility and in the community.

This part is necessary and reasonable because Minnesota Statutes, section 241.021, subdivision 1, requires that persons or agencies who wish to operate a juvenile detention facility licensed by DOC must conform to DOC rules.

## **2960.0290 PHYSICAL PLANT AND EQUIPMENT CODES**

**Subpart 1. Equipment codes.** The requirements of subpart 1 are reasonable and necessary to ensure that all equipment used in the detention facility meets existing code requirements and is in safe, operating order. It is reasonable to require license holders to assure that the facility's food service, plumbing, ventilation, heating, cooling, lighting, elevators and other fixtures and equipment are in compliance with all health and safety codes and regulations, because properly operating equipment will protect the health and safety of staff and residents.

**Subpart 2. Safety reports maintained.** The requirements of subpart 2 are reasonable and necessary to document that the license holder has the appropriate insurance coverage and has obtained the necessary inspections of the facility to ensure the health and safety of all staff and residents. It is necessary and reasonable to require documented proof of insurance and inspections so that the commissioner can verify the license holder's compliance.

It is reasonable to require the documentation to be kept on file by the license holder because written reports of insurance policies and facility inspections are regularly given to the license holder. The requirements of subpart 2 are reasonable and necessary, because they are similar to the requirements of part 2930.9900, subparts 1 to 3.

## **PROGRAM CERTIFICATION STANDARDS FOR SECURE PROGRAMS**

### **2960.0300 PURPOSE AND APPLICABILITY**

**Subpart 1. Purpose.** This subpart explains which requirements a license holder must meet to be certified to provide secure program services. It is necessary and reasonable to tell persons who wish to operate a secure program which requirements must the person must meet to be certified to operate a secure program.

**Subpart 2. Applicability.** This subpart indicates which types of programs parts 2960.0300 to 2960.0420 apply to. It is necessary and reasonable to tell persons who wish to operate a secure program which requirements apply to them. It is necessary and reasonable to exempt programs from these rule parts if other comparable rules apply to them. Group residential licensed facilities that are certified under parts 2960.0580 to 2960.0700, to provide treatments to residents with severe emotional disturbance in a locked unit according to part 2960.0700, within the facility, are examples of exempt programs which will continue to be certified separately from parts 2960.0300 to 2960.0420.

**Subpart 3. License requirements.** This subpart explains which license requirements must be met by an applicant who wishes to operate a secure detention or secure group residential program. It is necessary and reasonable to advise an interested person which license requirement rule parts apply to programs certified as secure programs. Detention and correctional programs have been licensed as secure programs under existing DOC rules.

#### **2960.0310 STATEMENT OF PROGRAM OBJECTIVES**

This part requires programs to prepare a written statement of program goals and outcomes. This part is reasonable and necessary because the rule's enabling legislation, Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1) (iii), requires outcome measures relative to the success of services. It is reasonable to require programs to meet the requirements of statutes to be certified under this rule.

#### **2960.0320 PROGRAM SERVICES STANDARDS**

This part requires programs to meet the needs of its residents based upon a resident's individual characteristics. This part is reasonable and necessary because Minnesota Statutes, section 242.32, requires that licensing rules include secure program licensing and certification standards similar to the standards in part 2960.0320. It is reasonable to require programs to comply with the requirements of statutes regarding services offered at licensed and certified program.

#### **2960.0330 ADMISSION AND CONTINUED STAY**

**Subpart 1. Placement authorized by statute or court.** This subpart requires that the placement of a resident in a secure program be authorized by the court. This subpart is reasonable and necessary because Minnesota Statutes, section 260B.198, requires that placement be approved by a juvenile court. It is necessary and reasonable to develop rules about secure treatment facilities, because Laws 1995, Chapter 226, Article 3, section 51, require the commissioners of DHS and DOC to develop rules about secure treatment placement. It is reasonable to require that programs admit residents to a secure placement facility if the court orders it, because a secure placement is the most restrictive placement for residents and the need for this restrictive placement should be determined on a case-by-case basis by court.

**Subpart 2. Admission documentation.** This subpart requires the license holder to require that the referring agency provide appropriate signed credentials to the facility during the admission of a resident. It is reasonable and necessary to require that the license holder get appropriate information at the time of admission so that a determination can be made that admission criteria is being followed. This subpart is reasonable because its requirements are similar to the requirements of part 2930.6800, Subpart 2.

## **2960.0340 SECURITY STANDARDS**

**Subpart 1. Supervision of non-employee service personnel. This subpart requires the license holder to ensure that all persons not employed by the program will be supervised while at the facility. It is reasonable to provide such supervision of outside persons because the equipment and tools that they may bring into the facility could be misplaced or stolen during their stay and could be used to jeopardize the security of the facility. In addition, persons who are not employed by the facility may not have had a background check and may have a background which would preclude them from having contact with residents if they were to attempt to be employed by the program. The requirements of this subpart are necessary and reasonable, because they are similar to the requirements of parts 2930.1400 and 2930.7000, subpart 1.**

**Subpart 2. Extra duty. This subpart does not allow the license holder to schedule staff to work two consecutive shifts or too many hours. This subpart is reasonable and necessary because program staff in a secure program are under stress from dealing with residents who may seriously act-out, and this stress may emotionally wear staff down during a regular shift of eight hours. Requiring staff to work two eight-hour shifts places a staff person in a position where the staff person's decision-making capacity could be impaired from over-work, resulting in security and safety breakdowns in the operation. The requirements of this part are necessary and reasonable, because they are similar to the requirements of part 2930.1600.**

**Subpart 3. Continuing need reviewed. This subpart requires the license holder to establish periodic reviews of residents' need to remain in a secure placement. This subpart is reasonable and necessary because it meets the requirements for the review of the a resident's continued need to stay in a secure treatment facility of Laws 1995, Chapter 226, Article 3, section 51. It is reasonable to require the license holder to review a resident's stay in compliance with law because secure facilities are the most restrictive placements and should be used when needed**

**Subpart 4. Plans for group arrest. This subpart requires the license holder to have a written plan for handling residents and persons to be admitted in the event of a group arrest. This subpart is necessary because there are occasions when local law enforcement makes large group arrests and brings all persons arrested to a secure juvenile detention facility for processing. This subpart is reasonable because a similar rule requirement has been in effect for years without a detention facility finding it unreasonable. The requirements of this part are reasonable and necessary because they are similar to the requirements of part 2930.5000, subpart 3.**

## **2960.0350 DISCHARGE**

**Subpart 1. Discharge criteria.** This subpart requires the license holder to have written discharge criteria. This subpart is reasonable and necessary because Laws, 1995, Chapter 226, Article 3, Section 60, Subdivision 2, clause (2), (1), requires rule standards which include discharge criteria. It is reasonable to have license holders develop discharge criteria so interested persons, will know what the discharge criteria are and what must be done to merit discharge from the facility.

**Subpart 2. Return of property.** This subpart requires the license holder to return the resident's property at discharge and document the property that is returned. This subpart does not require that the resident's property which is needed for an investigation or is the subject of litigation be returned to the resident. This subpart is reasonable and necessary because the license holder must be held accountable for the safe keeping of the residents' property which was entrusted to the care and safekeeping of the license holder. The requirements of this part are reasonable and necessary because they are similar to the requirements of part 2930.6900, Subpart 1.

## **2960.0360 SECURITY POLICIES AND PROCEDURES**

**Subpart 1. Content of policies and procedures.** This subpart requires the license holder to develop security policies and procedures. This subpart is reasonable and necessary to ensure that facility staff perform inspections and searches of the facility and residents to prevent items from coming into the facility that could be used to hurt someone or aid in an escape. It is necessary and reasonable to have the license holder develop security policies and procedures because detention facility administrators are currently required to do so by part. 2930.6700.

**Subpart 2. Inspection of facility and deliveries to facility.** This subpart requires the license holder to inspect the facility and items delivered to or taken from the facility for contraband. This subpart is reasonable and necessary to ensure that the facility is free of contraband or of any item that may be used to breach the safety and security of the facility. It is reasonable and necessary to require the license holder to conduct inspections because juvenile facilities licensed by DOC are currently required to do so by parts, 2930.7000, subpart 2, and 2935.5500, subpart 2.

**Subpart 3. Chemical irritant use.** This subpart requires the license holder to have written approved policies regarding the use of chemical irritants. It is reasonable to require the license holder to have a policy about the use of chemical irritants, because the development of policy will give the license holder an opportunity to consider how the use of a chemical irritant

should be handled at the license holder's facility. It is reasonable to require that the policy be approved by the commissioner, because the commissioner has the expertise to evaluate a policy about the use of chemical irritants.

This subpart also allows only those license holders who are licensed as detention centers or certified as secure programs with correctional program services to use chemical irritants. This subpart is reasonable and necessary to ensure that chemical irritants are only used in facilities where the residents are likely to become violent and uncontrollable, because the use of chemical irritants is a serious matter and should be available only in programs where it is likely to be needed. This rule is reasonable, because license holders who accept juvenile offenders who have exhibited criminal, violent or uncontrollable behavior should have available a variety of methods and restraints to maintain a safe and secure environment for all staff and residents. The requirements are reasonable and necessary to ensure that whenever chemical irritants are used by staff on a resident that the situation will be evaluated to determine whether or not such action was appropriate given the circumstances at the time the chemical irritant was used. It is reasonable to require the license holder to meet the requirements of because chemical irritant are not a method of maintaining control or safety that should be encouraged or used on a regular basis in a secure facility program. It is reasonable however; to allow chemical irritants to be used in the event other alternative methods were considered or used unsuccessfully to gain control of a potentially dangerous situation.

#### **2960.0370 LOCKS AND KEYS**

**Subpart 1. Storage.** This subpart requires the license holder to ensure that keys are handled properly and that the appropriate persons can get keys when they need them. This subpart is reasonable and necessary to ensure the safe keeping and accountability of all keys to the facility. It is also necessary to have an extra set of keys available in a different area of the facility in the event access to the key storage area is not available during an emergency. It is reasonable to expect a license holder to meet this requirement because license holders must currently meet this requirement under part 2930.7100, subpart 1.

**Subpart 2. Inspection.** This subpart requires the license holder to ensure that all doors, gates and locks within the facility are operable and in good repair at all times. The requirements of this subpart ensures that locks and doors will be fixed as needed, which is necessary and reasonable to maintain the safety and security of a secure facility. It is reasonable and necessary to expect a license holder to meet this requirement because license holders must currently meet this requirement under part 2930.7100, subpart 2.

#### **2960.0380 WEAPONS, TOOLS, EQUIPMENT, AND HAZARDOUS SUBSTANCE**

**Subparts 1, 2 and 3 are reasonable and necessary to ensure the safety, health and security of the facility and the staff and residents. It is also necessary to have a system of accountability for tools, dangerous materials and other hazardous substances so that staff knows where those items are located and can find the items when they are needed. It is reasonable and necessary to expect a license holder to meet this requirement because license holders must meet this requirement under the current rule at part 2930.7200.**

#### **2960.0390 COUNT PROCEDURE**

**Subparts 1, 2 and 3 are reasonable and necessary for the safety and protection of all concerned parties, including the community in which the facility is located. Subparts 1, 2 and 3 are also needed to ensure that all residents are accounted for on a shift by shift basis, which tells staff how many residents they are responsible for during their watch or shift and whether there may be a resident who is missing or otherwise not accounted for. It is reasonable and necessary to expect a license holder to meet this requirement because license holders must meet this requirement under the current rule at part 2930.7300, subparts 1, 2 and 4.**

#### **2960.0400 HOSPITALIZATION OF RESIDENTS**

**This subpart requires the license holder to supervise a hospitalized resident unless the resident is incapacitated or does not need supervision. This rule is reasonable and necessary because it ensures that a resident who requires hospitalization outside of the secure program is supervised to protect the community. It is reasonable to require the license holder to ensure that the resident is adequately supervised because residents referred to a secure program are expected to be supervised and securely confined during their stay in the program. When a resident is removed from the secure setting the license holder must take precautions to ensure the safety and protection of all concerned parties. It is reasonable and necessary to expect a license holder to meet this requirement because license holders must currently meet this requirement under part 2930.7800.**

#### **2960.0410 RESTRICTIVE PROCEDURES**

**It is necessary and reasonable to require that secure facilities seek certification to use restrictive procedures according to part 2960.0710, because part 2960.0710 contains standards for the use of restrictive procedures which are intended to ensure that restrictive procedures are used appropriately and that the health and safety of staff and residents are protected when a restrictive procedure is used.**

#### **2960.0420 SECURE PHYSICAL PLANT STANDARDS.**

**Subpart 1. New construction. It is reasonable and necessary to require compliance with DOC's construction standards because it is required by Minnesota Statutes, section 241.021, Subdivision 1. It is reasonable to require that DOC review construction plans for new secure facilities, because DOC has the expertise to review those plans. It is reasonable to require that DOC review new construction plans to ensure that the current best correctional practices be employed.**

## **CHEMICAL DEPENDENCY TREATMENT PROGRAM STANDARDS**

### **2960.0430 PURPOSE**

**subpart1. Purpose. It is necessary to promulgate rules which specifically govern programs serving residents with patterns of chemical abuse or dependency because chemical abuse and dependency are recognized as diagnosable conditions separate from any other problem, illness or complication.**

**An example of this recognition can be found in the rules used to establish an individual's need for treatment at parts 9530.6600 to 9530.6655. The threshold in the rules is whether or not the person is chemically abusive or dependent according to the rule definitions. These rules use the same definitions for chemical abuse and dependency that are found at part 9530.6605. Minnesota Statutes, Chapter 254B also recognizes these as separate conditions by establishing a separate funding mechanism to pay for their treatment and Minnesota Statutes, Chapter 148C recognizes alcohol and drugs counselors as a separate, licensed profession.**

**However, serious effort has been made to streamline these standards and make them compatible with other requirements placed on certificate holders.**

**It is reasonable to set only the minimum standards consistent with resident health, safety, and appropriate care, in order to make the chemical dependency certification attainable to license holders with other certifications.**

**The Minnesota Department of Human Services periodically surveys chemical dependency treatment programs, residential behavioral treatment programs, and juvenile corrections facilities. The most recent reports available are from the 1998 surveys.**

**The survey of clients in chemical dependency treatment programs shows that at intake, 64.9% reported alcohol use in the past 30 days. At admission, 79.4% reported marijuana use in the past 30 days and 55.3% reported polydrug use during the same period. Fifty percent of those surveyed reported daily use of drugs during the month preceding admission to treatment.**

The percentage of adolescents reporting involvement in illegal activities, or being in juvenile detention or corrections in the 30 days preceding treatment admission was 51.9%. Those who reported problems with depression and/or anxiety in the 30 days before admission made up 69.6% of total respondents.

Nearly 57% of adolescents who were admitted to chemical dependency treatment had previously undergone mental health treatment and 61% reported recent anxiety symptoms. Other indicators of emotional or behavioral issues among adolescents in chemical dependency treatment include the following:

History of physical abuse	22.1% (Female)	22.1% (Male)
History of sexual abuse	29.4% (Female)	6.6% (Male)
Depression	70.9% (Female)	48.4% (Male)
Suicide attempts	38.1% (Female)	15.1% (Male)
Under court jurisdiction at admission	32.8% (Female)	49.8% (Male)
Arrested, detained or incarcerated (lifetime)	71.1% (Female)	90.7% (Male)

Clearly many of the clients treated for chemical use or dependency have problems that are also addressed in residential behavioral treatment programs or juvenile corrections facilities.

Conversely, many of the residents of the behavioral treatment facilities engage in high risk alcohol and drug use behaviors in the year preceding the survey: 30% typically drink six or more drinks per episode, 42% use drugs or alcohol before or during school, and 6% have used injection drugs.

The rate of high risk alcohol and drug use in juvenile correctional facilities is even higher: 42% typically drink six or more drinks per episode, 53% use drugs or alcohol before or during school, and 9% have used injection drugs.

Considering the high rate of alcohol and drug risky behaviors in both the behavioral and correctional programs, it is to the benefit of the residents and, ultimately, to the public's benefit, to have resident chemical use problems addressed, regardless of the type of facility serving the resident. It is, then, reasonable for these standards be used in conjunction with the certification standards for other problem areas, such as those for serious emotional disturbance or correctional facilities.

**Subpart 2. Outcome.** This subpart explains the department's expectation for programs certified to provide chemical dependency treatment services under parts 2960.0430 to 2960.0490. This subpart is needed to provide interested persons with information about the department's requirements for outcomes for residential treatment programs. The emphasis on outcomes in this subpart are needed and reasonable because they are consistent with Minnesota Statutes, sections 245A.09, subdivision 2, paragraph (a), and Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1), (iii).

**Subpart 3. License requirements.** This subpart states that programs certified under parts

2960.0430 to 2960.0490, must meet the requirements of parts 2960.0010 to 2960.0220 and be licensed as a group residential setting. It is necessary to clarify that the standards contained in parts 2960.0430 to 2960.0490, only address standards that are related to chemical dependency treatment and are intended to be in addition to more general standards for residential care in parts 2960.0010 to 2960.0220.

#### **2960.0440 APPLICABILITY**

**Subpart1. Applicability.** It is necessary to define which chemical dependency treatment providers must meet the requirements of these rules so that the commissioner and the providers can know who is accountable for meeting the standards.

**Item A.** It is reasonable to require programs serving residents with no lower age limit to meet these rules, because these rules are specifically proposed to address the needs of children who need treatment.

**Item B.** It is reasonable to allow a choice of standards for providers that never admit residents younger than age 16. There are individuals in this age group who are preparing for independent living rather than returning to their families. The service requirements of the adult rule are more appropriate for these individuals. There are successful existing programs which specialize in caring for teenage children sixteen years of age and older which may benefit from the flexibility allowed in this licensing option. The requirements of these rules are appropriate for residents who plan to return home and should have significant family involvement during treatment, . It is reasonable, therefore, to have two types of programs licensed differently for two types of residents.

#### **2960.0450. CHEMICAL DEPENDENCY TREATMENT SERVICES.**

**Subpart1. Description.** It is necessary to describe which services are chemical dependency treatment services in order to differentiate them from other treatment services. Describing chemical dependency services in the rule helps certificate holders determine which services must be performed by a qualified chemical dependency counselor and which services meet the requirements for the minimum required hours of chemical dependency treatment services. The description provided is reasonable because it addresses those services specifically provided to alleviate harmful chemical use.

**Subpart 2. Required services.** It is necessary to establish minimum amounts and types of service to ensure that certificate holders are providing treatment for chemical abuse or dependency. If there were no minimum standards in this area, certificate holders could claim to provide chemical dependency treatment without offering specific services to address chemical use problems.

**It is reasonable to require 15 hours per week of chemical dependency treatment services because this is the amount currently required at part 9530.4100, Subpart 22, item C, and is a mid point between the required hours for each of the three types of licensed programs treating chemical abuse and dependency under existing rules. It is reasonable to exclude self-help groups from the provision of required services because they do not constitute services provided by the certificate holder and because they are excluded in the rules currently governing these programs at parts 9530.4380, 9530.4390, and 9530.4400.**

**While it is necessary to require a certificate holder to make the listed services available, it is reasonable to leave to the judgement of a qualified individual the decision about whether a specific resident receives a specific service. For instance, residents with co-occurring serious emotional disturbance may be afraid to participate in a group, or residents who have had a shameful or embarrassing experience may not be willing to discuss it in a group setting,**

**The reasonableness of the specific services is provided below:**

**A. The comprehensive assessment is the key to all other services. It serves to direct services provided to the resident and focus treatment activities on the resident's problem areas. This description of a comprehensive assessment is reasonable, because it relies on information the certificate holder has already gathered to meet the requirements of other rule parts.**

**B. It is reasonable to require individual and group counseling because these are required in the rules currently governing chemical dependency treatment providers at parts 9530.4380, item A; 9530.4390, item A; and 9530.4400, item A.**

**C. It is reasonable to require resident education because it is required in the rules currently governing chemical dependency treatment providers at parts 9530.4380, item C; 9530.4390, item C; and 9530.4400, item C, and because understanding the nature of chemical dependency is important for recovery. It is necessary and reasonable to require that the license holder provide resident education which includes information about HIV infection under Minnesota Statutes, section 245A.19, because this is a statutory requirement for all chemical dependency treatment programs.**

**Subpart 3. Additional chemical dependency treatment services. It is necessary to list additional services to provide guidance to certificate holders about the types of interventions that might make up the 15 hours of required services.**

**Items A, B, and C are reasonable because they are required according to the rules currently governing the licensure of chemical dependency treatment at parts 9530.4380, Items B, D and E; 9530.4390, Items B, D, and E; and 9530.4400, Items B, D, and E. While the requirements**

have been dropped to allow providers greater flexibility, the services are useful for many residents.

Item D is reasonable because it is required of programs currently offering extended care or halfway house services under current rules at parts 9530.4390, Item F and 9530.4400, Items F and G.

**Subpart 4. Counselors to provide chemical dependency treatment services.** It is necessary to specify the qualifications of staff providing program services to ensure that the services are appropriate to the resident's needs and delivered in a manner consistent with professional standards. It is reasonable to allow exceptions for professionals from other disciplines to practice within their scope of practice, because it allows residents to benefit from the additional expertise of, for instance, a Licensed Marriage and Family Therapist providing family counseling.

**Subpart 5. Volunteers.** It is necessary to govern the use of volunteers and interns in chemical dependency programs because residents are entitled to receive their services from qualified staff. Programs have a direct supervisory relationship with employees that they do not have with unpaid volunteers and student interns. It is reasonable, therefore, to require that volunteers and interns be directly supervised by a qualified staff member to ensure that volunteer activities are appropriate and that program rules and standards are upheld.

It is reasonable to require background checks on volunteers and student interns because they will be working with vulnerable clients and it is required in Minnesota Statutes, section 245A.04, subd. 3.

It is reasonable to require an orientation for volunteers and interns to ensure that their participation in the program and their interaction with residents is consistent with the program's overall goals and purpose.

**Subpart 6. Location of service provision.** It is necessary to require that essential chemical dependency treatment services be provided to residents at the licensed facility's location, because it has been inspected, zoned and approved for this use. It is necessary to ensure that certificate holders are responsible for and provide the services. This prevents certificate holders from simply providing housing and relying on publicly funded services available in the community instead of providing treatment to residents. It is reasonable to allow some services to be provided outside the facility because there are specific community resources the certificate holder is not expected to have expertise in, such as job seeking skills. Other services may require resident participation in community activities, particularly in the areas of recreation and social interaction without the use of mood altering chemicals.

## **2960.0460 STAFF QUALIFICATIONS.**

**Subpart 1. Staff qualifications.** It is necessary that staff in chemical dependency programs meet the basic qualifications for all staff of residential programs to maintain consistent standards and ensure a basic minimum set of qualifications. It is reasonable to cite them rather than repeat them in this part of the rules. It is also necessary to govern the age of staff members to ensure that each can be held accountable for his or her actions. Setting the age at 21 is reasonable because it is the generally accepted standard for adulthood.

**Subpart 2. Qualifications applying to all employees with direct resident contact.** It is necessary to require that staff meet a minimum standard regarding chemical use problems because they are teaching residents to avoid these problems and should have experience in useful techniques and because they serve as role models.

**Item A.** This is a reasonable standard because it is already required in 9530.4270, Subpart 1, Item B and because a person demonstrating two years freedom from chemical use problems generally can be expected to continue to avoid chemical use problems.

**Item B.** Overnight staff who have no other program responsibility have considerably less resident contact and have no responsibility to assist residents in resolving chemical use problems. It is therefore not reasonable to hold them to the same standard as professional staff. Additionally, overnight staff positions are frequently considered entry level positions for individuals seeking to become chemical dependency counselors. It is to the benefit of the chemical dependency treatment field to make positions available to future counselors early in their recovery from chemical use problems.

**Subpart 3. Program director qualifications.** It is necessary to govern the qualifications of program directors because they have unique responsibilities for the entire operation of the program. It is reasonable to require that they know and understand the rules and laws governing the care of residents because they must ensure that the program and each staff member comply. The Department considered additional qualifications for program director, but because there are requirements for counselor supervision and counselor qualifications to ensure the appropriateness of service delivery, these are not necessary requirements of the director, unless he or she is acting as a counselor or counselor supervisor. Beyond assuring compliance with the relevant rules and laws, it is most important that the program director be someone the board of directors trusts to safe guard the residents and budget and to carry out their wishes.

**Subpart 4. Alcohol and drug counselor supervisor qualifications.** It is necessary to govern the qualifications of the counselor supervisor to ensure that counselors are held accountable for complying with rules and laws governing the delivery of chemical dependency services and to

guide the clinical services.

**Item A.** It is reasonable that the counselor supervisor meet the qualifications of a counselor because it is his or her responsibility to guide the counselor in the application of those skills.

**Item B.** It is reasonable that the counselor supervisor have at least three years of experience so that he or she has seen a variety of unusual situations and had opportunities to test their leadership and problem solving skills.

**Item C.** It is reasonable for the counselor supervisor to know and understand the relevant rules and laws because they must provide leadership and assistance in the counselors' implementation of the requirements and, as necessary, enforce them.

**Subpart 5. Alcohol and drug counselor qualifications.** It is necessary to govern the qualifications of chemical dependency counselors because they are the primary providers of services in a chemical dependency treatment program. The effectiveness of the services provided to residents depends on the skills of the chemical dependency counselor.

**Item A.** It is reasonable to expect the counselor to be competent in the core functions because they have been identified by the legislature as essential to practice of chemical dependency counseling in Minnesota Statutes, Chapter 148C.

**Items B and C.** Because adolescents are a special population with different needs than adults and different reactions depending of their stage of development, it is reasonable for counselors serving this population to have specific education and closely supervised practice in this area. Programs providing chemical dependency services to adolescents now meet this requirement. This requirement is similar to part 9530.4450, Subpart.2.

**Subpart 6. Counselor licensing.** This subpart is included to serve notice that, as a part of program licensure, the Department will be enforcing the Counselor Licensing Act, Minnesota Statutes, Chapter 148C. It is both necessary and reasonable that governed counselors comply with the law and obtain the appropriate license.

**Subpart 7. Documentation of alcohol and drug counselor qualifications.** Not all counselors are required to be licensed. Those working for state or county programs or in community hospitals are exempted. The purpose of the exemption, as it is understood by the Department, is to save tax payer dollars, by avoiding the costs of licensure when the program is funded or subsidized with public funds. In the case of hospitals the exemption is in place to avoid adding to the cost of treatment and then compounding it by taxing the additional charge through the provider tax.

Because certain counselors are exempt from licensure, it is necessary for the Department to inform certificate holders of what will be accepted as documentation for demonstrating competency in the core functions required in subpart 5, Item A for exempt counselors. Because residents of the exempted programs require professional care, the standards which follow are patterned after those in the Counselor Licensing Act, Minnesota Statutes, Chapter 148C.

**Item A.** This standard is reasonable because it is substantially the same as the requirement in Minnesota Statutes, section 148C.04, subd. 4, without the requirement of the examination, which adds expense.

**Item B.** This standard is reasonable because it is substantially the same as the requirement in Minnesota Statutes, section 148C.04, subd. 3, without the requirement of the examination, which adds expense.

**Item C.** This standard is reasonable because it is substantially the same as the requirement in Minnesota Statutes, section 148C.06, subdivision 1, paragraph (a).

**Subpart 8. Overnight staff.** Because the overnight staff are likely to be the only staff in the building for several hours at a time, it is necessary to ensure they have specific qualifications to handle emergencies.

**Item A.** It is reasonable to require overnight staff to know and understand residents' rights so that staff are less likely to abridge residents' rights. It is also reasonable to require staff to know their responsibilities so staff can discharge their responsibilities.

**Item B.** It is reasonable to require that overnight staff have basic knowledge of first aid in case a resident or staff person has a medical problem.

**Item C.** It is reasonable to require that overnight staff to have knowledge of crisis intervention techniques and the facility's plan for handling threatening behavior, because resident to resident disagreements may escalate after the professional staff have left for the day.

**Item D.** It is reasonable to require that overnight staff know who to contact when something occurs that is beyond their capacity to handle, because overnight staff often are the staff with the least training or experience and should know how to contact a supervisor who is better able to deal with an unusual occurrence. It is reasonable to require that overnight staff not admit, transfer nor discharge residents, because overnight staff do not have the experience and training to admit, transfer or discharge residents.

## **2960.0470 STAFFING REQUIREMENTS.**

**Subpart1. Program director required.** It is necessary and reasonable to require that there be a program director so that there is one individual accountable for the operation of the program. It is reasonable that this individual be contracted or employed full time by the certificate holder so that their time and loyalties are not divided. This provision reduces opportunities for the program director to have conflicts of interest and ensures that they can reasonably be held accountable for the program.

**Subpart 2. Alcohol and drug counselor supervisor requirements.** It is necessary for each certificate holder to have a counselor supervisor to ensure that there is someone who has the knowledge, expertise and experience to guide counseling staff in situations that are out of the ordinary and to provide leadership and consistency to the program. It is reasonable to allow the alcohol and drug counselor supervisor to also serve as a counselor or the program director, because some chemical dependency programs are small, with few counselors. In a small program it would be unreasonable for the Department to require an additional staff member be hired whose only responsibilities would be to supervise one or two counselors.

**Subpart 3. Staffing requirements.** It is necessary to limit caseload and group size to ensure that resident behavior can be managed, each resident can get the necessary assistance to address his or her chemical use problems, and therapeutic interaction can occur. The eight residents to one counselor ratio is reasonable, because more than eight adolescents in a group impedes the counselor's ability to guide the interaction and maintain order. The ratio in this subpart is reasonable because it is the ratio required in 9530.4450, Subpart.3., for primary residential treatment.

## **2960.0480 ADMISSION AND DISCHARGE POLICIES.**

**Subpart1. Admission policy.** It is necessary to prohibit certificate holders from admitting individuals who do not meet the admission criteria in order to prevent programs from offering to serve residents whose needs cannot be met by the certificate holder. It is unreasonable to allow certificate holders to admit residents to whom they can not provide appropriate services. It is reasonable to require certificate holders to designate which staff members may admit and discharge residents so that those staff members can be held accountable for following applicable laws, rules and program policies regarding admission and discharge.

**Subpart 2. Individuals not served by the program.** It is necessary to govern denials of admission because these are human service agencies with public licenses and as such have some responsibility for the public good. For instance, it is not acceptable to turn away a child who is in need of medical attention, without referring the child to a place where the child's needs can be met, because the certificate holder does not have a doctor on staff.

**Item A.** It is reasonable therefore to require that the certificate holder have protocols for handling such occurrences. It would be unreasonable for the Department to dictate these protocols, because each certificate holder has different staff capabilities, access to community resources and relationships with medical providers and law enforcement.

**Items A and B.** It is necessary that certificate holders comply with the Code of Federal Regulations. Citing the relevant federal regulations is more reasonable than developing state regulations which could be duplicative or contradictory.

**Subpart 3. Discharge policy.** It is necessary to require that the certificate holder use written policies when a resident is discharged to ensure consistency and fairness for each resident and that care is taken for the resident's and the community's safety.

**Item A.** It is reasonable for certificate holders to comply with Minnesota Statutes, Chapter 253B, the Minnesota Commitment and Treatment Act, because it governs residents who admitted themselves or are otherwise voluntarily admitted to a chemical dependency treatment program.

**Item B.** It is reasonable and particularly important to have written policies concerning what might be termed "negative discharges" because these residents are more likely to have continuing problems that need to be addressed and may pose a risk to themselves or the community.

#### **2960.0490 INDIVIDUAL TREATMENT PLANS.**

**Subpart 1. Treatment plan required.** It is necessary to govern individual treatment plans because the treatment plan is central to the services provided to the resident.

Historically, rules governing the licensing of chemical dependency programs have dictated the number of hours and specific types of services to be provided. Treatment in many programs has been a set schedule of activities, regardless of the individual resident's needs. In order to allow Chemical Dependency Certification certificate holders more flexibility to tailor services to the individual, the rigid specificity of the standards has been relaxed in parts 2960.0430 to 2960.0490. However, certificate holders must be held responsible for providing appropriate services to residents. The individual treatment plan is important for holding the certificate holder responsible for providing appropriate services to residents in a timely manner.

It is reasonable to allow certificate holders to use this treatment plan rather than the more general plan in part 2960.0180 or merge this treatment plan with other plans required by these rules to avoid extra work on the part of the staff and to encourage integration of services to

residents.

**Subpart 2. Plan must reflect a resident's current condition.** This Subpart is largely a statement of policy and intent to guide the implementation of Subpart 3. It is necessary that the individual treatment plan begin as soon as possible so that therapeutic activity can begin as soon as possible. It is not reasonable for a resident to be in treatment for a period of time during evaluation, orientation and plan development without significant attention to the problems that lead to the resident's admission. Some chemical dependency programs serving adolescents have had up to two weeks for these activities. The expectation here is that some of the resident's problems were known at the time of admission and these can be addressed while additional assessment data is gathered.

It is necessary that the plan evolve and change. Some treatment strategies will not have the intended effect on the resident and alternative treatments must be substituted. Additionally, first priority-type problems will be resolved and other problems will replace them as the first priority. Residents will disclose information later in the treatment process that will alter the initial treatment plan.

Minnesota Statutes, section 254A.01 requires family involvement in the treatment process, however it is reasonable to modify that requirement in keeping with the residents' treatment plan because some residents come from abusive situations and confrontation with the perpetrator may be detrimental to the residents' recovery unless carefully managed.

It is necessary for the resident to be involved in the treatment planning process, because if the treatment plan does not address problems the resident wants to solve the resident is less likely to comply with or benefit from treatment activities. It is reasonable to document this participation with signatures, because it promotes compliance and provides a record for review to the certifying agency.

It is necessary to keep the treatment plan in the facility because it serves as a guide to all staff working with the resident and because it is the means by which the commissioner will hold the certificate holder accountable for providing appropriate services. Current rules governing these programs require that files be kept in a uniform manner for the convenience of the commissioner. This requirement has been dropped, improving the rule's reasonableness. The primary purpose of the files should be the convenience of the program staff.

It is necessary to share the plan with allied professionals, such as therapists outside the employment of the certificate holder, if appropriate to coordinate services. In such cases it is reasonable to make the plan available in a timely manner so that meaningful coordination can occur.

**Subpart 3. Plan contents.** The concept behind the plan is relatively simple: The resident's needs are assessed and problems identified; services are planned to address the resident's needs; some of the services may be provided outside the facility; goals are set for each service or treatment strategy; progress is reviewed regularly; and, the services and strategies are changed as necessary.

There are two types of goals. There are anticipated outcomes for the completion of treatment, such as, "The resident will have a circle of friends who support his or her recovery." There will also be goals related to specific treatment strategies, such as, "The resident will identify which friends are supportive of recovery," or "The resident will locate an Alateen group in which the resident is comfortable and feels supported."

The reasonableness of each required item is presented below:

**Item A.** It is reasonable to include a listing of outside resources so that it can be shown that each problem area is being addressed and to facilitate coordination of the resident's care.

**Item B.** It is reasonable to set goals in each problem area to ensure that the plan is comprehensive and that progress can be judged as compared to a goal.

**Item C.** It is reasonable to describe the objectives or strategies to be used to reach the goals. Referring to the earlier example of a goal of finding an Alateen group, the objective might be that the resident attend a different Alateen meeting every week and report back how it went until the resident finds a group he or she would like to continue attending. It is reasonable that these objectives be appropriate to the resident's language and reading skills so that the resident can benefit from the activity.

It is also reasonable for the certificate holder to build on opportunities provided by the resident's culture and other strengths and assets, because incorporating these aspects will reduce resident resistance to treatment and shorten the time needed to make changes. For instance, if the resident is of a culture in which extended families are important, involving aunts, uncles and cousins who are supportive of recovery will give the program a head start in assisting the resident. In other cultures the resident's relatives may not be an important resource.

**Item D.** As has been explained, it is reasonable to review the treatment plan at regular intervals to incorporate changes made necessary by resident improvement or lack thereof. It is also reasonable for the people developing the plan to determine those intervals, because they have sufficient knowledge and experience to know what the problems and objectives are and how much time is needed to achieve results.

**Item E.** It is reasonable to document the anticipated outcomes of treatment so that the resident knows what is expected before receiving a staff approved discharge. Discharge cannot be withheld for reasons unrelated to the resident's individual accomplishments in treatment. This provision is in direct response to programs that have refused to discharge residents because they had not stayed in the program a requisite amount of time even though the resident had met all the goals set in the individual treatment plan. There have been programs that set a specific length of stay regardless of resident achievement. Discharge should be dependent on the resident's needs.

**Subpart 4. Progress notes.** It is necessary to govern progress notes to ensure they are available to all the staff of the certificate holder who are involved in the resident's care and to appropriate providers outside the facility so that the resident's care will be consistent and coordinated. The commissioner must be able to see the notes, because the progress notes are used to determine if the certificate holder provided appropriate services to a resident. It is reasonable to include the type and amount of service provided to ensure that the treatment plan is being followed and monitor the provider's rule compliance.

The frequency of recording progress has been a matter of considerable discussion. While some providers feel that daily charting is burdensome, the Department has determined it to be reasonable. Documenting the type and amount of service is not an extensive amount of documentation. The information charted is specific enough so that staff members may not remember the information to be charted clearly if charting was done only once a week. Accurate progress notes are essential because they demonstrate that the treatment plan is being followed. Waiting a week to discover that the resident has not been showing up for group therapy is a possible result of weekly charting and is an unacceptable way to provide treatment. However, the Department did determine that summaries and conclusions could be entered weekly, which should minimize the amount of staff effort required for daily charting.

**Subpart 5. Plan reviews.** As has been discussed, it is necessary for treatment plans to be reviewed regularly to ensure treatment objectives are appropriate to the resident and achieve the anticipated outcomes. It is reasonable that these reviews take place at least every two weeks so that treatment approaches or objectives that are not effective can be changed in a timely manner. It is reasonable to involve residents in plan reviews for the same reasons it was important to include them in the initial planning. The resident's comfort with the planned strategies will improve the effectiveness of the planned strategy. Residents are more willing participants if they understand why they are asked to accomplish certain tasks.

**Subpart 6. Client records.** It is necessary for certificate holders to restrict access to resident specific information, because many residents have done things that were illegal and have been embarrassing or hurtful to other people. Coming to grips with difficult things in their past is

essential to beginning a life without chemical abuse. If residents do not believe that the information about their past action is confidential, then they will not discuss it and are effectively denied an important part of the treatment process.

It is reasonable to cite the relevant federal regulations because they govern all chemical dependency treatment providers that accept public funds or have nonprofit status. To the Department's knowledge there are no chemical dependency programs in Minnesota governed by these rules that are exempt. It would not be reasonable to repeat the federal regulations because they are lengthy and are easily obtained by the certificate holder.

Attempts have been made to summarize the federal regulations in Minnesota rules. These attempts invariably change the meaning of specifics in the regulations or neglect to consider a piece of information that will become important to a certificate holder under specific circumstances. Compliance with law enforcement requests for information and court orders is particularly detailed and does not lend itself to summarization.

#### **2960.0500 TRANSITIONAL SERVICES CERTIFICATION**

**Subpart 1. Purpose.** This subpart explains the purpose of part 2960.0500. It is necessary and reasonable to explain the purpose of part 2960.0500 because license holders who wish to apply to be certified to offer transitional services need to know how this service is distinguished from services offered under a different certification category in Chapter 2960. It is necessary and reasonable to cite the statutory references which underlie this program certification so that interested parties can read and understand the laws which authorize the program and are used as the basis for this rule.

**Subpart 2. Applicability.** This subpart explains that license holders must meet the requirements of part 2960.0500 regarding transitional services certification, if they wish to offer transitional services. It is necessary and reasonable to inform license holders of the need to meet the requirements of part 2960.0500, because license holders must be certified under this part to offer transitional services. Part 2960.0500 contains requirements which are required by laws governing transitional services.

**Subpart 3. License Requirements.** This subpart explains to providers that programs certified to offer transitional services under part 2960.0500 must meet the requirements of parts 2960.0010 to 2960.0120, except as noted in subpart 4. It is necessary and reasonable to advise persons interested in providing transitional services that they must be licensed, so that interested persons will not assume that they need only meet the requirements of part 2960.0500 to be allowed to offer transitional services. It is necessary and reasonable to require that persons who intend to offer transitional services be licensed under parts 2960.0010 to 2960.0120, because meeting the license requirements ensures that the license

holder's program will meet the health, safety, and general care requirements that a program should meet when taking care of residents. Parts 2960.0010 to 2960.0120 were reviewed by the advisory committee for this rule and determined to be minimum requirements that all programs should meet, except where the nature of the program would warrant an exception in rule or granting a variance from a rule standard to a program.

**Subpart 4. Exemptions.** This subpart lists the exemptions of requirements for transitional services as those described in parts 2960.0070, subparts 4 and 5; 2960.0080, subparts 3, 4, items C to E, 5, 6, 8 to 13, and 15; 2960.0090, subpart 3; 2960.0120, subpart 2, items A, C and G; and 2960.0130 to 2960.0220. The exemptions in this subpart were reviewed by the advisory committee for this rule and determined to be reasonable requirements for a transitional services program..

The exemptions from part 2960.0070, are needed and reasonable because transitional services programs do not take custody of the resident's property and do not purport to address all of the needs of a resident. Transitional services programs only address the resident's needs that are identified in the resident's independent living plan which must be completed according to Minnesota Statutes, section 245A.22, subdivision 3, therefore there is no requirement to conduct further assessments beyond the assessment conducted to develop the independent living plan.

The exemptions from part 2960.0080, are needed and reasonable because transitional services programs do not purport to meet all of the resident's unmet needs. In addition, transitional services programs are intended for residents who are preparing to live independently and need to be able to meet their own needs and learn how to meet their own needs from the experience of being responsible for meeting their own needs.

The exemptions from part 2960.0090, are needed and reasonable because the license holder does not take charge of the resident's property when the resident is admitted to the program, so it would not be reasonable to require the license holder to return the resident's property at discharge.

The exemptions from part 2960.0120, are needed and reasonable because the license holder does not use isolation or disciplinary rooms and the license holder does not operate the program for young children who would require outdoor recreation or exercise areas. Transitional services are not intended for persons with a history of problems which would require the program to have a disciplinary room for isolation or other purposes.

The exemptions from parts 2960.0130 to 2960.0220 are needed and reasonable because transitional services programs will not be required to be licensed as group residential facilities. The requirements of group residential programs are more extensive than are

needed for transitional services programs, because residents of transitional services programs do not have the same need for extensive supervision and care, because the residents are preparing to live independently during their stay in a transitional services program.

**Subpart 5. Description.** This subpart describes services offered to residents in a transitional services program and the expected outcome of the services. It is necessary and reasonable to tell license holders and others which services are required and are essential to prepare adolescents for independent living or reintegration into the community. Persons residing in independent housing will be provided with limited supervision and services to prepare them for self-sufficiency. It is necessary and reasonable to require an independent living plan which meets the requirements of Minnesota Statutes, section 245A.22, because it is necessary to meet the requirements of statute and it is important to establish a connection between the resident's activities at the licensed program and independent living after the program. It is necessary and reasonable to describe required program services for residents, staff and referring agencies so that the differences between transitional living program services and 24-hour-care residential programs are clearly understood. Required services for transitional living programs are further described in Minnesota Statutes, sections 245A.22 and 256E.115.

**Subpart 6. Statement of program outcomes.** This subpart states the license holder must have written policies that identify program outcomes and promote the development of the resident's independent living skills. It is necessary and reasonable to require the license holder to have policies which describe program outcomes for the licensed program so that the commissioner can determine whether programs are meeting the intent of underlying statutes which require programs to prepare residents to live independently after the resident completes the transitional services program. Requiring the license holder to offer program services which support the resident's reintegration into the community and are consistent with the resident's plan is needed and reasonable because Minnesota Statutes, section 245A.22, subdivision 3, requires that the program services be related to the resident's objectives stated in the plan which promotes the resident's progress toward independent living.

**Subpart 7. Outcome measures.** This subpart requires the license holder to measure the outcomes of services provided to the resident at least once a year. This subpart is necessary and reasonable because it meets the requirements of Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1), (iii), that the license holder must evaluate program effectiveness. This subpart also requires the documentation of the outcomes noted in items A to D, because these items are intended to be a minimum standard for measuring the program's outcomes. The license holder may use additional standards for measuring the outcomes of the program and to determine if the program is effective in helping a resident prepare for independent living. It is necessary and reasonable to require the license holder to measure specific factors and gather demographic information about residents, because Laws

1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1), (iii), states that licensing rules in Chapter 2960 must include demographic information and measure the success of programs in achieving outcomes as specified in rule.

**Subpart 8. Program effectiveness.** This subpart requires license holders to monitor and annually evaluate the effectiveness of the program's transitional services provided to residents. This subpart is needed and reasonable because Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1), (iii), (iii), require that the programs monitor and evaluate program effectiveness, and use the results of the evaluation and monitoring process to guide the improvement of the program's services. It is also reasonable to use the information gathered according to subpart 8 to guide improvements in a program's services, because the demographic, resident opinion, and program monitoring information will inform the license holder about how the program is perceived by others and how the program is meeting its objectives or outcomes as determined by statistical measures.

**Subpart 9. Community involvement.** This subpart informs the license holder and others that a board of directors or advisory committee is required and that the board or advisory committee must represent the interests, concerns, and needs of the residents and community served by the transitional services program. This subpart is needed and reasonable because Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1), (i), requires that the program have a means of gathering the community's input into the operation of the program, which could be met by meeting the requirements of subparts 5 to 8. The differences between transitional services programs and other types of programs governed by this rule merit using a different methods to represent the needs of clients served and measure program outcomes than the method described in part 2960.0060. The housing afforded residents may be in scattered sites, such as apartments or congregate housing and may have less supervision than the group homes and other facilities that are typically governed by Chapter 2960, so it would be difficult in some cases to define the community geographically. In this case measuring the opinions of clients is an effective way of measuring the community served by the program.

**Subpart 10. Admission** This subpart describes the eligibility criteria for persons seeking admission to transitional services programs. The admission criteria in this subpart are needed and reasonable because they are derived from the admissions requirements in Minnesota Statutes, sections 245A.22 and 256E.115. It is necessary and reasonable to describe admission criteria in the rule because there are special statutory admission criteria for programs licensed by part 2960.0500, that do not apply to other programs licensed by Chapter 2960. In addition, the license holder and others need to know who is eligible for admission to a transitional services program. It is reasonable to require that the license holder determine if a person is eligible to be admitted to the program because the license holder is required to control the program and it is customary to require the license holder to decide whether a person meets the program's admission criteria.

**Subpart 11. Criteria for termination of services.** This subpart states that the license holder together with a county agency must prepare a resident's service termination plan. This subpart is needed and reasonable because it meets the requirement of the enabling statute at Minnesota Statutes, section 245A.22, subdivision 5, regarding the resident's termination plan.

**Subpart 12. Supervision Standards** This subpart outlines the supervision requirements which license holders must meet. The license holder is licensed and certified to provide transitional services at group transitional housing sites as well as to provide program services to persons living in independent housing sites. The requirements of this subpart are necessary and reasonable because it allows county social services to use independent living as a placement option that can be federally reimbursed if the person placed in the program meets federal eligibility requirements. This subpart is reasonable because it responds to the need for a broader range of placement options for older adolescents, which was determined by requests and input from adolescents, service providers and county social workers.

It is necessary to provide nighttime supervision for adolescents in group transitional programs to ensure the safety of residents and to provide time for independent living skills training that takes place outside of the hours of residents' school or employment. Additional hours of supervision are necessary on weekends when residents are not in school or working, because that is the time that residents are most likely to be at the facility. It is also necessary to provide residents with 24-hour phone access to staff to ensure resident's safety and to ensure access to services when needed. It is necessary to require at least three home visits and 24-hour phone access to staff for persons living in independent housing to ensure their safety and to ensure access to services when needed. It is reasonable to require the level of supervision described for the program, because part 2960.0500 was reviewed by the advisory committee for the rule and determined to be generally appropriate for programs certified under this part. It is also necessary to clearly describe the supervision requirements for the residents, staff and referring agencies, so that all parties know what is expected of them and so that the commissioner can determine what the minimum supervision standard should be. It is necessary for license holders to develop a supervision plan and seek approval by the commissioner, so that the commissioner can review the supervision plan and make suggestions to the certificate holder regarding the supervision plan.

**Subpart 13. Services Required** This subpart states that the services or adequate access to services in items A to E must be provided by the license holder to residents in transitional programs. The license holder also needs to know that the services must be consistent with the resident's plan for independent living and must reflect the resident's needs. It is necessary and reasonable to require the license holder to provide the services in items A to D, because they are required by Minnesota Statutes, section 256E.115, subdivision 2. It is necessary and reasonable to require the license holder to provide the services in item E, because they are

required by Minnesota Statutes, section 245A.22, subdivision 1.

**Subpart 14. Custodial minor parent programs.** This subpart requires license holders to provide training in child development and parenting skills and child care services or access to child care services when custodial parents are in school, at work, or otherwise unable to care for their children. It is necessary and reasonable to require the license holder to provide these services because residents who are parents need to be able to care for their children while at the program and while working or at school. Minnesota Statutes, section 245A.22, subdivision 1, requires that services “meet the youth’s needs and improve the ability” to conduct a variety of tasks that are a part of independent living, which would include arranging child care services while the resident is going to school or at work. In addition Minnesota Statutes, section 256E.115, subdivision 2, paragraph (a), clause (2), requires that the program provide child care as a part of providing job services to residents. The requirements of subpart 14 apply only to those license and certificate holders who accept residents who are custodial minor parents.

**Subpart 15. Residence.** This subpart explains that licensure of a place of residence must be according to Minnesota Statutes, section 245A.22, subdivision 6 and that the residence must meet the needs of residents, including residents with disabilities. It is necessary and reasonable to defer to statute regarding the licensure of a place of residence in a transitional services program, because part 2960.0500 derives part of its statutory authority from Minnesota Statutes, section 245A.22. It is necessary and reasonable to require that the place of residence meet the needs of residents with disabilities, because Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, (2) (viii), requires that programs be able to “respond to persons with disabilities”. It is also reasonable to require that the program meet the needs of residents, because the program has traditionally had the responsibility to meet residents needs, including providing a place to live which is suitable and meets the residents needs. It would be unreasonable to license and certify programs which housed residents in places which were unsuitable or did not meet the resident’s needs.

## **CERTIFICATION STANDARDS FOR SHELTER CARE SERVICES**

### **2960.0510 PURPOSE AND APPLICABILITY**

**Subpart 1. Purpose.** Subpart 1 tells interested persons that there are additional standards that a license holder must meet to provide shelter care services to residents. This subpart is necessary and reasonable to provide information about the purpose of the additional standards for shelter care services to interested persons. The standards in parts 2960.0510 to 2960.0530 are similar to and replace the shelter care standards in part 9545.1045. Part 9454.1045 has governed shelter care programs since 1995.

**Subpart 2. Applicability.** This subpart tells interested persons which entities must be certified under parts 2960.0510 to 2960.0530 to provide shelter care services. This subpart is needed and reasonable because it clarifies which entities must be certified and which services are services that can be provided by a program certified under these parts.

It is necessary and reasonable to not require foster family settings to be certified under parts 2960.0510 to 2960.0530, because some foster family settings have been providing these service for several years without being licensed under part 9545.1045, without problems related to licensure. It is a common practice for counties to place infants and young children who need shelter care services in a home which is licensed as a foster home. Foster homes are allowed to only accept a few children who need foster care services, but programs certified under parts 2960.0510 to 2960.0530, may accept several children who need foster care services, subject to the terms of certification.

**Subpart 3. License requirements.** This subpart explains that certified shelter care services programs must be licensed under parts 2960.0010 to 2960.0120. This subpart is needed and reasonable because it explains to interested persons which additional standards must be met to provide shelter care services. Requiring the certificate holder to meet the license standards in parts 2960.0010 to 2960.0120 is necessary and reasonable because those license standards contain requirements which are intended to protect the health and safety of shelter care residents.

-55) The Council on Accreditation of Services for Families and Children, Inc. defines resid

## **2960.0520 SERVICES**

**Subpart 1. General requirements.** This subpart explains that certified shelter care services programs must meet the requirements of parts 2960.0010 to 2960.0120. This subpart is needed and reasonable because it explains to interested persons which requirements must be met to provide shelter care services. Requiring the certificate holder to meet the requirements in parts 2960.0010 to 2960.0120 is necessary and reasonable because those license standards contain requirements which are intended to protect the health and safety of shelter care program residents.

**Subpart 2. Shelter programs.** This subpart establishes the standards for providing shelter services to residents in programs certified by parts 2960.0510 to 2960.0530. It is necessary and reasonable to establish standards for shelter services to protect and promote the health and safety of the residents. Children who need shelter care services often do not have the resources to care for and protect themselves. The state licenses and certifies these programs to provide basic protection and to promote the well-being of residents.

The services required of a certified shelter care program are reasonable because they are similar to the shelter care standards of the Child Welfare League of America [CWLA]. According to the CWLA, “Emergency shelter care is a program of service that gives immediate attention to a child’s crisis situation. The emergency shelter care program should provide: Overnight and short-term shelter; Crisis intervention counseling; Stabilization; Placement, or other post-discharge planning; Protective custody; and Diagnostic assessment....Emergency shelter care is a program of service that should be used as an immediate intervention for a child or family in crisis when the necessary combination of needed services cannot be effectively delivered in a family or family foster home; when the safety of the child can be better protected by removal from the home; and/or when a diagnostic assessment in a residential setting is useful in placement planning.” Standards of Excellence for Residential Group Care Services, CWLA, 1991, pages 98 & 99.

The standards in subpart 2 are needed and reasonable because they are similar to the requirements of part 9545.1045, subparts 3, 4, 5, and 8.

The requirements in item A are needed and reasonable because the characteristics of shelter care services residents are different than the characteristics of long-term care residents. Shelter care residents are often children who were neglected or abused and delivered to a shelter care program as an emergency placement intended to protect and care for the child, while a decision is made about where to place the child long-term or until the emergency situation is resolved. Often the children placed in a shelter have not had a case manager and little is known about the child. Therefore, it is important for the certificate holder to assess the resident’s condition and to meet the residents immediate needs for care and safety. It is reasonable to require that program staff assess the resident’s vulnerability to maltreatment and develop a plan to reduce the resident’s vulnerability to maltreatment, because the purpose of shelter services is to provide a safe and protective environment for the resident. The requirements of item B are needed and reasonable because the purpose of shelter care is to give immediate attention to a child’s needs during a crisis situation. Many shelter residents have immediate medical and dental needs which should be addressed while the resident is receiving shelter care services. Examples of conditions which require attention are ear infections, ringworm, pink eye, asthma, and other chronic conditions, and toothaches. The results of physical abuse such as bruises and other injuries require medical attention and documentation as possible evidence in legal proceedings. To assure that the resident’s health care needs are met and that the spread of communicable and infectious disease is limited, it is necessary to require the certificate holder to use a qualified professional to conduct the physical examination. It is necessary and reasonable to require that the program conduct a basic health screening, because the program must determine whether the resident has a medical condition which must be treated and the program is required to adequately meet the resident’s health needs. It is necessary and reasonable to require the license holder to notify the case manager of the need for a medical examination or other medical care so that the

resident's medical care can be properly authorized by the case manager, because the license holder is responsible for the resident and knows about the resident's medical condition. The requirements of item B are needed and reasonable because they are similar to the requirements of part 9545.1045, subpart 4.

The requirements of item C are needed and reasonable because residents who remain in shelter programs for more than ten days need to have plans for their future placement or return home. The ten day threshold for requiring plans for a resident was concurred with by the advisory committee for the rule because residents who are out-of-home for that period of time are likely to have more serious problems than persons who are-out-of home for less time and are more likely to require plans for their future.

**Subpart 3. Plan for immediate needs.** This subpart requires the license holder to develop a plan for meeting the resident's immediate needs during the resident's stay in the shelter care program. Subpart 3, item A is needed and reasonable because the purpose of a shelter care service program is to meet the resident's immediate needs. This part is needed and reasonable because it is very similar to part 9545.1045, subpart 5. The immediate needs plan can be used by all staff and interested persons who are involved with the resident's care to guide the provision of services to the resident. It is reasonable to require the license holder to develop the resident's immediate needs plan within 24 hours of admission, because that time line assures a timely development of the plan of care while allowing the staff sufficient time to assess and review the resident's needs.

**Subpart 4. Shelter staffing pattern and minimum staff to resident ratio.** This subpart establishes the requirements for staffing patterns and the staff-to-resident ratio for shelter programs. It is necessary and reasonable to establish staff-to-resident ratios, because Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), requires the rule to include basic licensing standards including standards for adequate staff which consider the condition of the residents. Subpart 4 is needed and reasonable because it is similar to part 9545.0945, subpart 6 of the existing rule.

**Subpart 5. Criteria for the emergency use of restrictive procedures.** This subpart requires shelter programs to limit the use of restrictive techniques according to part 2960.0710. This subpart is needed and reasonable to protect the safety of residents, because the existing rule is tied to the requirements of Minnesota Statutes, sections, 144.651 and 253C.01. Part 2960.0710 replaces parts 9545.0900 to 9545.1090, which contain limitations on the use of restrictive techniques.

## **2960.0530 LIMITATIONS ON LENGTH OF STAY**

**Subpart 1. 90-day limit.** This subpart requires programs to limit the resident's stay in a

shelter program to 90 days. The limitation on the length of stay of a resident is necessary and reasonable because programs certified under parts 2960.0510 to 2960.0530 are exempted from most of the requirements of parts 2960.0130 to 2960.0230. Programs certified under parts 2960.0510 to 2960.0530 are exempted because they do not offer long-term care for residents and therefore are exempted from requirements that programs which care for residents for longer periods are required to meet. In addition using shelter care type programs to care for residents for long periods does not meet the national standards for child caring programs. According to CWLA, "The use of the emergency shelter program should be limited to a maximum of 30 days....The emergency shelter care program should not be misused by using it to provide an extended residential stay as a means of responding to a chronic problem." The 90-day limit reflects the current shelter care program practices in Minnesota under part 9545.1045, subpart 10. Requiring the license holder to apply for a variance if a resident is in shelter beyond 90 days is reasonable because the long period of time in shelter may indicate that the resident requires a different or longer term residential setting to meet the resident's needs.

**Subpart 2. 30-day review.** This subpart requires the license holder to determine if residents who are in shelter more than 30 days should be in a different kind of placement. It is necessary and reasonable to require programs to review the placement options for residents who stay beyond 30 days because shelter services are designed to be for short-term stays and address a resident's crisis and provide immediate services such as assessment, evaluation or placement planning. Thirty days is a commonly accepted amount of time for shelter services and is long enough to handle a resident's crisis, stabilize, and refer the resident to other care resources. Subpart 2 is needed and reasonable because it is similar to part 9545.1045, subpart 10.

It is necessary and reasonable to require the treatment team to review the necessity of the resident remaining in the shelter care facility and consider alternative placement plans to assure that the resident's needs are being addressed and that a process is underway to have the resident move out of the shelter and into a more appropriate setting. It is necessary and reasonable to require a written summary of the review of the resident's stay beyond 30 days, because a written summary can be reviewed by the commissioner to determine compliance and a written summary is easier to share with other parties who are interested in the resident's welfare. It is necessary and reasonable to require that the written summary be placed in the resident's file and sent to the placing agency, because the summary is an important document which should be retained and the summary is needed by the placing agency to determine the outcome of the review.

It is necessary and reasonable to require that the license holder conduct the review of a resident's placement to determine the appropriateness of the resident's stay, because Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (2) (i) and (ii) require that

facilities have standards for programming which include criteria for admission and discharge and measurable goals for each resident. The written review of the resident's continued stay should address whether the resident should be discharged and whether the resident has met their treatment goals.

## **CERTIFICATION STANDARDS FOR CORRECTIONAL PROGRAM SERVICES**

### **2960.0540 PURPOSE AND APPLICABILITY**

**Subpart 1. Purpose.** This subpart tells which program requirements must be met before a license holder can be certified to offer correctional program services under parts 2960.0540 to 2960.0570. It is necessary and reasonable to advise all persons who desire to provide correctional program services which requirements that they must meet to be certified to operate a correctional services program.

**Subpart 2. Applicability.** This subpart states which parts of Chapter 2960 apply to a licensed juvenile facility which offers correctional program services. It is necessary and reasonable to identify which parts of a rule apply to license holders who want to be certified so that license holders know which standards they must meet to be certified.

**Subpart 3. License requirements.** This subpart tells an applicant or license holder which parts of Chapter 2960 must be met if the license holder wants to operate a certified correctional program services program. It is necessary and reasonable that the proposed rule would tell prospective license holders which rule parts are required for specific types of facilities and programs.

### **2960.0550 PROGRAM CERTIFICATION APPROVAL**

**Subpart 1. Certification authority.** This subpart indicates that the Minnesota Department of Corrections (DOC) is responsible for reviewing and approving correctional program services certifications under Chapter 2960. It is necessary and reasonable for the DOC to be responsible for certifying correctional program services programs operating in licensed juvenile facilities because they are currently licensing such facilities under Minnesota Statutes, section 241.021.

**Subpart 2. Certification applicability.** This subpart states what types of licensed facilities are eligible to be certified to provide correctional program services. It is necessary and reasonable to require this standard, because facilities should not be permitted to provide correctional program services unless they meet the requirements of parts 2960.0540 to 2960.0570.

**Subpart 3. Program certification approval.** This subpart requires license holders to apply for certification and explains which information the applicant must give to the commissioner. This subpart is reasonable and necessary because the commissioner needs to know whom the program will serve, what types of services will be offered and for how long the program will provide services to residents. This subpart is also necessary to ensure that a child will not be admitted into a facility that does not have the appropriate services to meet the child's needs, because the commissioner will not certify a program that will fail to meet the needs of the population to be served by the program. It is reasonable to expect a license holder or applicant to provide such information because the commissioner needs to know what program standards to apply to a program so that the commissioner can determine whether to certify a program.

**Subpart 4. Minimum criteria for certification.** This subpart sets forth the criteria that a program must meet to be certified to provide correctional program services. This subpart is reasonable and necessary because license holders who wish to be certified to provide correctional program services need to know which criteria they must to meet to obtain a correctional program services certification. Items A to E are reasonable and necessary because Minnesota Laws, Chapter 226, Article 3, section 60, subdivision 2, clause (2), (v), (vi), (viii) and (ix) require programming standards contained in items A to E. In addition, Minnesota Statutes, section 242.32, subdivision 2, clauses (1) to (3) requires similar programming for delinquents in secure correctional facilities which serve juveniles with needs which are similar to the needs of residents in other correctional facility programs. Therefore, it is reasonable to require similar programming requirements for all correctional certification programs because the needs of these residents are similar.

Item B is reasonable and necessary because the license holder is responsible for meeting the resident's needs. This responsibility extends to a situation where the license holder cannot meet the needs of the resident through the programs it is offering, consequently the license holder must notify the placement agency so the placement agency can take appropriate action to seek a different placement that meets the needs of the resident in a more appropriate program.

Under Item C, it is necessary and reasonable to expect a license holder to notify the placement agency if the license holder can't meet the resident's needs because the license holder agreed to provide services that were intended to meet the needs of the resident at the time of the resident's admission. It is also reasonable to expect that the license holder would agree that the resident should be placed in another program if the license holder is not accomplishing what is in the best interest of the resident. It is necessary and reasonable to require the license holder to document notification of the placement agency, because documentation allows the commissioner to check compliance.

Item D, subitems (1) to (4) are reasonable and necessary to ensure that the license holder affords all residents an opportunity to meet the resident's basic physical health needs. In addition to proposed rules for exercise and recreation, proposed rules for leisure services are needed to help residents learn constructive ways to make use of leisure time. Constructive use of leisure time can be a considerable benefit which helps residents make a successful adjustment in the community. These standards are reasonable because they are currently required of all juvenile facilities licensed under parts 2935.3000 and 2935.3100.

## **2960.0560 PERSONNEL STANDARDS**

**Subpart 1. Staffing plan approval.** This subpart requires the certifying authority to use the criteria in this subpart to approve a correctional services program's staffing plan. Item A is reasonable and necessary because it requires the license holder to ensure that the recreational needs of residents of a correctional program receive sufficient and appropriate recreational opportunities that meets their needs during their stay. It is reasonable to expect a license holder to designate one properly trained staff person to develop, implement and coordinate a recreational program if the resident population exceeds 25, because, as the number of residents increase, it is likely that some residents' needs would not be met unless one staff was given the responsibility to ensure that all residents became involved in a recreational program. The higher the number of residents in the program, the more likely it would be that a resident's recreational needs would not be given attention.

Item B is reasonable and necessary because it requires the license holder to protect female residents' right to privacy. It is reasonable to expect correctional services programs to comply with this standard because they are doing it currently as required by part 2935.0600, subpart 5.

**Subpart 2. Staff qualifications.** This subpart establishes the qualifications of the persons designated by the license holder to act as the administrator or the program director of a certified correctional services program. It is necessary to require that the license holder designate an individual as administrator, so that the commissioner, parents, staff and other interested persons know who has the responsibility and authority to administer the program. It is reasonable to have an administrator designated, because it is common practice in the industry to have a person assigned to direct the agency program and be responsible for the ongoing operation of the program. It is reasonable to require that the administrator have at least a bachelor's degree in the behavioral sciences or a related field because the bachelor's degree is the minimum education an administrator would need to carry out their job duties. It is reasonable to expect at least a bachelor's degree because such training is readily available and many persons have bachelor degrees in the behavioral sciences, public administration, or a related field. It is necessary to require that the degree is in the behavioral sciences, public administration, or a related field so that the individual has the training and competencies in

the human service or related fields needed to fulfill their job duties. It is reasonable to expect that the degree be in one of the above noted areas because that degree should show minimum competence to perform the job, and these degree programs are available throughout Minnesota and the United States. It is necessary and reasonable to require the administrator to be responsible for the ongoing operation of the program, and maintenance and upkeep of the facility because it is important that one person be responsible for the facility and program so that the commissioner, parents and other interested persons know who holds this responsibility and authority. It is reasonable to require the administrator be responsible for oversight of the program and facility because these are commonly held responsibilities of a correctional services program administrator.

Items B, subitems (1) and (2) establishes the qualifications for the person designated by the license holder to act as the program director for a certified correctional services program. It is necessary and reasonable to require that the license holder designate an individual as program director so that the staff and other interested persons know who the program director is and that the program director has met the education, training, and experience requirements for this position.

Subpart 3. Supervision of treatment. Item A requires the program director to supervise the assessment and individual treatment plan development for each resident. It is reasonable to require supervision by a program director in the development of important documents such as the individual treatment plan and the assessment which indicate the resident's diagnosis and the treatments the resident will receive because the program director has the qualifications to perform and evaluate the planning and assessment required in this item.

Item B requires the program director to document involvement in the individual treatment planning process by signing the individual treatment plan. The treatment plan is to be developed under the supervision of the program director. The documentation of the program director's involvement in the development of the resident's individual treatment plan is reasonable because the program director is qualified to develop the individual treatment plan and because it verifies the review and approval of the plan by a professional and enables the commissioner to monitor compliance with the requirements of this rule.

Item C requires the program director to supervise staff by making sure that the resident's individual treatment plan is implemented and that there is documentation of the resident's evaluations and treatment. It is reasonable to require a program director to monitor the staff's implementation of the resident's individual treatment plan because the program director has the expertise to determine if the plan is being followed. It is also reasonable for the program director to review the documentation and evaluation of the resident's progress to ensure that the treatment plan is having the desired effect on the resident's overall development and behavior.

**Item D requires the program director to document the weekly reviews of services to the resident. It is necessary and reasonable to require the program director to document the weekly review of services provided to the resident, and verify which program services the resident receives, because the program director is the person who supervises the resident's treatment, and should be aware of the treatments provided to the resident. The requirement for documentation in this item are reasonable because they allow the commissioner to monitor the license holder's compliance with this subpart.**

**Subpart 4. Initial staff orientation training. This subpart describes the orientation training requirements which staff who provide corrections program services must complete within the first 45 calendar days of employment. The items in this subpart are necessary and reasonable because they provide an adequate minimum standard for background information and training, which a staff person should understand in order to provide adequate care to a resident and avoid care practices which would be considered dangerous or abusive to a resident. It is also reasonable to require that staff not use physical holding or isolation procedures with a resident unless staff are trained in the policies and procedures required in item D, because these procedures could result in physical or psychological harm to the resident when used improperly.**

**Subpart 5. Individual staff development and evaluation plan. This subpart requires the license holder to have an annual individual development plan for each staff person who provides correctional program services. It is necessary and reasonable to require certified corrections programs to have an individual development and evaluation plan for each staff person who provides correctional program services to a resident, because each staff person has unique experiences in child care and has specific areas of knowledge and experience which may need to be enhanced to make that person more effective in working with emotionally troubled residents. Staff also need to be trained in the use of new treatment methods.**

## **2960.0570 FACILITY OPERATIONAL POLICIES AND PROCEDURES**

**Subpart 1. Use of restrictive procedures. This subpart requires a facility to meet the requirements of part 2960.0710 if they intend to use restrictive procedures with a resident. This subpart is necessary and reasonable to ensure that staff and residents are not harmed during the use of restrictive procedures.**

**Subpart 2. Critical incidents. This subpart requires the license holder to report in writing to the certifying authority within ten days on forms approved by the certifying authority any serious or critical incident that occurs within the facility program that involves the endangerment of the lives or safety of facility staff or residents. This standard is needed and**

reasonable because existing licensing standards require it of juvenile detention and correctional residential facility programs according to Parts 2930.5000, subparts 1 to 4 and 2935.3900, subparts 4 to 7.

**Subpart 3. Security policies and procedures.** This subpart is needed and necessary to ensure the development of policies and procedures that require reasonable and prudent precautions to be taken to ensure that the primary objectives of the program is to protect the public by safely detaining juveniles who present a danger to the community or to themselves and to meet the individual needs of each resident.

Items A – K are needed and reasonable because they currently are required of all DOC licensed detention and correctional residential facilities according to parts 2930.6700 2930.6800, and 2930.7000 to 2930.7300, and 2935.5200, 2935.5300 and 2935.5500 to 2935.5800.

**Subpart 4. Information reporting required.** The requirements of this subpart are necessary and reasonable because the commissioner needs to have data to evaluate programs. The requirements of this part are necessary and reasonable because they are consistent with Minnesota Statutes, section 241.021, subdivision 1, (1), which allows the commissioner to require that the license holder, “furnish all information and statistics the commissioner deems necessary...”. It is necessary and reasonable to require that license holders meet statutory requirements by providing data about programs licensed or certified by DOC in the manner requested by DOC.

#### **CERTIFICATION STANDARDS FOR PROGRAMS WHICH PROVIDE RESIDENTIAL MENTAL TREATMENT FOR CHILDREN WITH SEVERE EMOTIONAL DISTURBANCE**

**Parts 2960.0580 through 2960.0700 - General Statement of Need and Reasonableness.** Nearly all of the standards contained in Part 2960.0580 to 2960.0700 are contained in Parts 9545.0905 to 9545.1125, which the proposed rule will replace on the effective date of the proposed rule. The current rule standards represent existing practice standards for residential treatment programs for children with severe emotional disturbance. The necessity and reasonableness of parts 9545.0905 to 9545.1125 was established during the 1995 rulemaking process for those rules and through the use of those rules. Because parts 2960.0580 to 2960.0700 of the proposed rules borrow heavily on existing standards, the statement of need and reasonableness for this section of the proposed rule restates some of the arguments for need and reasonableness used at the time those standards were promulgated in 1995.

Parts 9545.0905 to 9545.1125 are informally known as “Rule 5” because that was the rule’s

number in the past under the Minnesota Code of Administrative Rules [MCAR] system of numbering.

#### **2960.0580 PURPOSE**

**Subpart 1. Purpose.** This subpart states the purpose of parts 2960.0580 to 2960.0700. It is necessary to explain the purpose of the rule so that persons who are regulated by the rule and the department employees who implement the rule can more readily comply with the intent of the rule. Persons who operate or wish to open a children's residential mental health treatment program must be advised that the purpose of this rule is to set forth the minimum standards which apply to their program. It is also reasonable to advise interested persons that the rule implements certain sections of Minnesota Statutes, sections 245.487 to 245.4888, the Minnesota Comprehensive Children's Mental Health Act, because it is important to refer to the statutory provisions which act as a basis for certain requirements of the rule.

**Subpart 2. Applicability.** This subpart states the applicability of parts 2960.0580 to 2960.0700. It is necessary to explain the applicability of the rule so that persons who are regulated by the rule and the department employees who implement the rule can more readily comply with the intent of the rule.

**Subpart 3. Outcomes.** This subpart states in items A through F the outcomes which the department expects to be achieved by programs which are operated in accordance with the standards established in parts 2960.0580 to 2960.0700. This subpart is needed to provide interested persons with the department's requirements for residents in residential mental health treatment programs. The requirements in this subpart are based on requirements in Minnesota Statutes section 245.4882, subdivision 1. The emphasis on outcomes in this subpart is consistent with the requirements of Minnesota Statutes, section 245A.09, subdivision 2, paragraph (a).

**Subpart 4. License Requirements.** This subpart states that programs certified within the scope of parts 2960.0580 to 2960.0700 must also meet the requirements of parts 2960.0010 to 2960.0120 and be licensed as group residential facilities according to parts 2960.0130 to 2960.0220. It is necessary to clarify that the standards contained in parts 2960.0580 to 2960.0700 only address standards relevant to mental health treatment within a residential setting and are in addition to the more general standards for residential care contained in parts 2960.0010 to 2960.0220.

#### **2960.0590 PROGRAM AND SERVICE STANDARDS**

This part describes the services which must be offered by a program certified under parts

**2960.0580 to 2960.0700 and the outcomes which must result from the services. It is necessary to describe the program capability of a residential mental health treatment program and prescribe program services so that residential mental health treatment programs, county case managers, parents, residents, the state licensing and governing agencies and other interested parties will know what services are expected for the residents of these programs. It is also necessary to require "therapeutic" services for the residents and their families, that meet the requirements of Minnesota Statutes, section 245.4882, subdivision 1. It is necessary and reasonable to have resident's services scheduled at accessible times so that the residents will be available to receive the services. It is necessary to expect services to be appropriate to the resident's age or level of functioning so that the services rendered have optimum chance of success. It is reasonable to describe program capability in this rule because program certificate holders, program staff, county staff, case managers, and state licensing and governing agencies expect and require such direction from the state. The entities that provide and regulate residential mental health programs for children with severe emotional disturbance are accustomed to meeting requirements regarding program capability under part 9545.0945, subpart 1.**

**Item A. This item is both necessary and reasonable because individual and group psychotherapy services are considered core services for the treatment of residents with serious emotional disturbance. The Child Welfare League of America (CWLA) recommends that residential treatment programs provide specialized individual and group counseling to meet outcomes of a service plan that prepare the child for family reunification and independent community living. (CWLA, 1991, pages 49 ential treatment as providing psychotherapeutic treatment for children with serious emotional disturbance.(Council for Accreditation of Services for Families and Children, 1985)**

**It is necessary to state the minimum qualifications of staff able to perform this service to establish minimum standards of care and to notify certificate holders, staff, counties, parents, residents and other interested persons regarding which persons are eligible to provide individual psychotherapy services. It is reasonable to have a mental health practitioner provide this service because this person, as described by Minnesota Statute, has training or experience in the provision of services to children with emotional disturbance. This is also a reasonable standard because it is current practice in the state's Rule 5 programs. It is necessary to have a mental health professional clinically supervise the mental health practitioner providing this service because Minnesota Statutes, section 245.4882, subdivision 2, specifically requires that a residential mental health treatment program, "must be clinically supervised by a mental health professional." It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections 245A.09, subdivision 2 and 245A.095, subdivision 2. Because individual and group psychotherapy is clinical work, it is necessary and reasonable to have a mental health professional clinically supervise persons providing this service. This**

expectation is also reasonable because it is current practice in mental health service agencies and residential treatment programs to have a mental health professional clinically supervise mental health practitioners. This item is necessary and reasonable, because it is similar to part 9545.0945, subpart 1, item A.

**Item B.** It is necessary to define crisis assistance services as stated in this item, because this service is described in a manner which is similar to the way the term “crisis assistance” is defined in Minnesota Statutes, section 245.4871 subdivision 9a. Crisis assistance services are necessary because children with serious emotional disturbance have psychiatric crises. These residents and their parents need training in order to recognize factors that precipitate a psychiatric crisis, anticipate behaviors and symptoms and know which resources to use when crises occur. It is necessary for residential mental health treatment program staff to provide this service because Minnesota Statutes, section 245.4882 subdivision 1, paragraphs (3) and (5), requires residential treatment services to "help the child gain the necessary skills to return to the community" and "work with families throughout the placement to improve the ability of the families to care for children with severe emotional disturbance in the home." CWLA also recommends that, "The residential treatment program should remedy, arrest, and prevent social, emotional, and behavioral difficulties of the child in conjunction with the family; expand or develop the competencies of the child; promote healthy development; and prepare the child for family reunification or independent community life." (CWLA, 1991, page 107)

It is reasonable to have crisis assistance services provided by the residential treatment program because the staff are trained in the behaviors and symptoms of children with a severe emotional disturbance who are in crisis and are acquainted with the residents. It is reasonable to have a mental health practitioner provide this service because this person has training and experience in the provision of services to children with emotional disturbance. This is also a reasonable standard because it is current practice in residential mental health treatment programs. It is necessary to have a mental health professional clinically supervise the mental health practitioner providing this service because Minnesota Statutes, section 245.4882 subdivision 2, specifically requires that a residential mental health treatment program, "must be clinically supervised by a mental health professional." Because crisis assistance services are clinical in nature, it is necessary and reasonable to have a mental health professional clinically supervise persons providing these services. It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095. This item is similar to part 9545.0945, subpart 1, item B.

**Item C.** Some program residents take psychotropic medication prescribed by a physician for the purpose of controlling or alleviating their severe emotional disturbance. Minnesota Statutes, section 245.4882, subdivision 1., paragraphs (3) and (5), state that residential treatment must "help the child gain the necessary skills to return to the community" and

**"work with families throughout the placement to improve the ability of the families to care for children with serious emotional disturbance in their home." Therefore, it is necessary for residential treatment programs to provide medication education to residents and their families so that the families are able to care for the resident upon the resident's return home. An Ohio Department of Mental Health survey regarding medication administration requirement compliance showed that "aftercare clients who receive medication education were more likely to have attitudes favorable and predictive of adherence." (Ohio Department of Mental Health, 1988-1989) It is necessary to require that the person providing medication education be a registered nurse or licensed physician because the effect the medication may have on the resident's physical and mental health and the physical, emotional, or behavioral changes resulting from the resident's use, misuse or refusal to use prescribed psychotropic medication requires a very specialized body of knowledge that registered nurses and physicians have. It is reasonable to have registered nurses or physicians provide this information because they have this expertise and come into contact with the residents in their role of providing care to residents. It is necessary to develop rules which set standards for adequate staff and staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095. This item is similar to part 9545.0945, subpart 1, item C.**

**Item D. It is necessary to expect residential mental health treatment programs to offer instructions in independent living skills designed to strengthen a resident's ability to function in a less restrictive environment than a residential treatment program because Minnesota Statutes, section 245.4882, subdivision 1, clause (2), requires the program to "help the child improve family living and social interaction skills" and clause (3), requires the program be designed to "help the child gain the necessary skills to return to the community." The statutes, however, do not define the term or specify a standard for providing these skills. This rule part is therefore necessary to clarify what instruction in independent living skills is and set service standards.**

**The CWLA also lists "daily living experience, including life skills and routines" as one of the service elements that should be provided by residential group care agencies. (CWLA, 1991, page 52) This proposed rule part has been reviewed and recommended by the Rule Advisory Committee as setting forth reasonable requirements of the program. It is necessary to specify who can provide this instruction so that certificate holders, residential mental health treatment staff, residents, family, and other interested persons will know who is qualified to perform this duty. It is reasonable to specify that mental health practitioners or child care workers supervised by mental health practitioners may perform this instruction because mental health practitioners are qualified to adequately instruct residents in independent living skills and child care workers are qualified, if clinically supervised by a mental health practitioner. It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095. This item is similar to part 9545.0945, subpart 1, item D.**

**Item E. It is necessary to require recreation, leisure, and play activities because Minnesota Statutes, section 245.4882 subdivision 1, clause (2), states that residential treatment must be designed to "help the child improve family living and social interaction skills". It is also necessary to require that recreation services be a part of a residential mental health treatment program because play and recreation are critically important in the development of a resident. "However, in the case of an emotionally disturbed child, isolation from peers is the norm. Whether because of their own behavior or because of the attitudes of their peers, severely emotionally disturbed children are often not included in the play associated with healthy normal development. Consequently, these children often miss important opportunities for growth and their handicap may be compounded. Play and recreation activities can serve several functions for the severely emotionally disturbed child. The child can learn new skills that build self-confidence and enhance self-image. The opportunity is provided for the development of important social skills such as cooperation and good sportsmanship. Appropriate recreational activities can allow a child to form a positive relationship with a significant other outside the family such as a coach. Finally, recreational activities can serve as a form of respite for the family."(Stroul and Friedman, 1986, page 89)**

**CWLA states that; "The residential group care agency should provide recreational experiences for all children in its care, as age-appropriate, and develop objectives pertaining to recreation within their service plans. Recreational and leisure-time activities provide opportunities for the physical, social, and emotional development of children and, as such, should be incorporated into the daily life of the children in group care. Recreation cannot be separated from the total living experience of children. Play is a learning experience as important as formal education. The agency's recreational activities should further the physical, social and emotional development of each child"... "The recreational needs of children should be planned within the daily routine of the group care agency. Recreational and leisure-time activities should serve as a channel for energy and stimulation of relationships with others. Recreational activities can help children make choices, solve problems, and develop physically. As therapeutic endeavors, they add a richness to the group care agency's therapeutic milieu. Relationships between children and their parents can build as a result of recreational and leisure-time activities, which should be a planned part of family interventions." (CWLA, 1991, page 65)**

**It is reasonable to state the outcomes expected to be achieved by recreation, leisure and play activities to the certificate holder, staff, resident, parents, and interested persons, because all those persons should know and participate in achieving the goals of the service. It is necessary to state who can perform this task so that interested persons will know who is qualified to perform this task. It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota**

Statutes, sections 245A.09 and 245A.095. It is reasonable to specify that child care workers under the supervision of a mental health practitioner or a recreational therapist can perform this duty because these workers are qualified to provide this service. This item is similar to part 9545.0945, subpart 1, item E.

**Item F.** It is necessary to require residential mental health treatment programs to provide social and interpersonal skills development because Minnesota Statutes, section 245.4882, subdivision 1, requires that, "Residential treatment must be designed to :...(2) help the child improve family living and social interaction skills." and "(3) help the child gain the necessary skills to return to the community." Additionally, the CWLA states that the residential group care agency should have a service "forming positive and growth-producing adult relationships with families, peers and others. The residential group care agency should provide counseling and support to the children in its care, as age-appropriate, in the development of long-term relationships with family members, adults, and peers. The child's current relationships with family, peers, and significant others should be in the service plan. The child, as age appropriate, should receive regular, supportive feedback from the worker's observations of these relationships. Experiential learning in communication skills and conflict management can be very helpful. Socially isolated children should be helped to connect with any group or person that can contribute to their social skills through recreational activities, leisure-time groups, volunteers, and so on." (CWLA, 1991, pages 56 - 57)

It is reasonable to list outcomes expected by the provision of social and interpersonal skills development services because that is the goal of the service. Stating the goal makes the purpose of the service clear and understandable to the license holder, resident, staff, parents and interested others.

It is necessary to state who is to perform this duty so that persons reading this rule will know who the state has determined is qualified to perform it. It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095. It is reasonable to specify that child care workers under the supervision of a mental health practitioner can perform this duty because these workers have adequate skills and credentials to provide this service. This item is similar to part 9545.0945, subpart 1, item F.

**Item G.** It is necessary to require that vocational skills development services be provided by residential mental health treatment programs because, "One of the most neglected dimensions within the overall system of care for emotionally disturbed children is vocational." (Stroul & Friedman, 1986, page 83) The authors go on to say, "While employment is an essential key to successful integration into community life, only one-third of all youth with disabilities graduates to a job or some form of advanced education (National Council on the Handicapped, 1986). According to the National Council on the Handicapped, most school

systems in this country do not guide disabled youth into employment opportunities. The lack of systematic vocational services is blamed, in part, for the continued high unemployment rate among persons with disabilities. Without a strong vocational dimension, the system of care will fail to prepare emotionally disturbed youngsters for the transition to employment." (Stroul & Friedman, 1986, page 85) CWLA also recommends vocational services and vocational education as necessary components of a residential group care agency: "The residential group care agency should provide a vocational counseling service that assists children, as age-appropriate, to look realistically at their pre-vocational and vocational needs. Although vocational education can teach actual job skills, vocational counseling can help children examine their own interests, abilities, and aptitudes, and establish appropriate work behaviors and future goals for a realistic adult working life. Even with very young children, it is important to examine attitudes about work and the skills necessary to acquire and retain a job." (CWLA, 1991, page 58) Additionally, CWLA states, "The residential group care agency should ensure that all children in its care, as age-appropriate, receive appropriate pre-vocational and/or vocational education to help them prepare for economic independence. The pre-vocational educational services of the residential group care agency should include: Assistance in obtaining job preparation experiences such as supervised chores, work incentive programs, mock job interviews, and practice applications; provision of work-study programs; discussion of suitable occupations; assistance in setting realistic vocational goals and planning the steps for achieving them; assistance in conducting assessments of vocational skills; assistance in accessing vocational programs in the community, school system, or the private sector; assistance in locating role models in the community for specific career interests; assistance in conducting a self-evaluation of job performance skills; and teaching of appropriate work behaviors." (CWLA, 1991, pages 64 - 65)

It is reasonable to require that vocational skills development services be designed in the way recommended by CWLA because it is consistent with CASSP standards as well as standards contained in part 9549.0945, subpart 1, item G.

It is necessary to state who can perform this duty so that persons reading this rule will know who the state has determined is qualified to perform it. It is reasonable to specify that persons providing these services be at least mental health practitioners or must be child care workers supervised by a mental health practitioner because these workers have adequate credentials to perform this service. It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095.

It is necessary and reasonable to allow the certificate holder to make vocational skills development services available to the resident through the school district because school districts are required to provide this service, if the resident has an individual education plan, and it could be more costly for the certificate holder to solely provide this service. In addition,

**Minnesota Department of Education rules at part 3525.2900, subpart 4, require the school district to provide coordinated secondary transition planning for each resident with an IEP. It is necessary to have the certificate holder coordinate vocational skill development services with the child's secondary transition plan developed by the school because it is important to have these two service providers work together in the provision of this service. It is reasonable to expect this coordination because both parties have legal responsibilities for vocational services to the resident.**

**Item H. Minnesota Statutes, section 245.4882, subdivision 1, clause (5), specifies that residential treatment must be designed to "work with families throughout the placement to improve the ability of the families to care for the children with severe emotional disturbance in the home." The Council on Accreditation of Services for Families and Children recommends the residential treatment center provide "services to help the child and family" throughout placement (Council on Accreditation of Services for Families and Children, 1985, page 104). It goes on to state that these services shall be designed to "resolve conflicts in the child/family relationships and achieve understanding of separation from the family and preparation for return home or to another environment." (Council on Accreditation of Services for Families and Children, 1985, page 104) The CWLA states, "The residential group care agency should actively engage the family, wherever in the best interests of the child, in counseling services to improve family functioning; to examine the special needs and stresses of the family, as well as the child in placement; to change attitudes and behaviors to increase the child's opportunity for success after reunification; to examine their appropriate roles as parents; and to develop improved parenting skills. Individual change for the child is only one of the major goals of the group care counseling service. Research and experience have consistently shown that individual change must be accompanied and supported by change in the family and other support systems if the group care service is to have a lasting benefit...Parents have a rightful and important role in the lives of their children and can be powerful allies in their treatment."(CWLA, 1991, page 60)**

**N.E. Finkelstein presents methods of interventions for integrating families into the therapeutic process of residential treatment for children with emotional disturbances. (N.E. Finkelstein, 1974) Residents often come from homes with multiple problems and mental health workers have the complex task of defining the target area for change. At times the focus of treatment may be the child alone, the family, or the extended family system. Parental involvement and support of agency care is very important for a child's acceptance of self and the child's ability to benefit from treatment. It is recommended that the parents become involved with the treatment milieu and become familiar with parenting methods used in the residential treatment program. (N.E. Finkelstein, 1974) B.J. Friesen notes "Honesty: a respectful, non-blaming attitude; being supportive to the child and the parents and efforts to include the parents in decision-making were all rated as 'very important' professional behaviors by a great majority of parents...Information needs identified by parents included;**

assessment, available treatment, causes of the disorder, how to cope with raising a child with an emotional disorder, and long-range (transitional) planning."(Friesen, B.J., 1989)

This part is necessary to clarify the meaning of instruction in parenting skills and set service standards. This part prescribes the outcome that the service is designed to achieve but does not specify the particular service or procedures. Parents of residents may have to cope with situations that require knowledge and training about how to address the behaviors of a child with severe emotional disturbance. This training may include information about child development, health, safety and other child-rearing issues specific to the child with severe emotional disturbance. It is reasonable to have residential treatment programs provide instruction in parenting skills because they have expertise on working and living with children who have severe emotional disturbances.

It is necessary to state who is to perform this duty so that persons reading this rule will know who the state has determined is qualified to perform it. It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095. It is reasonable to specify that persons providing parenting skills services must be supervised by a mental health practitioner because these workers would meet the minimum requirements supported by the advisory committee to provide this service. This item is similar to part 9545.0945, subpart 1, item H.

Item I. In order to have an impact on the resident and support change for the resident and the resident's family, it is necessary to provide family support services. The CWLA states that residential group care services should be child-centered and family-focused. They also state, "The group care agency should provide its services from an orientation that recognizes that a problem affecting one family member affects the whole family. A child should be seen in the context of its larger economic, social, cultural, religious, and political environment."(CWLA, 1991, page 50) Additional support for this approach can also be found in B.J. Friesen's parent survey (Friesen, 1989). In this survey parents reported that support groups for siblings and parents were difficult to find. Informal support was received from a variety of sources, with emotional support being the most helpful. Parents identified the importance of association with other parents in similar circumstances.

In the report of the Education and Partnership Project of the Children's Mental Health Initiative, parents were identified as resources in need of support: "Like parents of children with other disabilities, parents of children with emotional disturbance will also benefit from support, information, and advocacy. Formation of parent support groups and advocacy organizations provides an opportunity for parents to navigate more easily the frequently confusing array of diagnoses, services, and systems."(Education and Partnership Project of the Children's Mental Health Initiative, 1989, page 18) It is reasonable to have the residential treatment program provide this service because they have the special skills and

expertise in dealing with children with severe emotional disturbance and are important players in teaching and empowering the families to gain insight into family dynamics and conflict resolution as well as improved coping skills and support for the reintegration of the resident into the family and community. It is necessary and reasonable to state in this rule that these services be provided at times, including evenings and weekends, that are mutually agreed upon by family and program staff because this service can only be effective if it is provided when families can participate. It is necessary to state who is to perform this duty so that persons reading this rule will know who the state has determined is qualified to perform it. It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095. It is reasonable to specify that the person providing this service must be at least a mental health practitioner because a mental health practitioner is commonly accepted as having the minimum training and skills needed to effectively deal with family dynamics and systems involving children with emotional disturbance. This item is similar to part 9545.0945, subpart 1, item I.

#### **2960.0600 DEVELOPING AND REVIEWING INDIVIDUAL TREATMENT PLAN**

This part requires the certificate holder to develop an individual treatment plan that meets the requirements of Items A to C. It is necessary to state in rule how the individual treatment plan should be developed and reviewed because the state statutes contain specific requirements regarding individual treatment plans which the certificate holder must meet. It is necessary and reasonable that the certificate holder know and comply with the standards regarding treatment planning as they are important to ensuring the quality of care provided under those plans. Minnesota Statutes, section 245.4876, subdivision 3, requires that providers of residential treatment develop an individual treatment plan for each resident. It is reasonable to require the certificate holder to develop an individual treatment plan within ten working days of admitting a resident, because it allows some time for the resident to acclimate to the program before the plan is written and allows time for the plan development process to take place with the resident and family. This time is also required in Minnesota Statutes, section 245.4876, subdivision 3. This same statute also requires the resident's individual treatment plan to be based on a diagnostic assessment as outlined in Minnesota Statutes 245.4876, subdivision 2., and that to the extent possible the resident and the resident's family should be involved in all phases of developing and implementing the individual treatment plan. Certain requirements of part 2960.0600 are similar to the requirements of part 9545.0975, subpart 1.

#### **2960.0610 CRITERIA FOR CONTINUED STAY, DISCHARGE, AND DISCHARGE PLANNING**

This subpart requires the treatment team to develop a discharge plan which is coordinated

with the residents's other plans, including the individual education plan, family reunification plan, and family community support plan. It is necessary to state a time frame for discharge and notification of planning prior to discharge to assure that proper coordination takes place with family, case managers, schools, and other providers. Ten days is a reasonable amount of time to require for discharge planning because it allows enough time to coordinate and notify parties who are involved with the resident, or who will be involved with the resident after discharge, or work on any remaining treatment or administrative issues. This time frame is also short enough to allow a person ready for, or in need of discharge, to leave the program in a reasonable time frame. Certain requirements of part 2960.0610 are similar to the requirements of part 9545.0985, subpart 3.

Requiring a discharge plan is a reasonable way to be in compliance with Minnesota Statutes, section 245.4882, subdivisions 3 and 4, which requires residential treatment programs to plan for the resident's care after leaving the program including transition to the community and to utilize discharge criteria requirements. This part is necessary and reasonable because it is consistent with requirements in Minnesota Statutes, section 245.4882, subdivisions 3 and 4.

It is necessary to prescribe that the advice from a special mental health consultant be sought when the plan is developed for children who are from a racial or cultural minority group because these residents often have different needs not identified by staff from the majority racial or cultural group. To assure that residents from the minority racial or cultural group have their needs met, it may be necessary to use a special mental health consultant. It is reasonable to get planning advice in this way because not all residential treatment programs will have special mental health consultant staff but would be able to access this specialized expertise for this planning purpose. This requirement is consistent with standards in Minnesota Statutes section 245.4876, subd. 1, (2).

#### **2960.0620 USE OF PSYCHOTROPIC MEDICATIONS.**

**Subpart 1. Conditions for use of psychotropic medications.** This subpart requires the license holder to meet the conditions in this subpart if the program admits residents for whom psychotropic medication is prescribed by a physician. It is necessary to address the use of psychotropic medication in this rule because a number of residents with severe emotional disturbance are prescribed psychotropic medication as part of their treatment plan for their severe emotional disturbance. It is reasonable to require the program to follow uniform procedures regarding psychotropic medication because the program is responsible for developing and implementing the plan of care for children using psychotropic medication and because the use of psychotropic medication is a specific intervention method for an identified need within the plan of care. Certain requirements of subpart 1 are similar to the requirements of part 9545.1025, subpart 1.

Under item A, it is necessary and reasonable to require that the use of psychotropic

medication is included in the resident's individual treatment plan because this is a specific method and plan of care which addresses an identified need of the resident while in the program. It is necessary and reasonable to have the use of psychotropic medication based on the prescribing physician's diagnosis and the diagnostic and functional assessments because the prescribing physician is medically trained to prescribe medication based on diagnosis and because the diagnostic and functional assessments are standardized tools that can aid the physician, case manager and program staff to individualize the use of the psychotropic medication for the resident.

Under item B, it is necessary and reasonable to have the certificate holder document: (1) a description in observable and measurable terms of the symptoms and behaviors that the psychotropic medication is to alleviate in order to evaluate the efficacy of the psychotropic medication on a systematic basis and to determine a baseline of symptoms and behaviors to compare psychotropic medication initiation or dosage changes against; (2) the data collection methods the certificate holder will use to monitor and measure changes in the symptoms and behaviors that are to be alleviated by the psychotropic medication in order to quantify the rate or level of the behavior and symptoms to ensure professionally accepted methods are used and to ensure all persons involved in the collection or review of this data will be aware of the procedures used to obtain the data. It is reasonable to document the data collection methods because the data are a major variable upon which psychotropic medication decisions are reached. Documentation assures that the way in which this data was gathered is recorded. Under subitem (3), it is necessary to document the criteria to prompt review by the physician for possible dosage increase, and decrease, or medication discontinuation because a staff person would not generally have the background or medical training to know about such criteria unless the criteria were made available to them. It is reasonable to list the criteria in the individual treatment plan because that is the plan directing the care of the resident. It is necessary that the program staff are aware of the psychotropic medications that each resident is taking and the criteria to prompt review by a physician, because the residential treatment program is responsible for residents.

Under item C, it is necessary and reasonable to state that psychotropic medication must not be administered as punishment, for staff convenience, as a substitute for a behavioral or therapeutic program, or in quantities that interfere with learning or other goals of the individual treatment plan, to protect the resident's well being, because instances have been recorded where psychotropic medications have been misused. Several court cases, federal regulations, and professional literature over the past 20 years have emphasized the prohibition against the use of psychotropic medication for purposes prohibited in this item. It is reasonable to require that psychotropic medication be used for the explicit purpose of reducing or relieving symptoms of severe emotional disturbance using the lowest and optimal dosage that is effective in controlling such symptoms without unduly interfering with other aspects of the resident's development.

**Subpart 2. Monitoring side effects. This subpart requires the certificate holder to monitor the possible side effects of psychotropic medication prescribed for a resident. The requirements of subpart 2 are necessary and reasonable because they are similar to the requirements of part 9545.1025, subpart 2. This subpart is necessary to protect the health and safety of the resident by requiring that the certificate holder monitor the presence of side effects from the use of psychotropic medications in order to detect and correct side effects and to avoid high risk side effects. Additionally, this subpart is necessary to inform certificate holders of their role in monitoring side effects of medication prescribed to children in the program. It is reasonable to hold the certificate holder responsible for this function because the resident can easily be observed at the program by staff and the program is responsible for the resident's 24 hour plan of care, and because most residential mental health treatment programs do not have a physician to monitor medication on site every day.**

**It is necessary and reasonable that the license holder have the presenting physician or a pharmacist list possible side effects of the psychotropic medication because the prescribing physician or a pharmacist would have this knowledge or easy access to this information while the certificate holder would not necessarily be aware of these side effects. It is necessary and reasonable to require the certificate holder to document and check for side effects under the direction of a licensed nurse or physician because persons so licensed are qualified by experience and training to recognize side effects of medication. Stating that the oversight can be done by a nurse or a physician is reasonable because it allows the certificate holder flexibility in meeting this rule requirement and promotes rule compliance if a physician is not available to provide this oversight.**

**Requiring that the certificate holder document and check for side effects at least weekly for the first month after a resident begins taking a new psychotropic medication or an increased dose of currently used psychotropic medication is reasonable and necessary because this is a high risk period for side effect development. Psychotropic medication side effects can be associated with medication noncompliance or interference with other aspects of the resident's life.**

**It is reasonable to require the certificate holder to check for side effects at least quarterly, because side effects can also potentially develop over longer periods of psychotropic medication use. Furthermore, it is necessary and reasonable to clarify that the certificate holder must use standardized checklists or rating scales in addition to appropriate physical or laboratory assessments as determined by the physician, so that the certificate holder will have a standard for meeting the responsibility to monitor side effects. Many side effects are functional in nature and do not have laboratory assessments or may occur within therapeutic monitoring ranges. It is also reasonable to require the certificate holder to use a standardized side effects inventory to assure consistent and thorough assessment of the**

possible presence of harmful side effects. Failure to use of such instruments leads to significantly less detection of side effects. (Corso, et al, 1992, pages 890-896)

It is necessary and reasonable to have the certificate holder provide the assessments to the physician for review because the physician is the health professional responsible for the health care of the resident and trained to take into account side effects in the context of the resident's total health. It is reasonable to have the certificate holder provide the assessments to the physician for review because the physician needs the information to give the resident proper care and a certificate holder can easily supply this information to the physician.

**Subpart 3. Monitoring for tardive dyskinesia.** This subpart requires the certificate holder to monitor a resident for tardive dyskinesia if the resident is prescribed antipsychotic medication or amoxapine. The requirements of subpart 3 are similar to the requirements of part 9545.1025, subpart 3. It is necessary and reasonable to require monitoring for tardive dyskinesia (TD) because these side effects represent a public health concern for children with emotional disturbances who are prescribed antipsychotic medication or the antidepressant amoxapine. Few data exist on TD for children who do not have autism or mental retardation. Data that do exist indicate that: (1) 75% of actual TD cases for children are withdrawal TD which goes away within 12 weeks after antipsychotic discontinuation; and (2) about 7% of children prescribed antipsychotic medication for extended periods of time have TD compared to the generally accepted 15% to 40% for adults depending on the age group. (Richardson, M. A., Haugland, G., Craig, T. J., 1991, 148: pages 1322-1328) According to these authorities, child and adolescent psychiatric patients who are prescribed antipsychotic medication require systematic monitoring using rating scales for TD and the full range of neurological side effects.

TD is an important concern for five basic reasons: (1) a high percentage of patients experience this side effect; (2) potentially severe nature; (3) potentially persistent nature even after antipsychotic medication discontinuation; (4) the lack of consistent long-term pharmacological treatment for TD; (5) litigation award upwards of \$2,000,000 at the expense of physicians and providers paid to patients who suffer TD when proper standards related to the use of antipsychotics are not followed. (Kalachnik, J. E., et al, 1988, 12: pages 749 and 750) It is necessary and reasonable to have the certificate holder monitor TD under the direction of a licensed nurse or physician because tardive dyskinesia is a health concern and a licensed nurse or physician is qualified to provide oversight for the certificate holder's staff.

It is reasonable to require that the certificate holder document and check for tardive dyskinesia at least once every three months because the American Psychiatric Association TD Task Force Reports recommend TD assessments every three to six months for patients prescribed antipsychotic medication and because TD may develop over longer as opposed to

shorter periods of time. Because children may be more vulnerable to tardive dyskinesia, the three month period was chosen for this rule. Other than special cases such as empirical trials of various medications in an attempt to control extreme TD, no reference in the professional literature advocates more frequent ongoing TD monitoring. This time frame is also consistent with DHS rules governing other client populations such as individuals with developmental disability who may be taking prescribed medication for a long time.

It is necessary and reasonable to require that a resident who has been prescribed antipsychotic medication or amoxapine for more than 90 days must be checked for tardive dyskinesia at least 30 and 60 days after discontinuation of the antipsychotic medication or amoxapine because, except for a rare case, TD does not develop unless the client is prescribed antipsychotic medication for at least three months or longer and because the period immediately after antipsychotic medication discontinuation is the period of concern for withdrawal TD and the effects this might have on the child and the child's individual treatment plan. (Schooler, N.R. and Kane, J.M., 1982, 39: pages 486-487)

It is necessary and reasonable to have the certificate holder provide the assessments to the physician for review so that the physician has the necessary information when determining if the resident has TD. It is reasonable to have the certificate holder provide this information because the certificate holder is responsible for monitoring and documenting the data and therefore can readily provide the data to the physician. The provision of monitoring results to the physician is reasonable because the physician needs the information to make a determination about the need for further tests or changes in medication.

**Subpart 4. Training required to administer psychotropic medications.** This subpart requires persons who administer medications to residents to either be appropriately licensed, certified, or trained, and requires a registered nurse to review the administration of medications at least weekly. The requirements of subpart 4 are necessary and reasonable because they are similar to the requirements of part 9545.1025, subpart 4. Because employees other than a physician, registered nurse, or licensed practical nurse may be responsible for medication assistance, it is necessary to require standards governing the administration of psychotropic medications. It is reasonable to require these standards because training to administer medication is readily available. It is necessary to require this training by the successful completion of a trained medication aide program for unlicensed personnel offered through a post-secondary institution or by a registered nurse to assure that the training is adequate and is done by qualified personnel.

This subpart is necessary because Minnesota Statutes, section 245A.09, subdivision 2, paragraph c, clauses (1), (3), and (5), requires the commissioner to set basic licensing and certification standards, including adequate staff requirements, and section 245A.095, requires the commissioner to review rules regarding staff training. It is reasonable to provide this

training in one of these ways because it allows the program and the employee options in receiving this training while assuring a minimal training standard. It is reasonable to require that the specific medication administration training provided by a registered nurse to unlicensed personnel must be documented to chronicle what training has occurred as evidence of compliance. Documenting specific medication administration training is reasonable because it can be easily accomplished by the certificate holder. It is reasonable to require that this training document be placed in the unlicensed employee's personnel records to show proof that this training requirement was met. This requirement is reasonable because all program staff have a personnel file and this is a standard and accessible place to store this information.

It is necessary to require that a registered nurse, physician or pharmacist must provide consultation and review of the certificate holder's administration of medications at least weekly, because a registered nurse, physician or pharmacist is qualified to review administration of medications and an at least weekly oversight review assures oversight frequently enough to correct problems in a timely fashion. It is reasonable to require a registered nurse, physician or pharmacist consultation because these medically licensed persons are available across the state. A weekly oversight review is reasonable because it is not a burdensome requirement and it still assures timely oversight. It is necessary to require that the consultation shall include the review of the certificate holder's compliance with subparts 5 and 6 so that the nurse, physician or pharmacist knows what is expected in the consultation. It is reasonable to include subparts 5 and 6 in this consultation because they require psychotropic medication review and informed consent for the administration of psychotropic medication which are topics that a registered nurse, physician or pharmacist knows about.

Subpart 5. Psychotropic medication review. This subpart requires the certificate holder to conduct a psychotropic medication review at the indicated intervals for a resident who is prescribed psychotropic medication. The requirements of subpart 5 are necessary and reasonable because they are similar to the requirements of part 9545.1025, subpart 5 and related items. It is necessary to require a psychotropic medication review to assure that psychotropic medications are being used effectively to reduce or relieve symptoms of the severe emotional disturbance. It is reasonable to require this review because the use of the psychotropic medication is part of the treatment plan that the program is responsible for carrying out. It is reasonable to require that the certificate holder conduct a psychotropic medication review as frequently as required by a physician, but at least monthly for the first six months and at least quarterly thereafter because the first three to six months of treatment generally constitute the acute phase of treatment and the more frequent review schedule assures that the medication is doing what it was prescribed to do. Some children do not respond to a particular psychotropic medication while others require several dosage adjustments which must be reviewed within the context of side effects and other individual

treatment plan variables. Additionally, the medication may no longer be necessary after short-term use combined with the use of other treatment program interventions.

A quarterly review is adequate once stabilization and the need for maintenance have been established. The physician may set a more frequent medication review schedule because the physician has the knowledge and skills necessary to determine if an additional or different review schedule is necessary for an individual resident's case. It is reasonable to require that the certificate holder must consider and document specific items at the quarterly review and provide this information to the physician for review because the certificate holder is responsible for the individual treatment plan which is reviewed quarterly. Minnesota Statutes, section 245.4876, subdivision 3, requires residential treatment programs to review the individual treatment plan every 90 days after intake. The use and effect of psychotropic medication is a part of the individual treatment plan, and it is reasonable to review information on psychotropic medications at that time. It is necessary to list specific items that are considered and documented in the medication review because this assures that a consistent and standardized inventory has been used as a basis for the risk-benefit decision. It is important that this information is provided to the physician for review because it will provide the physician with relevant information about the resident's reaction to and effectiveness of the psychotropic medication. This will allow the physician the opportunity to review basic variables and to determine if further in-depth actions are required.

**Item A.** It is necessary and reasonable to list symptoms and behaviors of concern and any corresponding diagnosis because the medication's purpose is to alleviate diagnosed symptoms and behaviors of concern and the physician needs to be aware of the medication's outcome.

**Item B.** It is necessary and reasonable to require that data collected since the last review be documented so that this information is readily and consistently available to persons working with the resident. These are the data on the specific symptoms and behaviors which are compared from review to review to determine psychotropic efficacy and whether changes in medication may need to be made.

**Item C.** It is necessary to require the certificate holder to consider and document any side effects observed and actions taken, because this information is directly related to the use and amount of the psychotropic medication prescribed. It is reasonable to expect the certificate holder to consider and document this information because it is important in carrying out the resident's treatment plan and program staff are available to observe and record this information and this information is a necessary part of the risk-benefit analysis.

**Item D.** It is necessary and reasonable to require the certificate holder to consider and document the resident's goals in the individual treatment plan and whether these goals are adversely affected by the psychotropic medication because formulation and implementation of

the plan of care as written in the resident's individual treatment plan is the responsibility of the certificate holder. The control of a behavior or symptom of concern which also has adverse effects on other treatment goals requires ongoing review.

**Subpart 6. Informed consent.** It is necessary to require the certificate holder to obtain informed consent before any nonemergency administration of psychotropic medications because psychotropic medications can cause side effects, can effect other areas of care, and require a therapeutic alliance in order to be used most effectively. Therefore, the resident's parent or legal representative should be knowledgeable about the psychotropic medication and give permission for its administration. [See the description of the information for informed consent in subpart 7 below.] Informed consent, in one form or another, is standard operating procedure in almost all medical or educational interventions or activities. It is reasonable to require the certificate holder to obtain the informed consent because the certificate holder is the party responsible for the child's individual treatment plan. The requirements of subpart 6 are necessary and reasonable, because they are similar to the requirements of part 9545.1025, subpart 6 and related items.

It is necessary to inform and involve the resident in the decision-making to the extent possible, because the resident is the person receiving the medication and medication noncompliance might occur without the residents participation. Informing and involving the resident can also be empowering and therapeutic for the resident. It is necessary to qualify this informed consent by the resident with the phrase, "to the extent possible" because there may be instances when the resident may be unable to give informed consent such as when the resident is too young, too ill or intellectually unable to understand informed consent.

**Item A.** It is necessary and reasonable to state when and how the certificate holder is to obtain informed consent so the certificate holder knows how to meet this requirement. It is reasonable to require informed consent before the nonemergency initiation of a psychotropic medication because initiation of medication before informed consent would negate the premise and intent of informed consent. Additionally, the requirements of Minnesota Statutes, section 144.651, are applicable to the resident or the resident's parent and the resident's representative in the areas of information about treatment, participation in planning treatment, and the right to refuse care.

It is necessary to differentiate between antipsychotic medication and other psychotropic medication for purposes of informed consent procedures because professional references stress informed consent as necessary and good clinical practice when psychotropic medication is prescribed, but do not recommend written informed consent per se when psychotropic medication is used with children or persons diagnosed with a mental health disorder who are not admitted under a commitment order or developmentally disabled. (Kaplan, H. I., and

Sadock, B.J., 1988, 121: pages 666, 667, 670 and 671) However antipsychotic medication is an area of concern in the literature due to the risk of tardive dyskinesia (TD) and other neurological side effects. Professional opinion is split on the need for written informed consent in this area. (DeVaugh-Geiss, J., 1979, 136: pages 959-962) Additionally, commitment laws in Minnesota for persons diagnosed with a mental health disorder as well as Minnesota Supreme Court decisions in cases such as Jarvis and Blilie view antipsychotic medication in a more stringent light requiring specific written informed consent by a legally authorized representative or, in some cases, a formal court review. In light of this situation, the low percentage of antipsychotic medication use with children compared to other medications such as antidepressants or stimulants and the serious nature of a case requiring the use of antipsychotic medication and a coinciding higher standard of care, it is reasonable to require written informed consent before initiation of antipsychotic medications.

In the case of nonantipsychotic psychotropic medication, it is reasonable to require written informed consent within one month of oral informed consent to strike a balance between the interests of the resident who may require such medication, and the parent's rights as an authorized representative of the resident to initially approve the medication at least orally, and the reality of some parents not returning written informed consent forms on a timely basis. During a resident's stay in residential treatment, it may be necessary for the proper care of the resident to begin the administration of a psychotropic medication or change the type or amount of a prescribed psychotropic medication. Unfortunately, some residents do not have a parent or guardian who could be readily contacted to give consent and some residents have parents who are less likely to return consent forms. Therefore, it is reasonable to begin administration of nonantipsychotic psychotropic medication under witnessed informed oral consent with written informed consent to follow as soon as possible following the initiation of the medication.

An emphasis on completed consent forms is somewhat misdirected in that it does not emphasize the educational role of informed consent, which is more beneficial to the process of treating a resident with severe emotional disturbance. The limited treatment value of informed consent documentation is noted in the following; "The legal doctrine of informed consent is a crude reminder that psychiatrists must respect the rights of patients, including their right to be informed and to make treatment choices...Respect for persons incorporates and goes beyond informed consent. It is unfortunate that so much emphasis has been placed on informed consent--its rituals, documentation, and difficulties--at the expense of the higher ethical standard of respect for persons." (Kaplan, H.I. & Sadock, B.J., 1988, pages 120-122) It is reasonable that the oral informed consent process should include the educational aspects of the process and be standardized to a greater degree, with documented evidence provided by the certificate holder. The certificate holder must minimize the expectation that a consent form is a substitute for educational aspects of the informed consent process. The oral informed consent process may present a "red flag" to the provider that possible formal

**inquiry may be required and that a problem with parental participation may exist if the informed consent form is not returned within one month despite reminders by the provider.**

**Item B. It is reasonable to require informed consent be renewed in writing at least yearly, because it is not difficult to include an annual informed consent renewal in the process for reviewing the individual treatment plan. The provider is not substantially inconvenienced by renewing informed consent annually because the treatment plan, including psychotropic drug treatment, is developed in cooperation with the parties who may give consent and is reviewed quarterly as the major treatment review point. Even with maintenance cases, new variables, risks, or the developmental process dictate that informed consent is an ongoing dynamic process and not a one-time static event.**

**Item C. It is necessary and reasonable to identify the exact person serving as the resident's legal representative from whom informed consent must be obtained in order to inform providers and to avoid confusion on this issue.**

**Item D. It is necessary to differentiate the emergency use of a psychotropic medication from the nonemergency use, define what constitutes an emergency, and state that informed consent is not necessary before emergency initiation because clinical reality will probably present cases which the rule will apply to. The exemption from consent prior to emergency initiation is reasonable because there is no such requirement in the professional literature or according to Minnesota Statutes, section 144.344. It is reasonable to require specific action on the certificate holder's part in an emergency psychotropic medication initiation in order to protect the rights of the resident. A major and dangerous event has occurred if an emergency treatment intervention is used, and the resident's parent or guardian should be advised of the situation. As a result of the emergency, an in-depth review of the resident's existing treatment plan, involving the resident's parent or legal representative, is needed to determine if possible changes to the plan are needed in response to the emergency. It is reasonable to require written informed consent within 30 days for any continued use of a psychotropic medication initiated on an emergency basis because such continued use is expected to be formally reviewed with the resident's parent or legal representative within the context of the resident's treatment plan. The 30 day limit is consistent with the time period for written informed consent for other psychotropic medications initiated on a nonemergency basis and allows the program to overcome possible difficulties of contacting some parents without unduly interfering with a resident's need for such continued medication. The inability to involve the resident's parents or legal representative within 30 days may serve as a "red flag" to the provider that formal outside review, such as review by the court, may be necessary.**

**Subpart 7. Information communicated in obtaining consent. This subpart requires certain information to be communicated to the resident's parents or legal guardian and, if possible,**

the resident when obtaining informed consent. The requirements of subpart 7 are necessary and reasonable, because they are similar to the requirements of part 9545.1025, subpart 7. This subpart is necessary to inform the certificate holder of the documented information which the certificate holder must provide to the resident's parent, legal representative, and to the extent possible, to the resident. The information delineated in items A to G is reasonable because it is consistent with the Department's policy on the monitoring of psychotropic medications which is contained in Psychotropic Medication Monitoring Manual. (John E. Kalachnik and Nord, Gerry B., 1985) Additionally, the items represent information generally recommended by treatment professionals to be provided as part of the informed consent process. (C. W. Lidz, et al, 1984,)

**Subpart 8. Refusal to consent to routine administration of psychotropic medication.** This subpart requires the certificate holder to take certain measures upon refusal of consent for the administration of psychotropic medication. The requirements of subpart 8 are necessary and reasonable, because they are similar to the requirements of part 9545.1025, subpart 8. This subpart is necessary to inform the certificate holder what to do if the authorized person refuses consent for a psychotropic medication. This subpart is reasonable because it is consistent with the Department's policy on informed consent as it relates to psychotropic medication. It balances the requirement for due process and the right to refuse treatment with actions which may be necessary on the provider's part if the refusal endangers the resident or others. The requirement in item B, that the program obtain a court order to override the refusal to consent to medication is reasonable because it is consistent with the requirements of Minnesota Statutes, section 253B.092, subdivision 8, regarding administration of neuroleptic medication. Item C is reasonable because it does not allow a program to punish a resident who refuses psychotropic medication, but allows a program to discharge a resident following a due process procedure if the resident's refusal of psychotropic medication results in the program being unable to properly care for the resident.

## **2960.0630 CLINICAL SUPERVISION BY A MENTAL HEALTH PROFESSIONAL**

Part 2960.0630 is necessary because Minnesota Statutes, section 245.4882, subdivision 2, requires that providers of residential mental health programs for children be clinically supervised by a mental health professional. The requirements of part 2960.0630 and its subparts are necessary and reasonable, because they are similar to the requirements of part 9545.1075 and its subparts. Subparts 1, 2, and 3 are necessary to describe the activities required of a mental health professional providing "clinical supervision" as defined in Minnesota Statutes, section 245.4871, subdivision 7. Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), clause (3), requires the commissioner to set standards for the qualifications of persons administering and delivering program services.

**Subpart 1. Mental health professional consultation.** This subpart requires the certificate holder to use the services of a mental health professional to provide consultation regarding program service planning, development, implementation, and evaluation. It is necessary to require the involvement of the mental health professional in the planning, development, implementation, and evaluation of program services, because Minnesota Statutes, sections 245.4871, subdivision 7, and 245.4882, subdivision 2, require clinical supervision by a mental health professional. It is reasonable to require the involvement of a mental health professional in program services planning, development, implementation and evaluation because a mental health professional is qualified to advise the certificate holder regarding the clinical aspects of program services.

**Subpart 2. Supervision of staff.** This subpart requires clinical supervision of staff who provide residents with the program services described in part 9545.0945, subpart 1. This subpart is necessary because Minnesota Statutes, section 245.4882, subdivision 2, requires that providers of residential mental health treatment services to children must be clinically supervised by a mental health professional. It is reasonable to require the clinical supervision of staff by a mental health professional because the educational and personal qualifications of a mental health professional, as defined in Minnesota Statutes, section 245.4871, subdivision 27, provides a mental health professional with the substantial clinical expertise necessary to provide oversight for the delivery of mental health services.

Under item A, the mental health professional is given a choice of methods to meet clinical supervision requirements. Allowing the mental health professional flexibility to determine whether to meet with staff as a group or individually is reasonable because it avoids inappropriately prescriptive rulemaking and allows the mental health professional to choose the most appropriate, efficient, and cost effective approach to the clinical supervision of staff. It is reasonable to give the mental health professional flexibility to choose the most appropriate means to meet the clinical supervision requirements by meeting with the staff as a group or as individuals, because the treatment needs of residents and the specific information given by the mental health professional to program staff may require different approaches to clinical supervision. In certain cases the mental health professional may wish to perform the oversight responsibility by giving identical clinical information to all staff simultaneously or discuss treatment approaches for a resident with staff as a group, or on the other hand the mental health professional may wish to meet individually with a staff person to discuss a resident's treatment.

Item B requires the mental health professional to document clinical supervision activities. It is reasonable to require documentation of clinical supervision activities because it provides a record for review by department employees who must monitor certificate holder compliance with this subpart. It is also reasonable for the certificate holder to use documentation of the clinical supervision of employees as a sound management practice to ensure that staff

providing program services to children are delivering the proper services in a way which best meets the resident's needs.

Item C requires the mental health professional to advise the certificate holder regarding management activities related to staff development and evaluation. It is reasonable to include the comments of the mental health professional in staff development and evaluation activities because the mental health professional is familiar with the training needs and job performance of the staff who provide services to residents.

Item D allows the mental health professional who supervises staff to consult with other mental health professionals who work with residents, rather than supervise the other mental health professionals. This item is needed and reasonable because mental health professionals are licensed to work independent of supervision, but may benefit from consultation with the supervising mental health professional regarding the treatment of a resident or the broader treatment policies of the program.

### **Subpart 3. Supervision of treatment.**

Item A requires the mental health professional to supervise the assessment and individual treatment plan development for each resident. Minnesota Statutes, section 245.4871, subdivision 21, requires the individual treatment plan to be developed under the clinical supervision of a mental health professional. Minnesota Statutes, section 245.4871, subdivision 11, requires the mental health professional's participation in the development of the diagnostic assessment. It is reasonable to require at least clinical supervision by a mental health professional in the development of important documents such as the individual treatment plan and the assessment which indicate the resident's diagnosis and the treatments the resident will receive because the mental health professional has the qualifications to perform and evaluate the planning and assessment required in this item.

Item B requires the mental health professional to document involvement in the individual treatment planning process by signing the individual treatment plan. Minnesota Statutes, section 245.4871, subdivision 21, requires the treatment plan to be developed under the clinical supervision of a mental health professional. The documentation of the mental health professional's involvement in the development of the individual treatment plan is reasonable because the mental health professional is qualified to develop the individual treatment plan and because it verifies the review and approval of the plan by the mental health professional and enables the department employees to monitor compliance with the requirements of this rule .

Item C requires the mental health professional to provide clinical supervision of staff by making sure that the resident's individual treatment plan is being implemented and that there is documentation of the resident's ongoing evaluations and treatments and the quarterly

review. It is reasonable to require a mental health professional to monitor the staff's implementation of the resident's individual treatment plan because the mental health professional has the expertise to determine if the plan is being followed. It is also reasonable for the mental health professional to review the documentation and evaluation of the resident's progress to ensure that the treatment plan is having the desired effect on the resident's mental health.

Item D requires the mental health professional to document the bi-weekly review of services to the resident. It is reasonable to require the mental health professional to document the bi-weekly review of services to the resident and verify which program services the child receives, because the mental health professional, as the person providing clinical supervision of the resident's treatment, should be aware of the treatments provided to the resident. The requirement for documentation in this item allows department employees to monitor the certificate holder's compliance with this subpart.

Requiring the certificate holder to ensure that a mental health professional can be contacted within thirty minutes in the event that a resident has a mental health emergency is reasonable because the certificate holder's staff needs to be able to promptly respond in a clinically appropriate manner to a significant, sudden worsening of a resident's mental health. Setting the maximum time limit for being able to contact a mental health professional at thirty minutes is reasonable because the expertise of a mental health professional should be available in a comparatively short period of time to staff who must immediately deal with resident's mental health emergency if the staff need clinical advice to ameliorate the mental health emergency.

#### **2960.0640 STAFF QUALIFICATIONS**

This part establishes the staff qualification requirements for the programs governed by parts 2960.0580 to 2960.0700. This part is necessary because Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), clauses (1) and (3), require the commissioner to adopt program licensing rules which include standards for adequate staff. Minnesota Statutes, section 245.802, subdivision 2a, clause (5), requires the commissioner to review and recommend staff education and training requirements as necessary for residential mental health programs.

Subpart 1. General staff qualifications. This subpart establishes the general qualifications for staff who are involved with program services. The necessity and reasonableness of these qualifications are outlined in the statement of need and reasonableness at parts 2960.0100 and 2960.0150. It is reasonable to rely on the earlier parts of the statement of need and reasonableness because they establish adequate general staff qualifications and restating those qualifications in this part is not necessary.

Subpart 2. Administrator. This subpart establishes the qualifications for the person

designated by the certificate holder to act as the administrator of a certified residential mental health treatment program. The requirements of subpart 2 are necessary and reasonable, because they are similar to the requirements of part 9545.1085, subpart 2. It is necessary to require that the certificate holder designate an individual as administrator so that the certifying agency, parents, staff and other interested persons know who has the responsibility and authority to administer the program. It is reasonable to have an administrator designated because it is common to have a person assigned to direct the facility program and be responsible for the ongoing operation of the program.

It is reasonable to require that the administrator have at least a bachelor's degree in the behavioral sciences, health administration, or a related field because the bachelor's degree is the minimum education an administrator would need to carry out the job's duties. It is reasonable to expect at least a bachelor's degree because such training is readily available and many persons have bachelor degrees in the behavioral sciences, health administration, public administration, or a related field.

It is necessary to require that the degree be in the behavioral sciences, health administration, public administration, or a related field so that the individual has the training and competencies in the human service or health administration field needed to fulfill job duties. It is reasonable to expect the degree be in one of the above noted areas because that degree would show minimum competence to perform the job, and these degree programs are available throughout Minnesota and the United States. It is necessary and reasonable to require the administrator be responsible for the ongoing operation of the program, and maintenance and upkeep of the facility because it is important that one person be responsible for the business so that the commissioner, parents and other interested persons know who holds this responsibility and authority. It is reasonable to require the administrator be responsible for oversight of the program and facility because these are commonly held responsibilities of a residential treatment program administrator. The CWLA states, "The chief executive officer (CEO) should be delegated by the board of trustees or directors to carry overall responsibility for all the children in care; to administer the services; to plan and coordinate all phases of the program within the framework of the functions and policies established by the board; to evaluate continually the effectiveness of services for children and their families; and to seek new approaches and knowledge. The CEO's responsibilities include: Directing the agency program;...Supervising building maintenance, management, and purchasing." (CWLA, 1991, page 129)

**Subpart 3. Program director.** This subpart establishes the qualifications for the person designated by the certificate holder to act as the program director for a certified residential mental health treatment program. The requirements of subpart 3 are necessary and reasonable, because they are similar to the requirements of part 9545.1085, subpart 3. It is necessary and reasonable to require that the certificate holder designate an individual as

program director so that the staff and other interested persons know who the program director is and that the program director has met the education, training, and experience requirements for this position. It is necessary to require that the program have at least one program director for every 50 residents to assure that the program has adequate program oversight and supervision by a qualified person. It is reasonable to have at least one program director for every 50 residents because that ratio assures quality care and because that ratio was established in previous rules governing this type of program. It is reasonable to state that the positions of program director and administrator may be filled by the same person if the person meets the qualifications in items A and B because some small programs would not need nor easily afford to have separate positions for the administrator and program director. Furthermore, this requirement is reasonable, because it gives each certificate holder greater flexibility to meet the state's staff qualification standards.

It is reasonable to require that the program director have a master's degree in the behavioral sciences or a related field with at least two years of work experience providing services to children with severe emotional disturbance or have a bachelor's degree in the behavioral sciences or a related field with a minimum of four years of work experience providing services to children with severe emotional disturbance because this combination of training and experience is commonly accepted in Minnesota as minimum to perform a program director's job duties. The Minnesota Comprehensive Children's Mental Health Act definitions of "case manager", at Minnesota Statutes, section 245.4871, subdivision 4; "mental health practitioner", at subdivision 26; and "mental health professional", at subdivision 27, establish education, training, and experience requirements for professional positions related to mental health services for children.

It is reasonable to require that the program director have one year of experience or training in program administration and supervision of staff because the program director needs administrative and supervisory experience to recognize and deal appropriately with supervisory and program issues. Such experience or training is available throughout the state and nation.

#### **2960.0650 STAFF ORIENTATION**

This part establishes the staff orientation requirements for the programs governed by parts 2960.0580 to 2960.0700. The requirements of this part are similar to the requirements of part 9545.1095. This part is necessary because Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), clause (1), requires the commissioner to adopt program licensing rules which include standards for adequate staff. Minnesota Statutes, section 245A.095, subdivision 2, clause (5), require the commissioner to review rules for programs serving persons with mental illness and recommend staff educational and training requirements as needed. Minnesota Statutes, section 245.802, subdivision 2a, clause (5), requires the commissioner to review and

recommend staff education and training requirements for residential mental health treatment programs.

**Subpart 1. Initial staff orientation training for staff who provide program services.** This subpart describes the orientation training requirements which staff who provide program services must complete within the first 45 calendar days of employment. This subpart is needed to fulfill the requirements of Minnesota Statutes, section 245A.095, subdivision 2, clause (5) and section 245.802, subdivision 2a, clause (5) regarding the commissioner's duty to review rules and recommend staff educational and training rule requirements. The items in this subpart are reasonable because they were established in existing rules governing residential mental health treatment and they provide an adequate minimum standard for background information and training which a staff person should understand to provide adequate care to a resident and avoid care practices which would be considered dangerous or abusive to a resident. It is also reasonable to require that staff not use physical holding or isolation procedures with a resident unless staff is trained in the policies and procedures required in item D, because these procedures could result in physical or psychological harm to the resident or others when used improperly.

**Subpart 2. Orientation training for staff who do not provide program services.** This subpart establishes the minimum limits for employment related orientation for staff who do not care for or provide program services to residents. It is reasonable to exempt staff persons, such as cooks, gardeners, and clerical staff who do not care for residents from some of the orientation requirements of subpart 1. It is also reasonable to require staff who do not care for residents to receive sufficient training to be able to participate in emergency procedures and have some general information about the problems and needs of residents and their families.

## **2960.0660 INDIVIDUAL STAFF DEVELOPMENT**

This part establishes the staff development and documentation requirements for the programs governed by parts 2960.0580 to 2960.0700. This part is necessary because Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), clause (1), requires the commissioner to adopt program licensing and certification rules which include standards for staff training and adequate staff. Minnesota Statutes, section 245A.095, subdivision 2, clause (5), also requires the commissioner to recommend rules which establish staff training requirements. Minnesota Statutes, section 245.802, subdivision 2a, clause 5, requires the commissioner to review and recommend staff education and training requirements for residential mental health programs. It is reasonable to require programs to maintain staff development programs to ensure that persons who provide residential mental health treatment for residents have the necessary training and information to treat residents with severe emotional disturbance.

**Subpart 1. Individual staff development and evaluation plan.** This subpart requires the

certificate holder to have an annual plan for each staff person involved in delivering program services. The requirements of subpart 1 are similar to the requirements of part 9545.1105, subpart 1. It is reasonable to require certified programs to have an individual development and evaluation plan for each staff person involved with delivering program services to residents, because each staff person has unique experiences in child care and has specific areas of knowledge and experience which may need to be enhanced to make that person more effective in working with severely emotionally disturbed residents. Additionally, staff need to be trained in the use of new treatment methods. This subpart is consistent with Minnesota Statutes, section 245A.095, subdivision 2, which requires the commissioner to recommend rules which establish staff educational requirements and training for persons employed in certified programs governed by this rule.

Subpart 2. Amount of annual training. This subpart specifies the training requirements for staff involved in delivering program services. It is reasonable to require that training have the goal of developing competent staff, because competent staff are necessary for successful mental health treatment.

## **2960.0670 ADMISSION**

This part establishes the requirements a certificate holder must meet when admitting a child to a program. It is necessary to state the admissions criteria and process in this rule so that only children with severe emotional disturbance who are eligible and in need of residential treatment are admitted to residential mental health treatment programs. It is reasonable to state the admissions criteria and process in this way so that standards of admission and the admission process are consistent statewide.

Subpart 1. Admission requirements. This subpart establishes the admission requirements for a program that provides mental health treatment according to parts 2960.0580 to 2960.0700. It is reasonable to rely in part on the general admission requirements of parts 2960.0070 and 2960.0160 to avoid reiterating those general requirements in this part. It is also reasonable to rely in part on the specialized mental health treatment oriented admission requirements of this part.

Subpart 2. Conditions governing admission. This subpart establishes conditions in items A through F for the admission of a child to a residential mental health treatment program. The requirements of subpart 2 are necessary and reasonable, because they are similar to the requirements of part 9545.0955, subpart 1.

Item A. It is reasonable to state that the child be under 18 years of age at the time of admission because the program is required by the Children's Comprehensive Mental Health Act, Minnesota Statutes, Minnesota Statutes, sections 245.487 to 245.4888, to be designed

for children under 18 years of age.

**Item B.** The screening requirement in this item is necessary and reasonable because it is prescribed by Minnesota Statutes, sections 245.4885, subdivision 1, and 245.4882, subdivision 1.

**Item C.** This part is necessary because some children requesting admission in a residential treatment program certified by this rule will not use public funds for the service. A standard of screening is needed to assure that such children are eligible and in need of these services. It is reasonable to use the same standards and requirements set in statute for screening for residential treatment when public funds are used because it would assure consistency in admission standards and admit only eligible children in need of residential treatment services. Setting consistent screening standards without regard to who pays assures that the program is serving the child's needs according to Minnesota Statutes, sections 245.4882 and 245.4885.

**Item D.** This item is necessary to assure that the child is admitted to a treatment program that meets the requirements of Minnesota Statutes, section 245A.095, subdivision 1a. This item is reasonable because it is consistent with the statutory requirements and informs affected persons.

**Item E.** This rule requirement is necessary because these programs are not designed to provide primary chemical abuse treatment or detoxification services. It is necessary to require that this treatment not be needed at the time of admission because the child may need such treatment later, even though this need is not evident in the screening process. This requirement is reasonable because residential treatment programs are specifically designed for the treatment of children with severe emotional disturbances and children admitted to these programs should be in primary need of treatment for their severe emotional disturbance and not chemical abuse treatment or detoxification.

**Item F.** It is necessary to assure that the certificate holder's program can meet the developmental and mental health needs of the child being considered for admission because receiving appropriate treatment is the purpose of the child going to the residential program. It is reasonable to state this requirement in the admissions criteria and process section because, although all programs certified under this rule will be serving children with severe emotional disturbance, individual programs will have additional admissions criteria reflecting their sub-specialties, (e.g. serving only children aged 12 to 17, or under 12 years of age, or only serving girls over 12 who have been sexually abused.) Because the certificate holder can set these additional admission criteria and have sub-specializations, it is necessary and reasonable to have this requirement as a basic certification standard to best meet the resident's needs.

**G. Item G requires mental health diagnostic and evaluation programs to perform a diagnostic assessment and use qualified persons to interpret the diagnostic and evaluation tests given to residents. It is necessary and reasonable to require that the program use a diagnostic assessment that meets the requirements of Minnesota Statutes, section 245.4871, subdivision 11, because the diagnostic assessment definition contains a set of requirements which are generally considered to be appropriate requirements to consider when evaluation a person for mental health treatment services. It is necessary and reasonable to require that the tests be evaluated by a mental health professional, because a mental health professional is qualified to evaluate the diagnostic and evaluation tests taken by the resident.**

#### **2960.0680 STANDARDS GOVERNING THE USE OF RESTRICTIVE TECHNIQUES AND PROCEDURES**

**This subpart requires shelter programs to limit the use of restrictive techniques according to part 2960.0710. This subpart is needed and reasonable to protect the safety of residents, because the existing rule is tied to the requirements of Minnesota Statutes, sections, 144.651 and 253C.01. Part 2960.0710 replaces parts 9545.0900 to 9545.1090, which contain limitations on the use of restrictive techniques.**

**It is necessary to have rules governing the use of restrictive techniques and procedures, because Minnesota Statutes, section 245.826 specifically requires the commissioner of human services, when amending the rules governing programs serving residents with emotional disturbance, to develop rule provisions which govern the use of restrictive techniques and procedures in programs serving residents with emotional disturbance. Accordingly, part 2960.0710 sets forth the limitations, but does not encourage or require the use of restrictive techniques in programs serving residents with emotional disturbance.**

#### **2960.0690 STAFFING PATTERN AND MINIMUM STAFF TO RESIDENT RATIO**

**This part establishes the requirements for staffing patterns and the staff to resident ratio for programs certified under this rule. This subpart is needed to meet the requirement of Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), clause (1), which requires human services licensing and certification rules to establish standards for, "adequate staff that take into account the age distribution and severity of handicap of persons served by the program". The requirements of this part of the proposed rule are necessary and reasonable, because they are similar to the requirements of part 9545.0945, subpart 6. It is necessary to reasonable to require special staffing ratios for programs serving severely emotionally disturbed children, because of the increased supervision needs associated with their behavior. It is reasonable to set the staff to resident ratios at the levels stated, because these ratios have proven to be adequate minimum levels in current practice.**

#### **2960.0700 STANDARDS GOVERNING TREATMENT IN A LOCKED SETTING**

**This part establishes the requirements that a program must meet if the program offers treatment in a locked setting. Minnesota Statutes section 245.4876, Subdivision 1(4) requires that mental health services be provided in the most appropriate, least restrictive setting available to meet the resident's treatment needs. Since residential mental health treatment within a locked setting is a highly restrictive setting, it is necessary and reasonable to state under what conditions use of this highly restrictive setting is justified. These programs treat residents with severe emotional disturbance who may present a threat of harm to themselves or others. The use of locked programs or locked areas within a larger program to treat residents with severe emotional disturbance centered around protecting the rights of the resident while at the same time ensuring that the program could provide needed treatment and control a resident who was likely to harm self or others so that the resident would recover from severe emotional disturbance and be less likely to harm self or others. Part 2960.0700 provides guidance for residential mental health treatment for residents in these circumstances.**

**Subpart 1. Limitations on admissions to a residential mental health program offering treatment in a locked setting. This subpart requires the certificate holder to determine if the resident's diagnostic assessment and individual treatment plan indicate that the resident should receive treatment in a locked setting. The requirements of subpart 1 are necessary and reasonable, because they are similar to the requirements of part 9545.1035, subpart 2. Providing treatment to residents whose diagnostic assessment indicates they pose a likely threat of harm to themselves or others in a locked setting complies with the requirements of Minnesota Statutes, section 245A.095, subdivision 1a, to provide treatment in the "least restrictive, most appropriate environment" that meets the resident's needs. A resident who is a threat of harm to self or others needs the protection and security afforded by a treatment in a locked setting to ensure that the resident will not harm self, harm others, and be less likely to be harmed by others. It is reasonable to require a resident in a locked setting to have an individual treatment plan which identifies the need for providing the resident with treatment in a locked setting to meet the requirements of Minnesota Statutes, sections 245.4871, subdivision 21 and 245.4876, subdivision 3. The CWLA recommends that secure settings be used only for those children who would otherwise endanger themselves or others, or runaway or escape, and that the degree of restrictiveness be limited to that which is required for security. (CWLA, 1991, pages 21-23)**

**Subpart 2. Prohibited placements. This subpart prohibits a program from admitting a resident to a locked setting unless the resident meets the requirements of subpart 2, and also prohibits transferring a resident to a locked setting part of a program as a punishment for violating the program's rules. The requirements of subpart 2 are necessary and reasonable, because they are similar to the requirements of part 9545.1035, subpart 3. This subpart is needed to meet the requirements of Minnesota Statutes, sections 245.4882, subdivision 1, and 245A.095, subdivisions 1a and 2, clause (2), regarding placing residents in the least restrictive most**

appropriate treatment settings that meet the resident's treatment needs. Treatment in a locked setting is intended to be a "specialized treatment service" for children under Minnesota Statutes, section 245.4882, subdivision 5, for children with emotional disturbance who exhibit violent or destructive behavior toward themselves or others. Treatment provided under part 2960.0700, must be provided only to those residents whose diagnostic assessments under Minnesota Statutes, section 245.4871, subdivision 11, indicate it is needed.

**Subpart 3. Staff ratio.** This subpart establishes the minimum ratio of staff to residents for programs offering treatment in a locked setting. The requirements of subpart 3 are necessary and reasonable, because they are similar to the requirements of part 9545.1035, subpart 4. This part is needed and reasonable because it meets the requirements of Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), clause (1), which requires the commissioner to establish basic standards, including standards for adequate staff. The ratio of staff to residents in a program offering treatment in a locked setting is higher than for the general licensing category governed by parts 2960.0010 to 2960.0220, because the residents cared for in a locked setting are in need of the most intensive treatment available in programs governed by this rule. Because the residents present a risk of harm to themselves and others, they require greater vigilance by staff and the ability of staff to respond in sufficient numbers in the event of a crisis. The staff ratio required in this rule part reflects an average staff to resident ratio used in current practice by programs offering this kind of treatment.

**Subpart 4. Additional staff training.** This subpart requires staff who provide treatment services in a locked setting to have additional training beyond the training required of staff who provide treatment services in a setting which is not locked. The requirements of subpart 4 are necessary and reasonable, because they are similar to the requirements of part 9545.1035, subpart 5. This subpart is needed and reasonable because it meets the requirements of Minnesota Statutes, section 245A.095, subdivision 2, clause (5), which requires the commissioner to review rules governing mental health programs and recommend staff training requirements as needed. This subpart also meets the requirements of Minnesota Statutes, sections 245A.09, subdivision 2, paragraph (c), which requires the commissioner to develop rules which include standards, such as standards for adequate staff and training. It is reasonable to require additional training for staff who provide treatment services in a locked setting because staff need to have more skills and knowledge to deal with the residents who are more likely to pose a risk of harm to themselves, other residents, and to staff. The specific requirement for eight hours is the compromise consensus of the work group and PAC. It is reasonable to give the program managers discretion in choosing which subjects will benefit staff who must deal with residents who present a risk of harm to self or others, because the program managers know which training will be most appropriate for an individual staff person working with residents with severe emotional disturbance.

**Subpart 5. Compliance with codes.** This subpart requires the program to comply with any

additional health, fire, or building code requirements. The requirements of subpart 5 are necessary and reasonable, because they are similar to the requirements of part 9545.1035, subpart 6. This subpart is necessary to advise interested persons that there may be additional code and rule requirements which must be met to operate a residential mental health treatment program which offers treatment in a locked setting.

Subpart 6. Limitations on the use of rooms for seclusion. This subpart requires the certificate holder to follow the requirements of part 2960.0680 which refers to standards in part 2960.0710, if a resident is locked in a room in the part of the program facility offering treatment in a locked setting. The requirements of subpart 6 are necessary and reasonable, because they are similar to the requirements of part 9545.1035, subpart 7. It is necessary to meet the requirements of part 2960.0710, when using isolation with a resident, because part 2960.0710, sets the standard for the appropriate safe use of restrictive procedures including isolation of a resident. It is reasonable to require that the certificate holder not assume that providing treatment in a locked setting would give the certificate holder blanket authority to lock up residents, nor does providing treatment in a locked setting relieve the certificate holder from following the requirements of rule parts established to ensure that a resident in seclusion receives appropriate treatment and that the resident is free from abuse.

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\* Available through the Inter-Library Loan system.

## **CERTIFICATION STANDARDS FOR PROGRAMS WHICH INTEND TO USE RESTRICTIVE PROCEDURES WITH RESIDENTS**

### **2960.0710 RESTRICTIVE PROCEDURES CERTIFICATION**

**Subpart 1. Certification required.** This subpart requires a license holder to be certified under part 2960.0710 prior to using a restrictive procedure with a resident. It is necessary and reasonable to limit the use of restrictive procedures to programs that are certified under part 2960.0710, because this part contains requirements which are intended to protect the resident and others from harm and to ensure that the resident is not abused. The Department of Corrections regulates the use of restrictive procedures at juvenile facilities in current rules at parts 2930.3200 to 2930.3700 and 2935.2700.

It is necessary to have rules governing the use of restrictive techniques and procedures, because Minnesota Statutes, section 245.826 specifically requires the commissioner of human services, when amending the rules governing programs serving residents with emotional disturbance, to develop rule provisions which govern the use of restrictive techniques and procedures in programs serving residents with emotional disturbance. Accordingly, part 2960.0710 sets forth the limitations, but does not encourage or require the use of restrictive techniques in programs serving residents with emotional disturbance.

**Subpart 2. Restrictive procedures plan required.** The requirements of subpart 2 are reasonable and necessary to ensure that the license holder and staff make limited use of restrictive procedures and put a priority on non-physical means of preventing and redirecting dangerous behavior. The requirements of items A to H are reasonable because they are similar to the requirements of parts 2930.3100 to 2930.3700 and 9545.1005.

The requirements of item A are reasonable and necessary, because the commissioner needs to know which restrictive procedures the license holder proposes to use, so that the commissioner can determine if the license holder is eligible to use the proposed restrictive

procedure and to determine if the restrictive procedures plan supports the type of restrictive procedure. Requiring the license holder to list the restrictive procedures used in the program is necessary and reasonable because the commissioner needs to know which procedures the license holder will use, so that the commissioner can monitor compliance with restrictive procedure certification rule requirements and ensure that staff training is compatible with the restrictive procedure used.

The requirements of item B are necessary and reasonable because the license holder should limit the use of restrictive procedures to situations which merit the use of a restrictive procedure. The license holder must have a method to monitor and control the use of restrictive procedures to ensure that restrictive procedures are correctly carried out and to ensure that they are used in appropriate circumstances. The commissioner needs to know how the license holder will monitor and control the use of restrictive procedures, so the commissioner can determine whether the license holder is complying with the license holder's restrictive procedures plan and the rules governing part 2960.0710.

The requirements of item C are reasonable and necessary because the staff who will administer restrictive procedures need to have enough training and information about the use of restrictive procedures to use the procedures correctly and avoid situations which may harm the resident and staff or be considered abusive. Including the use of techniques to limit or avoid the use of restrictive procedures is reasonable, because restrictive techniques should only be used when necessary and because staff's use of techniques to avoid the use of restrictive techniques can serve as an example to residents who need to know how to avoid potentially harmful conflicts and deal with incidents in a positive way.

The requirements of item D are necessary and reasonable, because the license holder should review patterns of the use of restrictive procedures on a yearly basis to ensure that restrictive procedures are not over used or cause injuries to the residents. It is reasonable to require a review of the patterns of use of restrictive procedures, so that the license holder may identify areas where action is needed to modify or correct policies and procedures about the use of restrictive procedures that are ineffective or harmful to residents or staff.

The requirements of item E are necessary and reasonable because the license holder is responsible for all aspects of the care of the resident, including care for an injury, according to the resident's case plan. The license holder is most likely to notice a resident's injury which results from use of a restrictive procedure and should be reasonably expected to take action to treat the resident's injury or take the resident to a medical provider who can treat the resident's injury.

**Subpart 3. Department of Human Services licensed facilities. This subpart limits the use of restrictive procedures in DHS licensed or certified programs. This subpart is needed and**

reasonable, because there are statutory limits on the use of restrictive procedures in DHS licensed facilities, including the limits noted in Minnesota Statutes, section 144.651, subdivisions 31 and 32, 245.826, and 245A.095, subdivision 1a.

The requirements of Minnesota Statutes, section 245.826 apply to programs currently licensed as group homes and residential mental health treatment programs. Minnesota Statutes, section 245.826 requires that the department have rules which govern the use of restrictive techniques and procedures, but the rules may not require the use of restrictive procedures. This law allows DHS to specify which restrictive techniques and procedures may be used and to specify the conditions under which the techniques and procedures may be used.

The requirements of Minnesota Statutes, section 245A.095, subdivision 1a, governs DHS licensed programs and requires that rules assure that residents will receive treatment "...in the least restrictive most appropriate environment...". The department interprets this to mean that residents will be appropriately cared for with the minimum amount of restrictive procedures which are necessary to appropriately treat a resident.

Residents of a mental health treatment facility certified under parts 2960.0580 to 2960.0700, must be free from restraint and isolation, except in an emergency situation in which the resident is a danger to self or others, because these rule parts are tied to the requirements of Minnesota Statutes, sections, 144.651, subdivisions 31 and 32, regarding residents of a mental health treatment program, and 253C.01. Minnesota Statutes, section 253C.01, refers to parts 9545.0900 to 9545.1090 which were replaced in 1995 by parts 9545.0905 to 9545.1125. When enacted, parts 2960.0580 to 2960.0700, and parts of 2960.0710 will replace certain parts of 9545.0905 to 9545.1125. Part 2960.0710 will replace part 9545.0995, which contains the current rules that limit the use of restrictive techniques in residential mental health treatment programs.

Limiting the use of restrictive procedures to shelter care services programs and residential mental health treatment programs for children with severe emotional disturbance is necessary and reasonable, because those programs are currently allowed to use restrictive procedures under part 9545.0995.

Many children in shelter programs require the use of physical escort, physical holding and less commonly the use of seclusion to protect themselves and others during their stay in the program. Other programs currently licensed by DHS are not now allowed to use restrictive procedures with residents and the department is not aware of a justification for extending the use of restrictive procedures to other types of programs. Incidents of assault and related emergencies in facilities where restrictive procedures are not now authorized are currently resolved by program staff with the help of local emergency services such as law enforcement.

Limiting the types of restrictive procedures which may be used in shelter and residential

mental health treatment for children with severe emotional disturbance facilities to the procedures listed in items A to D is reasonable, because these procedures are currently permitted in DHS licensed shelter and residential mental health treatment programs for children with severe emotional disturbance programs. The restrictive procedures listed are necessary and reasonable, because they are the procedures which are lawful under statutes mentioned above. The use of the restrictive procedures are also limited by the requirements in subparts 2, 5, 6, 7, 9, 10, and 11.

Comments from public advisory committee {PAC} members during PAC meetings also indicated that prohibiting corporal punishment and requiring programs to use restrictive techniques within the limitations of program policies are appropriate certification requirements which promote good residential care practices and protect residents from harm.

**Subpart 4. Department of Corrections licensed facilities.** The requirements of subpart 4 are needed and reasonable because current DOC licensed programs already must comply with similar requirements found in parts 2935.2700 and 2930.3100 to 2930.3700.

The requirements of item E, subitem (1) are needed and reasonable because using disciplinary room time after a facility rule violation should occur only after the resident has had a due process procedure to ensure that the situation warrants a restrictive procedure such as removal of a resident from the general population. A due process procedure could present information that allows the program to avoid the use of disciplinary room time. It is necessary that a due process hearing be held as soon as practical after the incident occurred that precipitated the segregation of a resident, so that a resident is not held in segregation for a long time if segregation is not warranted and to ensure that all facts and circumstances surrounding the incident are fresh in the mind and that the issues involved can be readily addressed. Due process hearings are more commonly used in DOC licensed programs which employ consequences for the inappropriate behavior of residents.

The requirements of item E, subitems (2) and (3) are necessary and reasonable because they are similar to the requirements of parts 2930.3100, 2935.2200 and 9545.1005. It is necessary and reasonable to expect that the license holder will have facility rules and provide the rules to residents in a way that the resident can understand the rules, because it is a current care and treatment industry practice and because it is required in current rules governing programs licensed by DHS and DOC.

**Subpart 5. Physical escort requirements.** This subpart establishes the requirements for the use of physical escort in a licensed facility. The requirements of subpart 5 are necessary and reasonable to ensure that this restrictive procedure is properly used and documented, because the proper use and documentation of the procedure ensure that the resident is treated appropriately and that the commissioner can review the documentation to determine if the

requirements of this subpart have been met.

**Subpart 6. Use of physical holding or seclusion** This subpart requires the certificate holder to meet certain rule requirements when using physical holding or seclusion with a resident, because these procedures are potentially dangerous to residents and staff and sometimes fatal to residents. Staff need to be trained to use the appropriate methods for holding a resident to avoid injury and possibly death of a resident or injury to the staff person using physical holding or seclusion. Residents of Minnesota care and treatment facilities have died from positional asphyxiation while being restrained by program staff, so proper use of physical holding is an important item for staff to be trained about. Residents of Minnesota care and treatment facilities have injured themselves and committed suicide while in isolation, so proper use of isolation by staff and paying attention to residents and the physical characteristics of a room used for isolation are important rule requirements to be observed by the license holder.

The requirements of subpart 6 regarding physical holding are similar to the requirements of part 9545.0995, subpart 5. In DHS licensed programs, it is necessary to require the approval of a physician, psychiatrist, or mental health professional for the use of physical holding, except as stated in this subpart, to meet the requirements of Minnesota Statutes, section 144.651, subdivision 31. The use of physical holding and seclusion in the event of an emergency and the requirement for staff to be trained in the use of this procedure are reasonable and consistent with federal law governing the use of restrictive procedures in health facilities, and are supported by the CWLA, regarding "physical restraint". (CWLA, 1991, page 83) The standards for the use of physical holding of a child were reviewed and approved by the public advisory committee, as being reasonable and consistent with current practice in children's residential programs.

This subpart requires the certificate holder to meet certain rule requirements when using seclusion with a resident. The requirements of subpart 6 are similar to the requirements of part 9545.0995, subpart 6. In DHS licensed programs it is necessary to require the approval of a physician, psychiatrist, or mental health professional for the use of seclusion, except as stated in this subpart, to meet the requirements of Minnesota Statutes, section 144.651, subdivision 31. The requirements for the use of isolation established in this subpart are also needed and reasonable because they comply with Minnesota Statutes, section 245.826, which requires the commissioner to include rule provisions governing restrictive techniques and procedures. The use of isolation is reasonable because it helps ensure that other residents and staff have reduced risks of harm from a resident who is out of control and a threat of harm to others. The requirements of this subpart for the use of isolation are reasonable and are supported by the CWLA regarding "confinement" (CWLA, 1991, pages 83 - 84).

The requirements of item C are necessary and reasonable to ensure that staff does not apply

physical force to a resident longer than is necessary to calm the resident and prevent harm to the resident and others.

The requirements of item F are reasonable and necessary to ensure that a resident who may be acting out are handled in a manner that prevents the resident from physically harming themselves or others, and that the methods used to address the resident's acting out behavior is consistent with the resident's case plan. These rules are reasonable because staff are expected to address the resident's acting out behavior in a manner that will coincide with the resident's case plan and are implemented only when less restrictive measure have been determined to be ineffective or not feasible.

The requirements of item H are necessary and reasonable to ensure staff is properly trained to use physical holding appropriately, because training will help staff know the correct techniques to use to control the resident and avoid harm to the resident and others.

The requirements of item K are necessary and reasonable to ensure that there is sufficient documentation of the use of the restrictive technique to allow the commissioner to determine whether the license holder complied with the requirements of part 2960.0710.

**Subpart 7. Use of mechanical restraints.** The requirements of subpart 7 are reasonable and necessary, because they are similar to the requirements of parts 2930.3600, 2935.2700 and 9545.0995, which are the current rules governing the use of use of restraint in licensed programs. The requirement for the facility administrator to include written policies and procedures governing the use of restraints in the restrictive procedures plan is reasonable because it will increase the likelihood that staff will be consistent in the use of restraints. It is reasonable to require written policies on the use of restraint to ensure the proper use of restraints. It is reasonable to use restraints during transfer as a precaution against escape, because it is the minimum amount of restrictive procedure that is necessary to protect the resident and others when the resident must be moved to another location within or outside of the facility

The requirements of item A are reasonable and necessary because they limit the use of restraint devices to situations which may involve harm to the resident or others. Limiting the use of restraints on residents is necessary to avoid possible harmful and abusive use of restraints on residents. The requirements of item A are necessary and reasonable because they are similar to part 2935.2700, subpart. 5.

The requirements of item B are reasonable and necessary to ensure that the less restrictive measures have either been used and proven to be ineffective or that the less restrictive measure is not feasible to use in the situation, because staff should use methods of controlling residents which are appropriate in the situation. Using the most appropriate method of

controlling residents will do the least harm to the resident and may avoid escalation of the incident to a more severe crisis. It is also reasonable to require staff to not use restraints as a means of punishing the resident, because the use of restraints as punishment is prohibited in treatment settings and may be considered abuse in other settings. The requirements of item B are necessary and reasonable because they are similar to part 2930.3600, Subpart 1.

Items A and B are needed and reasonable to ensure that instruments of restraint are not used to punish a resident. It is reasonable and necessary to define which circumstances justify the use of physical restraints. .

The requirements of items C and F are necessary and reasonable to ensure that the use of restraints does not go beyond a preventative technique or action and become a punitive technique or action. Restraint should be used to protect the resident and others or to prevent escape or to protect property.

The requirements of item D are reasonable and necessary to ensure that staff will monitor the condition of the resident in restraints and determine if the continued use of restraints is needed. Assessing and documenting the continued use of restraints every 15 minutes is necessary to ensure that the resident in restraints is not left alone and that there is a record of staff's observation of the resident which the commissioner can use to determine that the requirements of this subpart are met by the license holder. Requiring that staff be within sight and hearing of the resident during this crisis period is important for the safety and protection of the resident, because staff will be able to observe problems that the resident is having and see and hear evidence of a change in the resident's condition. The requirements of this item are reasonable because they ensure that staff will provide close supervision and attention to residents in this crisis situation. The requirements of this item are necessary and reasonable because they are similar to parts 2930.3600, subpart 5 and 2935.2700, subpart 5.

The requirements of item H are reasonable and necessary to ensure that staff who uses physical restraints are properly trained in the use of restraints and in the license holder's policies and procedures about the use of restraints. The requirements of item H are reasonable and necessary because they minimize the risk of injury to residents or staff when a staff person attempts to restrain a resident. It is reasonable to require staff to have sufficient knowledge in the use of restraints to minimize the risk of injury to residents or themselves. Improperly applied restraints could cause injury or death to a resident. The requirements of item H are necessary and reasonable because they are similar to parts 2930.3600, subpart 6 and 2935.2700, subpart 5, item D.

The requirements of item J are reasonable and necessary because documenting the license holder's use of restraints provides a record for review by the department and could be used by the license holder to defend its action if the resident complains to the department or sues the

facility. It is reasonable to require that the staff person who used the restraint record its use immediately after the incident, because the staff person would likely remember the incident more clearly soon after the incident. The staff person's clear memory of the incident would be likely to result in the staff person writing an accurate report about the incident and the use of restraints with a resident.

**Subpart 8. Disciplinary room time use.** The requirements of this subpart are needed and reasonable because the resident's freedom within the facility should be limited only after the resident has had a due process procedure to ensure that the situation warrants a restrictive procedure such as removal of a resident from the general population. It is reasonable to expect a due process system to be applied when disciplinary room time is used because all parties involved would welcome a process whereby they would present information that would be helpful in resolving the situation that necessitated disciplinary room time use. It is reasonable to expect that the time a resident spends in disciplinary room time be as short as possible if the circumstances that precipitated the segregation are no longer evident or that the problem has been resolved. It is necessary that a due process hearing be held use of disciplinary room time, so that a resident is not held in segregation if the use of disciplinary room time is not warranted and to ensure that all facts and circumstances surrounding the incident are presented and that the issues involved can be readily addressed.

**Subpart 9. Training for staff using physical holding or seclusion.** Staff who use physical holding or seclusion need to be trained in the proper use of these restrictive techniques prior to using the technique with a resident, because staff need to know how to safely use these techniques and avoid injury to residents and themselves. Staff and residents have been hurt during the use of these techniques and residents have died during the use of these techniques in the past, so it is important that staff know how to use these techniques correctly. It is important that staff be trained when and under which circumstances to use the techniques, because using the techniques in the wrong situation would be inappropriate and could be considered abusive. Training also supports and facilitates compliance with rule requirements.

Requiring the license holder to provide training for staff who use restrictive techniques is necessary and reasonable because it is similar to training requirements in parts 2930.1800, subpart 2, 2930.3600, subpart 6, 2935.0800, and 9545.0995, subparts 5 and 6.

**Subpart 10. Administrative review.** The requirements of subpart 10 are reasonable and necessary, because a review of patterns of the use of seclusion, physical restraints and physical holding ensures that these procedures were used according to program policies and procedures. The review also ensures that the program policies are reviewed to determine if they are appropriate for use with the residents. The review also determines if there is a need to give additional instructions to staff who must implement restrictive procedures. Requiring reviews of the use of restrictive procedures is reasonable because it increases the likelihood

that staff will only use restrictive procedures in justifiable situations and that staff has been trained in the use of restrictive procedures.

The requirement that someone do the review other than the person whom decided to impose the restrictive procedure, or that person's immediate supervisor is necessary to bring objectivity to the review. It is also necessary to allow the resident or the resident's representative to have the opportunity to present to the reviewer evidence and argument to explain why the restrictive procedure was unwarranted, because the resident's point of view needs to be considered.. The administrative review requirements of subpart 10 are necessary and reasonable because they are similar to the requirements of part 9545.0995, subpart 8.

The documentation requirements of subpart 10 are necessary and reasonable because they are similar to the requirements of 9545.0995, subpart 7. The requirements of item A are reasonable and necessary, because the review of the documentation will tell the license holder whether the use of restraint was necessary and whether the restraint was correctly implemented. The requirements of item B are reasonable and necessary to ensure that the placing agency has authorized the facility to use restrictive procedures with the resident, because the placing agency may determine the limits of disciplinary procedures used by the facility. The placing agency sets the general limits and goals for the care of a resident prior to the resident's placement and the license holder must consider the limits and goals when developing the resident's treatment plan or working with the placing agency to modify a resident's case plan.

**Subpart 11. Review of patterns of the use of restrictive procedures.** This subpart requires the license holder to review patterns of the use of physical holding, restraints and room restriction on a semiannual basis. The requirements of subpart 11 are necessary and reasonable to ensure that physical holding, restraints and room restriction are not over used or cause injuries to the residents. It is reasonable to require a review of the patterns of use of physical holding, restraints, and room restrictions, so that the license holder may identify areas where action is needed to modify or correct policies and procedures about the use of physical holding, restraints or seclusion. The requirements of subpart 9 are reasonable and necessary, because they are similar to the requirements of part 9545.0995, Subpart 9.

## **REQUIREMENTS FOR FOSTER FAMILY SETTINGS, FOSTER RESIDENCE SETTINGS AND ADDITIONAL REQUIREMENTS FOR TREATMENT FOSTER CARE**

### **2960.3000 Foster Family Settings**

**Subpart 1. Purpose and applicability.** Minimum standards for licensing foster families have been established through administrative rules since 1956. The last significant revision to

these rules occurred in 1977. This revision is necessary because, for over the past 25 years, children in foster care have manifested greater and more challenging needs and services provided to foster children have changed. Child welfare service have focused more on in-home and family preservation services, thus limiting foster care to those situations where alternative services could not assure the child's safety at home.

It was determined that licensed child foster care providers would be subject to rulemaking under Minnesota Laws, 1995 Chapter 226, Article 3, section 60, which requires the Department of Human Services and the Department of Corrections to develop licensing standards for programs that provide residential care to children in out-of-home placement. Foster Family settings meet the requirements of a "residential program" as defined in Minnesota Statutes, section 245A.02, subdivision 14. Minnesota Statutes, section 245A.03, subdivision 1, requires foster family settings to be licensed. Minnesota Statutes, section 256.01, subdivision 2, (25) authorizes the development of treatment foster care standards. Treatment foster care is provided in a licensed foster care setting. Therefore, it is necessary and reasonable that requirements for this program be included in this rule.

**Subpart 2. Outcomes.** The requirements that foster parents incorporate the child into their family life and actively work with the placing agency to implement the child's case plan have been mainstays of foster care as reflected in the current administrative rules (See parts 9545.0030, 9545.0100, and 9545.0210). The strength of family foster care is the caring and involvement of committed foster parents who work as a member of a team with the placing agency, the child, and the child's parents towards a permanent placement for the child. The child could be return to the child's family, or the child could have a permanent placement with another person or family. It is necessary to require that the foster parents cooperate with placing agencies to assure that the child's placement goals are met and that the child gets the same standards of care required in other out-of-home placements. It is necessary and reasonable to implement the child's case plan and involve the child in the foster home's daily life, because the case plan sets a standard of quality care and identifies appropriate services which meet the identified individual needs of the child and are in the child's best interest.

**Subpart 3. Community interest.** It is necessary and reasonable to require that license holders have a board of directors or advisory committee, that "represents the interest, concerns and needs of the clients and community being service" according to Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1), (i). Foster families typically do not have advisory boards and are not required to have a board of directors. Therefore, it is reasonable that this requirement of the enabling law be fulfilled by allowing foster families to rely on the advise of their public/private licensing agency's board. Public agency boards are often elected or appointed by elected officials, and reflect the community through elections and appointment. Private agency boards are usually diverse and reflect the interests of the community. It is necessary and reasonable to use regulatory flexibility, yet fulfill the

requirement of community involvement for providers of out-of-home care for children in foster placements.

**Subpart 4. Statement of intended use.** The statement of intended use is needed to ensure that the family foster care license holder and the licensing agency reach a consensus regarding the use of the foster home. The statement of intended use helps placing agencies decide where best to place children. The statement of intended use is reasonable because it provides information that placing agencies need to make informed decisions about the care of the foster child by foster parents with the interests and skills listed in the statement of intended use.

The ability to modify the statement of intended use is needed and reasonable, because it allows licensing agencies and foster parents to change the focus of the foster home to meet changing needs of children in care and changing community needs and interests. The ability to change the focus of a foster home is needed, because there should be enough regulatory flexibility to allow foster homes to meet future community needs.

Foster parents began supporting the concept of a statement of intended use at the 1997 Foster Parent Association meeting, as well as at various presentations throughout the state since that date. County foster care supervisors from the metro area and throughout the state elicited support for this concept. The public advisory committee believed there should be one basic type of foster care license, but that foster parents' capabilities and the types of children they could best serve will vary. The rule advisory committee believed that it is reasonable to require foster parents to explain what types of care they intend to provide to foster children.

**Subpart 5. Program outcomes.** Laws of Minnesota, Chapter 226, Article 3, section 60, subdivision 2, will require "the use of an ongoing internal program evaluation and quality assurance effort at each facility to monitor program effectiveness and guide the improvement of services provided, evaluate client and family satisfaction with each facility services..." This requirement will be fulfilled through the annual evaluation of the foster home, which is conducted jointly by the foster parents and the agency. It is reasonable to allow foster parents to participate in the evaluation with the agency, because both the agency and the license holder are required to evaluate the license holder's program. The advisory committee felt that it was reasonable for the two parties to work together during the review, because it was efficient and both parties would benefit from the process of working together to determine the outcomes of the foster parent's care of foster children.

#### **2960.3010 Definitions.**

This part defines words or phrases that have a specific meaning in parts 2960.3000 to 2960.3340. The definitions are necessary so that interested persons can understand the meaning of the rule and interpret correctly the various standards and requirements contained

in the rule. Incorporation by reference of definitions in statutes including Minnesota Statutes, Chapters 245A, and 256E, and sections 241.021, 260B, 260C, 626.557 and Laws 1995, Chapter 226, Article 3, section 60, is reasonable because the meaning of a term should be consistent in both statutes and rules to avoid confusion. It is also reasonable because the statutory definition of a term may change over time and so the meaning of the term in rule should change to conform to the meaning of the term in statute.

**Subpart 1. Scope.** This subpart advises interested persons that the definitions apply to the terms as they are used in parts 2960.3000 to 2960.3340. It is necessary and reasonable to clarify that the definitions used apply only to these parts and not to any other rule, to promote rule compliance and to tell interested persons about the limits of applicability of the definitions.

**Subpart 2. Applicant.** This subpart incorporates the definition of “applicant” contained in Minnesota Statutes, Chapter 245A, into this rule. This subpart is necessary and reasonable in order to clarify which entities are considered to be the “applicant.” The term “applicant” is defined, because it includes a broad range of entities that could operate a program licensed under this rule. The definition is needed and reasonable because it conforms with licensing law.

**Subpart 3. Assessment.** This subpart clarifies the meaning of “assessment” as it is used in the rule. The definition is reasonable because it describes the assessment process that is now commonly used in the out-of-home care field. It is reasonable to require that the assessment note strengths, weaknesses, problems, and needs, because the care that the foster child receives will be determined by the information gathered through the assessment. The care provided to the child should meet the individual child’s identified needs.

**Subpart 4. Aversive procedures.** This subpart incorporates the definition of “aversive procedures” at part 9525.2710, subpart 4. It is reasonable and necessary to incorporate this definition because parts 9525.2700 to 9525.2810 govern the use of aversive procedures with individuals who have mental retardation or a related condition and who are served by a program licensed by the commissioner under Minnesota Statutes, Chapter 245A.

It is necessary and reasonable that the term be included in the rule because Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, paragraph (2), (viii), requires that the standards developed by this rule have the capability to respond to persons with disabilities.

**Subpart 5. Basic services.** This subpart clarifies the meaning of “basic services” as it is used in the rule. It is necessary and reasonable to define basic services because the term is used in the rule to describe services, which a license holder must provide to residents. It is reasonable to describe the list of services that a license holder must provide to residents with

a single term, because it obviates the need to repeat a list of the services in each place that the term “basic services” appears.

**Subpart 6. Caregiver.** This subpart clarifies the meaning of “caregiver” as it is used in the rule. It is necessary and reasonable to define “caregiver” because the license holder may ask people to assist with the care of the child and it is important to distinguish which people who help the child are covered by the rule requirements applicable to a “caregiver”.

**Subpart 7. Case manager.** This subpart clarifies the meaning of “case manager” as it is used in the rule. The term refers to the supervising agency and its duty to develop, implement, and monitor the child’s case plan. It is necessary and reasonable that the term “case manager” describe the case manager’s duties, because the case manager’s described duties are set the case manager apart from other persons who care for a foster child. The term “case manager” is not used as a job title in this rule.

**Subpart 8. Case plan.** This subpart clarifies the meaning of “case plan” as it is used in the rule. It is necessary and reasonable that a plan be developed and in place so that the case manager can oversee the resident’s progress during placement and the license holder may follow the plan. It is necessary and reasonable to define “case plan” to distinguish it from other plans that a resident may have. The definition of “case plan” is reasonable because it is consistent with Minnesota Statutes, section 260B .198, subdivision 5, regarding the case plan.

**Subpart 9. Chemical.** This subpart clarifies the meaning of “chemical” as it is used in the rule. It is necessary and reasonable that license holders and other interested persons be aware of the definition of the term “chemical” in the context of caring for residents who may have chemical abuse problems and need treatment for chemical abuse. It is reasonable to define the word “chemical” in this rule because “chemical” has a special meaning in the field of chemical abuse treatment which is different from the common meaning of the word as used in chemistry or in general use.

**Subpart 10. Chemical dependency.** This subpart clarifies the meaning of “chemical dependency” as it is used in the rule. It is necessary and reasonable to define the term so that license holders will understand how the term “chemical dependency is used in the rule, in order to recognize if a resident is exhibiting behavior characteristic of a person with chemical dependency. The definition is reasonable because it is similar to the definition of the term as it used in the chemical abuse treatment field.

**Subpart 11. Commissioner.** This subpart explains the meaning of the term “commissioner” as it is used in the rule, includes the commissioners of the Minnesota Department of Human Services (DHS) and the Minnesota Department of Corrections (DOC). It is necessary to

define the term in this rule because the use of the term as referring to either one or two commissioners is unusual and needs to be made clear. The definition of the term is reasonable because Chapter 2960 is jointly adopted by DHS and DOC, so the administrative responsibilities required in the rule are the duties of both commissioners.

**Subpart 12. Cultural competence or culturally competent.** This subpart clarifies the meaning of “cultural competence” or “culturally competent” as it is used in the rule. It is necessary and reasonable that the term be included in the rule, because Laws, 1995, Chapter 226, Article 3, section 60, subdivision 2 clause (2), (vii), requires that license holders provide training about cultural competence.

In addition DHS sponsored a task force to explore issues associated with cultural needs of residents and other persons served by DHS. The task force defined the term “cultural competence or culturally competent”. The rule advisory committee formed a work group to consider how to define “cultural competence” in the rule. The work group suggested minor changes to the definition developed by the task force. The work group’s recommendations about the definition of the term “cultural competence” are reflected in the definition in this subpart.

**Subpart 13. Deprivation procedures.** This subpart incorporates the definition of “deprivation procedures” at part 9525.2710, subpart 12. It is reasonable and necessary to incorporate this definition, because parts 9525.2700 to 9525.2810 govern the use of deprivation procedures with person who have mental retardation or a related condition and who are served by a license holder licensed by the commissioner under Minnesota Statutes, Chapter 245A. License holders governed by Chapter 2960 may serve persons with disabilities whose behavior might be managed by using various techniques, including deprivation procedures.

It is necessary and reasonable that the term be included in the rule because Laws, 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (2), (viii), requires that the standards developed by this rule ensure that the license holder will have the capability to respond to persons with disabilities.

**Subpart 14. Direct contact.** This subpart clarifies the meaning of “direct contact” as it is used in the rule. It is necessary and reasonable that the definition of the term “direct contact” be included in the Rule, because staff and license holders who have “direct contact” with children must meet rule requirements, such as training. It is necessary and reasonable to include this definition in the Rule as Minnesota Statutes, section 245A.04, subdivision 3, requires persons employed by the program who have direct contact with children have a background study. The definition of “direct contact” is reasonable because it is consistent with definition of the term in Minnesota Statutes, section 245A.04, subdivision 3, (c).

**Subpart 15. Disability.** This subpart clarifies the meaning of “disability” as it is used in the

rule. It is necessary and reasonable that a definition of “disability” be in the rule to be certain that the requirements of Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (2), (vii) and (viii) which requires programs to provide care and services to persons with a disability are met. It is reasonable to use the statutory definition of the term “disability” to ensure that the rules and statutes are in agreement.

**Subpart 16. Discipline.** This subpart clarifies the meaning of “discipline” as it is used in the rule. It is necessary and reasonable to define the term “discipline”, to distinguish it from other forms of behavior control, such as punishment. The definition of “discipline” is reasonable because it is similar to the way the term is defined in residential treatment field. The advisory committee discussed the definition of “discipline” and generally agreed with the definition.

**Subpart 17. Education.** This subpart clarifies the meaning of “education” as it is used in the rule. It is necessary and reasonable to include a definition of “education” in the rule so that license holders are aware of its meaning and can distinguish it from other types of training or instruction that a program will provide. The definition is reasonable because the Department of Children Families and Learning, which has legal responsibility for education of children in Minnesota, reviewed the definition and found it to be reasonable.

**Subpart 18. Emotional disturbance.** This subpart clarifies the meaning of “emotional disturbance” as it is used in the rule. It is reasonable to incorporate the definition of the term contained in Minnesota Statutes, section 245.4871, subdivision 15, into this rule. It is necessary and reasonable to use the term in a manner consistent with statute governing services to persons with emotional disturbance, because the term is used to describe a condition and specify complicated measurement criteria that are related to the admission of a child to a program, such as treatment foster care, certified under this rule. It is reasonable to tell interested persons the specific meaning intended in this rule. The requirements of this subpart are similar to the requirements of existing rule, at part 9545.0925, subpart 13.

**Subpart 19. Family.** This subpart clarifies the meaning of “family” as it is used in the rule. It is reasonable and necessary to define “family” in a manner consistent with the definition of “relative” found in Minnesota Statutes, section 260C.007, subdivision 14, because that statute is related to the care and custody of children and juveniles. The use of the statutory definition is reasonable because it was reviewed and generally agreed to by the rule advisory committee. The definition is also reasonable because it defines family broadly and recognizes the importance of significant adult relationships for children who may come from backgrounds with nontraditional family structures.

**Subpart 20. Foster care.** This subpart clarifies the meaning of “foster care” as it is used in the rule. It is reasonable and necessary to define “foster care” by incorporating by reference

the definition of the term, which is found in rules that govern the provision of foster care to children by the placing agency. The placing agency plays a key role in the foster care system and the terms used by the placing agency and the licensing agency should be consistent to promote rule compliance.

**Subpart 21. Foster child.** This subpart clarifies the meaning of “foster child” as it is used in the rule. It is reasonable and necessary to define “foster child” because it refers to a child who is placed away from the child’s parents, which is different than a child who is away from home at a boarding school or summer camp. The definition of “foster child” is reasonable because it conforms with the definition of the term as it is commonly used in the foster care field. The inclusion of persons under the age of 22 who are placed in foster care by a juvenile court is reasonable, because foster homes licensed by DOC are governed under this rule.

**Subpart 22. Foster family or household members.** This subpart clarifies the meaning of “foster family or household members” as it is used in the rule. It is necessary and reasonable to define “foster family or household member” because there are rule requirements that the “foster family or household members” must meet. The definition of “foster family or household members” is reasonable because it provides a comprehensive description of the persons that are considered part of the foster family or household.

**Subpart 23. Foster family setting.** This subpart clarifies the meaning of “foster family setting” as it is used in the rule. It is necessary to define “foster family setting” because applicants need to know what is required to be considered a “foster family setting” and to distinguish it from other settings. It is reasonable to require the license holder to live at the foster home so that the program will resemble a family home, rather than an institutional type of setting.

**Subpart 24. Foster home.** This subpart clarifies the meaning of “foster home” as it is used in the rule. It is necessary to define “foster home” so that it is clear whether a dwelling unit should be considered a foster home and meet the requirements in the rule for a foster home. The definition is reasonable because it is consistent with current practice in the foster care field.

**Subpart 25. Foster parent.** This subpart clarifies the meaning of “foster parent” as it is used in the rule. It is necessary and reasonable to define “foster parent” because people need to know who may be considered to be a foster parent. The definition is reasonable because it is consistent with current practice in the foster care field.

**Subpart 26. Foster residence setting.** This subpart clarifies the meaning of “foster residence setting” as it is used in the rule. It is necessary and reasonable to define “foster residence setting” in this rule to distinguish it from other types of foster care settings, and because

foster residence setting license holders must meet specific license requirements.

**Subpart 27. License.** This subpart clarifies the meaning of “license” as it is used in the rule. It is necessary to define the term license so that interested persons will understand the meaning of the term in this rule and be able to comply with the rule. This subpart is necessary and reasonable because it is similar to the definition of the term “license” contained in Minnesota Statutes, section 245A.02, subdivision 8. It is reasonable to use a definition of “license” which is similar to the definition of the term contained in statute, because this rule derives part of its statutory authority from Minnesota Statutes, Chapter 245A, and its purpose is, in part, to implement Minnesota Statutes, Chapter 245A, therefore the rule needs to use terms related to administrative licensing matters which have meaning consistent with Minnesota Statutes, Chapter 245A.

**Subpart 28. License holder.** This subpart clarifies the meaning of “license holder” as it is used in the rule. The definition of this term is necessary and reasonable because it is similar to the definition of the term “license holder” contained in Minnesota Statutes, section 245A.02, subdivision 9. It is necessary to define the term “license holder” so that interested persons will understand the meaning of the term in this rule and be able to comply with license requirements. It is reasonable to use a definition “license holder” which is similar to the definition contained in Minnesota Statutes, Chapter 245A, because this rule derives part of its statutory authority from Minnesota Statutes, Chapter 245A, and its purpose is to implement Minnesota Statutes, Chapter 245A, therefore, the rule needs to use terms related to administrative licensing matters which have meanings consistent with Minnesota Statutes, Chapter 245A. It is necessary and reasonable to include a reference to Minnesota Statutes, section 241.021, because some license holders will be licensed by DOC, using Chapter 2960, and to note that Commissioner of Corrections has statutory authority to license foster care homes.

**Subpart 29. Licensed professional.** This subpart clarifies the meaning of “licensed professional” as it is used in the rule. It is necessary and reasonable to define a “licensed professional” to include persons defined as professionals in Minnesota Statutes, Chapter 147 and section 148B.18, subdivision 10. Professionals licensed by Minnesota Statutes Chapter 147 and section 148B.18, subdivision 10 are recognized as professionals with the qualifications to complete a diagnostic evaluation. It is necessary to define “licensed professional” because these licensed professionals are recognized as having the qualifications to describe a condition and specify complicated measurement criteria for children admitted to and cared for in treatment foster care. The definition is also reasonable because it defines licensed professional broadly, recognizing the importance of allowing admission and treatment in a foster care setting to be guided by various qualified licensed professionals who can meet the child’s needs.

**Subpart 30. Licensing agency.** This subpart clarifies the meaning of “licensing agency” as it is used in this rule. It is reasonable and necessary to define “licensing agency” because it refers to a specific public or private agency that recommends licensure of an applicant for a foster care license according to parts 9543.0010 to 9543.0150. County social service agencies provide this service in accordance to Minnesota Statutes, section 393.07. Minnesota Statutes, section 317A.907, subdivision 3, requires a corporation formed to secure homes for orphaned, homeless, abandoned, neglected or mistreated children to be licensed as child placing agencies. Private agencies are licensed as child-placing agencies under parts 9545.0755 to 9545.0845, and can be an individual, corporation, partnership, voluntary association, or other organizations or entities.

**Subpart 31. Medication assistance.** This subpart explains what is meant by “medication assistance” in this rule. It is necessary and reasonable to define “medication assistance” so interested persons understand its meaning in the rule. This subpart is reasonable because it uses a definition that is clear and easily understood by laypersons and medical personnel, and it is consistent with the use of the term in the field. The definition of “medication assistance” in this subpart is reasonable because it is similar to the definition of “medication assistance” in part 9555.9600.

**Subpart 32. Person assisted by medical technology.** This subpart clarifies the meaning of “person assisted by medical technology.” This definition is necessary and reasonable because it is consistent with the requirements of Minnesota Statutes, section 245A.155. It is reasonable to identify children who rely on medical monitoring equipment to sustain life or monitor a medical condition as having specific needs that require on-going care and monitoring by trained individuals. It is reasonable that rules which define minimum standards for the care of a person assisted by medical technology.

**Subpart 33. Placing agency.** This subpart explains what is meant by “placing agency” in this rule. It is necessary and reasonable to define “placing agency” to tell interested persons the meaning of the term in this rule. It is reasonable to define “placing agency” consistent with other DHS rules.

**Subpart 34. Psychotropic medication.** This subpart explains what is meant by the term “psychotropic medication” in this rule. It is necessary and reasonable to define “psychotropic medication” in this rule to distinguish medications given to children to treat physical ailments from medications given to a children to treat a mental health condition, because “psychotropic medications” require specific informed consent procedures in the rule that may not apply to other types of medications. The definition of “psychotropic medication” is reasonable because it provides a sufficiently broad description of medications that would be considered “psychotropic” by mental health professionals. The requirements of this subpart are similar to the requirements of parts 9545.0925, subpart 32.

**Subpart 35. Residential program.** This subpart clarifies the meaning of “residential program” as it is used in the rule. It is necessary to define “residential program” because it is important to distinguish residential from non-residential programs. It is also necessary to define “residential program” because Chapter 2960 is intended to govern the licensure of residential programs. The definition of “residential program” is reasonable because it is similar to the definition of the term in Minnesota Statutes, section 245A.02, subdivision 14, and is similar to the use of the term in the residential care field.

**Subpart 36. Respite care.** This subpart clarifies the meaning of “respite care” as it is used in the rule. It is necessary and reasonable to define “respite care” because there are requirements which the license holder must meet when the license holder uses respite care services for a foster child. The definition of “respite care” is reasonable because it is similar to the use of the term in the foster care field.

**Subpart 37. Screening.** This subpart clarifies the meaning of “screening” as it is used in the rule. It is necessary and reasonable to define “screening” in the rule, so that the term is not used to describe another type of examination. The definition of “screening” is reasonable because it is consistent with the use of the term in the treatment field.

**Subpart 38. Seclusion.** This subpart defines what is meant by “seclusion” in this rule. It is necessary and reasonable to define the term “seclusion” because some residential programs for children include “seclusion” as a possible intervention that may be used in treatment of a child. It is necessary to define “seclusion” because the term could cause confusion with other restrictive techniques, referred to as “time-out”. The definition of “seclusion” is reasonable because it is consistent with the use of the term in the treatment field.

**Subpart 39. Shelter care or emergency shelter care.** This subpart clarifies the meaning of “shelter care or emergency shelter care services” as it is used in the rule. It is necessary and reasonable to define “shelter care or emergency shelter services” so that interested persons may know which foster care programs are governed by this rule. The definition of “shelter care services” is reasonable because it is very similar to the definition of the term in the existing rule at part 9545.0010, subpart 7.

**Subpart 40. Staff.** This subpart clarifies the meaning of the term “staff” as it is used in this rule. It is necessary and reasonable to define the term “staff” so that interested persons may know which persons must follow the requirements set out in the rule for “staff”. It is reasonable to include shift staff, hourly employees and persons employed on a salary to act as house parents because they are all regular providers of foster care services to foster children, but are not license holders.

**Subpart 41. Substitute care.** This subpart clarifies the meaning of “substitute care” as it is used in the rule. It is necessary and reasonable to define the term “substitute care” because the license holder must meet rule requirements if the license holder uses substitute care for a child. The definition is reasonable because it is similar to the definition of the term as it is used in the foster care field.

**Subpart 42. Time-out.** This subpart explains what is meant by the term “time-out” in this rule. The definition is necessary and reasonable to clarify the meaning of “time-out” in this rule and to differentiate this type of intervention from more restrictive behavioral interventions, such as seclusion. The definition is reasonable because it accurately and simply describes this behavior management and intervention method as it is appropriately applied in a family setting.

**Subpart 43. Treatment foster care.** This subpart clarifies the meaning of “treatment foster care” as it is used in this rule. It is necessary and reasonable to define treatment foster care, so that it can be recognized as a specific service. Consistent treatment foster care standards are reasonable and necessary for all stakeholders in child welfare, so that they are able to distinguish the difference between treatment foster care and foster care. This definition is reasonable because it is similar to the definition of the term “treatment foster care” by the Foster Family-based Treatment Association.

**Subpart 44. Treatment plan.** This subpart clarifies the meaning of “treatment plan” as it is used in the rule. It is necessary and reasonable to define “treatment plan” in the rule so the license holders who must follow a treatment plan for a foster child will know the meaning of the term. It is reasonable to define the term “treatment plan”, because the plan controls all the recommended treatments a child may receive. The definition is also necessary, because using the treatment plan is an essential part of providing treatment foster care. The definition of “treatment plan” is reasonable, because it is consistent with the use of the term in the treatment field.

**Subpart 45. Variance.** This subpart clarifies the meaning of “variance” as it is used in the rule. This subpart incorporates into the rule the definition of the term “variance” contained in Minnesota Statutes, section 245A.04 subdivision 9. It is necessary and reasonable to incorporate the statutory definition of the term “variance” into the rule, because the statute governs the granting of a variance and incorporating the definition by reference ensures that the definition in this rule will continue to be consistent with statute in the future.

## **2960.3020 LICENSING PROCESS**

**Subpart 1. License Required.** It is necessary and reasonable to reference Minnesota Statutes, section 245A.03, which requires an individual, corporation, partnership, voluntary

association, other organization or controlling individual providing foster care services to be licensed, unless it is excluded from licensure, because it is one of the statutes that provides legal authority for the foster family rule. It is reasonable to require foster care providers be licensed, because license standards help to ensure the health and well being of children in foster care.

**Subpart 2. Application.** It is necessary and reasonable to have a standard license application form because it makes the licensing process more efficient for the licensing agency and it is also easier for the applicant to use a standard form, rather than to request needed information without a form to guide the applicant. It is reasonable to have a standard application form because it is consistent with the current licensing practice, as required in part 9545.0020, subpart 2.

It is necessary and reasonable to license existing DOC-licensed foster homes through DOC, because DOC has statutory authority to license foster homes and is now licensing foster homes. It is necessary and reasonable to continue to license existing DOC-licensed foster homes through DOC, because these foster homes have asked to continue to be licensed by DOC. The DOC-licensed foster homes are a resource that should be retained. It is also reasonable to license these homes through DOC, because DOC has agreed to use licensing standards in parts 2960.3000 to 2960.3340, for licensing these foster homes.

**Subpart 3. License does not guarantee placement.** It is necessary and reasonable to emphasize that licensure as a foster parent does not guarantee placement of foster children in a foster home, so that the foster parent and others are aware of this limitation of licensure. It is necessary to clarify that the license does not establish a legal right to have foster children placed in the license holder's home, because foster parents sometimes claim that a license gives them a legal right to have foster children placed with them. Multiple factors, including the individual needs of the child, and internal and external resources of the foster parent must be considered when making a placement. Minnesota Statutes, section 260C.212, subdivision 2, requires that an individual determination of the child's best interest be used to determine the out-of-home placement of a child. Therefore, the agency with the responsibility for the child must fulfill its duty to meet the needs of the child as best it can, by determining whether to place a child with a particular foster family.

**Subpart 4. License is not transferable.** It is necessary and reasonable to require that the license belongs only to the foster parents listed on the license and that the license cannot be transferred for the safety and well being of the child. The license is granted after an evaluation of the safety of the foster home and of the experience, suitability and background of the individual foster parents who apply to be licensed by the agency. Therefore, it is necessary that the license not be transferable to another person or foster home, because the

other person or home may have different characteristics and may not be suitable and has not been evaluated by the commissioner. In addition it is necessary and reasonable to advise the license holder that the license may not be transferred, because the license holder does not own the license as though it were property.

**Subpart 5. Commissioner's right of access.** It is necessary and reasonable to cite the commissioner's statutory right to access in this rule so that foster parents and others are notified that the commissioner has the legal right of access to the foster home.

**Subpart 6. Limited licensure.** It is reasonable and necessary that foster parents be licensed through only one licensing agency at a time. The limit on licensure assures accountability, consistency of training and supervision, and prevents the inefficiency and confusion that would result from having two or more licensing agencies simultaneously recommending licensure of a foster home and supervising the foster parent.

**Subpart 7. Notice of change in household condition.** It is necessary and reasonable to require that the license holder advise the licensing agency of changes in household conditions, so the licensing agency can evaluate whether the home is a safe home for children or a specific child and determine that the foster home remains in compliance with licensing rules and determine whether the changes in the home affect the family's ability to meet the children's needs. Therefore, it is reasonable to require that foster parents immediately notify the licensing agency of any household changes that affect the terms of the license or the license holder's ability to provide care for the foster children. It is reasonable and necessary that the safety needs and best interest of foster children placed in the home are evaluated when a change in household conditions occurs.

**Subpart 8. Roomers and boarders.** It is necessary and reasonable to require licensing agency approval of any adult roomer or boarder and that the roomer or boarder must complete an applicant background study as required by Minnesota Statutes, section 245A.04. The safety needs and best interest of foster children placed in the foster home are served by having the persons who live with the foster child go through a background study to determine whether the roomer or boarder has a criminal history or record of maltreatment. The licensing agency and foster parent must comply with the background study requirements to protect the safety and well being of the foster child and to increase the likelihood of a successful foster placement.

**Subpart 9. Variations.** It is necessary and reasonable to cite the commissioner's statutory authority to grant rule variations so that foster parents know that they can request variations and they can refer to the statute for information about variations to the rules. It is necessary and reasonable to inform foster parents about the information that must be included in a variance request, so that foster parents know what they must do to request a variance. It is reasonable to require that the license holder give the commissioner enough information to

evaluate a request for a variance and ensure that the requirements of Minnesota Statutes, section 245A.04, subdivision 9 are met. The variance requirements of this subpart are reasonable because they reiterate the requirements of Minnesota Statutes, section 245A.04, subdivision 9.

**Subpart 10. Other licenses** It is necessary and reasonable to require foster parents who wish to hold a family child care or and adult day care license obtain a variance because of the potential safety risks that could arise when an individual holds licenses permitting the care of a variety of populations of children and adults. It is necessary to ensure that providing day care services or adult foster care will not create a hazard nor compromise the quality of service to foster children. The variance process will ensure a higher level of review of activities at the foster home than a regular license review, and thus, the review will focus on the safety of the foster child in a home that also serves as a family child care or adult day care home.

**Subpart 11. Denial of license**. It is necessary and reasonable to tell applicants and the public about the conditions for denying a license, so that they can know the standards for denial. The standards for denial of a license are also necessary and reasonable, because they are similar to the standards in parts 9543.1030, subpart 1, and meet the requirements of Minnesota Statutes, section 245A.04.

**Subpart 12. Department of Corrections licensed foster homes**. The Department of Corrections (DOC) now licenses foster homes according to Minnesota Statutes, section 241.021 subpart 2. It is reasonable that DOC continue to act as the licensing agency for their current license holders after the date of the enactment of chapter 2960, because the DOC licensed foster care license holders have an existing relationship with DOC and have requested that DOC continue to license their foster homes after Chapter 2960 is adopted. It is also necessary and reasonable to require that no other added foster homes be licensed by DOC following of the enactment of these rules, because it is more consistent and efficient to have counties and other agencies license foster homes.

It is reasonable and necessary to require that DOC-licensed foster homes meet the requirements of parts 2960.3000 to 2960.3340, because both departments will adopt these rules, and Minnesota Laws, 1995, Chapter 226, Article 3, section 60, requires that residential licensing rules have consistent standards.

## **2960.3030 CAPACITY LIMITS**

**Subpart 1. Maximum foster children allowed**. It is necessary and reasonable to specify the maximum number of foster and non-foster children allowed to reside in a foster home, because it is consistent with the current foster care licensing rule, which establishes capacity limits for

foster homes at parts 9545.0030, 9545.0040, 9545.0240 and 9545.0260.

The decision to limit the maximum number of children in a foster home to 8 with no more than 6 foster children is reasonable, because it is the result of extensive discussions with the rule advisory committee, foster care professionals and foster parents. It was the opinion of persons who work in the foster care field that the current upper limit of 10 children was improper, because children cannot get enough attention from foster parents if there are 10 children in the foster home. The consensus of the public advisory committee and representatives of the foster parents was that there needs to be a ratio of one adult for every five children to assure that the individual needs of all children in the home can be met. It is reasonable to rely on the advice of foster parents and professionals in the foster care field regarding the maximum number of foster children that can be well cared for in foster homes.

Subpart 2. Capacity limits. It is necessary and reasonable to establish criteria to be used to determine the number of children a foster parent may be licensed to care for to inform foster parents of the limit to the number of children they can care for and because foster children often have more needs than a foster parent's own children and require more of a foster parent's time and effort than the foster parent's own children. It is necessary and reasonable to use uniform criteria to determine the number of children a foster parent may be licensed to care for, because using uniform criteria to make the determination, rather than using instinct or other more subjective criteria allows an agency to make an objective decision about the capacity limit of a foster home.

The requirements in item A that a foster parent care for no more than three children who are two years of age or non-ambulatory is similar to the requirement in the current foster care rule at part 9545.0240, subpart 8, and is consistent with Minnesota's rule regarding in-home family child care at part 9502.0367. The limit of three non-ambulatory foster children per foster home recognizes that it would be difficult to evacuate non-ambulatory foster children in the event of an emergency, such as a fire, in the foster home. However, the advisory committee believed that a foster home could meet the needs of more infants and toddlers if a ratio of 1 adult to 3 children under age 2 were maintained. This recommendation provides regulatory flexibility, while assuring that the children's needs are met.

Similarly, in item B, the advisory committee recognized the need to limit the number of foster children a foster care provider could care for, if one or more of the children had severe or profound mental retardation, severe emotional disturbance, was medically fragile, or were non-ambulatory. The advisory committee believed the ongoing physical and emotional demands of caring for children with such high levels of need warranted a capacity limitation. Subsequent discussions with foster care licensing personnel and foster parents affirmed both the need and reasonableness of the limitations in this item. The limitation is also reasonable, because it is similar to Part 9545.0260, category 4, of the current foster care licensing rule

which establishes a limit of 4 foster children for a “special services” type of foster home.

The five factors, listed as subitems (1) to (5), in item C are necessary and reasonable, because they were recommended by the advisory committee and supported in separate reviews by foster care managers and foster parents. The determination of the five factors in item C is to be conducted jointly by the agency with the foster parent and should be reflected in the foster home’s statement of intended use to ensure that the placing agency and others have the information they need about the foster home.

**Subpart 3. Exceptions to capacity limits.** It is necessary and reasonable to allow certain exceptions to the capacity limits. Item A recognizes the importance of maintaining sibling relationships. Item A is reasonable because, sibling relationships provide mutual support, affirmation of one’s identity, and a vital connection with people significant in the child’s life. Child welfare professionals agree that siblings should be kept together. These requirements are reasonable, because they are similar to the “exceptions” in the current rule at part 9545.0260.

The second exception in item A recognizes the importance of continuity of foster placements when a former foster child is again in need of a foster home placement. The exception in item A is reasonable, because placement with a former foster parent minimizes the disruption to a child’s life and offers continuity of care for the child.

Items B, C, D, and E are necessary and reasonable because they consider the needs of siblings and former foster children who would qualify for a capacity limit exception according to item A, against the impact they may have on others in the foster home. Therefore, it is reasonable to require that there be no risk of harm to the other children in the foster home, that the structural characteristics of the home can accommodate additional children, a ratio of adults to children is maintained that will ensure safety and supervision, and that the home remains in compliance with applicable zoning, health, fire, and building codes.

#### **2960.3040 FOSTER FAMILY PHYSICAL ENVIRONMENT.**

**Subpart 1. Fire and building codes.** It is necessary and reasonable to require that family foster settings comply with applicable fire, health, building and zoning codes, because these codes are intended to protect the health and safety of the persons who reside in the foster home. It is reasonable and necessary to protect the health and safety of residents through this licensing rule, because foster children do not have the option to select other foster homes or other types of settings to live in. Protecting the health and safety of children in out-of-home placement has been a traditional purpose of rules governing the licensing of residential settings.

**Subpart 2. Sleeping space.** Foster family settings are typically residential homes or apartments and not institutions. In order to assure a child's safety and privacy, it is necessary and reasonable to describe what is and what is not an acceptable sleeping space. It is also necessary and reasonable to recognize the child and foster parent's cultural traditions and community standards as they apply to single or multiple-family residences. Thus, for instance it is reasonable to allow two siblings of the same sex to share a double bed.

The requirement that a sleeping room have two exits is necessary and reasonable, because the fire marshal recommends that all bedrooms have two exits which will provide a means of egress from the room in case of fire. Having children sleep in detached buildings and trailers is not reasonable because it is more difficult to provide care and supervision of the child when the child is in a different building. It is reasonable to require that spaces not intended for use as a bedroom should not be used for sleeping areas, because the purpose of foster care is to provide a normal homelike environment for children.

**Subpart 3. Space for belongings.** It is necessary and reasonable for foster children to have sufficient space for their clothing and personal possessions, so that the child will feel like part of a family and is not made to feel out of place in the foster home. It is reasonable to require that foster homes provide normal furnishings in rooms used by foster children so that foster children are accustomed to using normal furnishings and have an opportunity to learn to organize and store their belongings in a typical orderly way. It is also reasonable to require that the foster child's right to have possessions is respected.

**Subpart 4. Dining area.** One of the goals of placing a child in foster family setting is to provide the child with a healthy family life experience, which includes gathering around a table to eat meals together as a family. Consequently, it is necessary and reasonable to require that a family foster home have dining facilities with enough room and equipment, such as a table and chairs, plates, knives and forks, etc., to allow all persons who live in the foster home to eat together. While it is true that many families do not eat every meal together because family members may have different schedules, it is nonetheless reasonable to require that the foster home have enough room and equipment for the foster family to eat together when there is a chance to eat together, so that a foster child may experience this social part of family life.

**Subpart 5. Construction or remodeling.** Part of the licensing process is an inspection and approval of the foster home. The condition of the home, as it was inspected by code inspectors or the licensing agency, is considered during the determination process, which leads to the decision of whether to recommend licensure of the foster home. Therefore, it is necessary and reasonable to require the license holder to notify the licensing agency of any physical changes to the home from construction or remodeling which might affect a licensing requirement. It is reasonable and necessary to limit the requirement that a license holder report changes to

those changes which affect a licensing requirement, because minor or unimportant changes do not affect a foster home's safety and suitability and do not pertain to the licensing of the home.

#### **2960.3050 FOSTER HOME SAFETY.**

**Subpart 1. Inspection by licensing agency.** The requirement that the family foster home be inspected by a licensing agency employee is needed and reasonable because it is similar to the requirement in the current rule at part 9545.0190, subpart 3, item A. The variation among single and multiple-family dwellings make it necessary to inspect the prospective foster home to ensure the safety of children in the foster care, because a foster home could have conditions or characteristics which make it dangerous or unhealthy. It is reasonable to require use of the Commissioner of Human Services Home Safety Check List, because it assures a review of the things that are essential to maintain the foster home in a safe and healthy way. The list is now being used successfully and the list is updated regularly as needed to keep pace with changes in technology and the construction industry. It is necessary and reasonable to require that the license holder correct identified deficiencies before issuing a license to ensure that deficiencies are corrected and that foster children are placed in safe environments.

**Subpart 2. Additional inspections required.** Under certain circumstances it is necessary and reasonable to require the prospective foster home to be inspected by a fire marshal or the fire marshal's designee, because a potential safety hazard exists. While substantially the same as the requirements in the current rule at part 9545.0190, the advisory committee determined that due to changes in technology and construction since the current rule was developed, some modifications to the list of conditions were required. The list of conditions that trigger an additional inspection is needed and reasonable because it is based upon discussions with the state fire marshal, the DHS licensing division, the advisory committee, and a sampling of foster care licensing supervisors. The fire marshal, departmental licensing officials and the public advisory committee have sufficient expertise to determine which conditions should require additional inspection. Because the state fire marshal and other inspectors do not have the resources to provide direct inspection of every foster home, it is reasonable to expect the licensing agency to seek an inspection by the appropriate authority only when there is a potential hazard or a suspected violation.

**Subpart 3. Emergency procedures.** It is necessary and reasonable to require that the foster parents develop emergency procedures for the safety of the children and others in the foster home. It is necessary and reasonable to require that emergency plans be reviewed during re-licensure, because the review assures that the plans will be changed if necessary to conform to changes in the household or the home. The requirements in this subpart are similar to the requirements in part 9545.0190, subpart 5, item L.

**Subpart 4. Pets.** Pets provide children opportunities to assume responsibility, enjoy emotional comfort, and to play and exercise with pets. However, some pets, such as chickens, ducks, and reptiles, are carriers of salmonella bacteria. Young children exposed to salmonella bacteria can develop serious infectious illnesses. Therefore, it is necessary and reasonable to follow the advice of the Minnesota Department of Health and the Center of Disease Control who recommend that these animals not be kept as pets if the family is caring for children ages five and under. It is also necessary and reasonable to expect foster parents with foster children of any age to incorporate good hygiene habits and to require immunization of pets, because although children over the age of five are at less risk of harm from disease the pets may transmit, a safety risk does also exist for older children which can be reduced by good hygiene habits.

#### **2960.3060 LICENSE HOLDER QUALIFICATION**

**Subpart 1. Experience.** Foster children need stable, understanding foster families. Foster children come from diverse family experiences and may have experienced neglect or abuse. While many children are placed with non-related foster parents, an increasing number are placed with foster parents who are related to the child or who are significant persons in the child's life. The increased number of relative foster parents reflect a growing recognition by the state and counties that extended family members often care deeply about one another and want to help their relatives' children during difficult times. However, due to the needs of children in foster care and the need to work cooperatively with the placing agency, it is reasonable to expect that all prospective foster parents, even those related to the child, either have experience working with children similar to the foster children they will care for or that they are committed to getting training and education about child care and development. It is necessary and reasonable to require that foster parents be qualified to care for foster children. The requirements are necessary and reasonable because they contain the minimum requirements for foster parents to be qualified to care for foster children. The advisory committee believed the identified requirements are necessary and reasonable, because they assure that foster parents will be qualified to address the issues associated with caring for a foster child. In addition the requirements provide sufficient flexibility as to how the license holder will become qualified.

**Subpart 2. Background study.** A background study for prospective foster parents and any adult living with them is necessary and reasonable because it is required by Minnesota Statutes, section 245A.04. It is necessary and reasonable to reference the statutory requirement in the rule so that prospective foster parents understand that the state law requires an investigation into their background. It is necessary and reasonable that each department follow the applicable statute when conducting the background study so that the background study is appropriately done.

**Subpart 3. Personal characteristics of applicants.** The multiple roles and responsibilities required of foster parents make it necessary to identify specific characteristics which foster parents must have, because not every person is well suited to assume the role of a foster parent.

**Item A.** Item A is needed and reasonable because it is consistent with the current rule which requires foster parents to be age 21 at part 9545.0050. The advisory committee examined whether 21 is the appropriate minimum age for a foster parent and recommended retaining the requirement of age 21, rather than lowering the age limit, as the minimum age for foster parents, because a 21 year old prospective foster parent will have more experience managing adult responsibilities and would be in a better position to understand the magnitude of the responsibilities they are taking on as foster parents. The rule is also needed and reasonable because the advisory committee, which has expertise in caring for children in out-of-home placement agreed that retaining the 21 year old minimum age made sense.

**Item B.** The current rule requires foster parents to provide a statement from a medical doctor as documentation that they are physically able to care for children. Feedback from child foster care managers recommended this requirement be reduced to a signed statement from the applicant that they are receiving all necessary medical care, are physically able to care for foster children, and that indicates any limitations on the applicant's ability to provide foster care. This feedback identified the statement by a physician as a licensing barrier which keeps some prospective foster parents from applying to be licensed. It is reasonable and necessary for the licensing agency to ensure that the applicant is physically able to care for children. The advisory committee agreed that a written statement from an applicant was a reasonable means to document compliance.

**Item C.** The abuse of alcohol and use of illegal drugs has become a major social issue since the current rule was first promulgated. Many foster children come from homes with chemical dependency problems. It is critical for these children's well being that they be placed in foster homes where chemical dependency is not a problem. Therefore, it is necessary and reasonable, at minimum, to expect that all persons over the age of 13 in the foster parents household sign a statement that they are free of chemical use problems for the last two years.

In addition, the advisory committee recommended that persons with chemical dependency problems in their past be permitted to be foster parents, but that there should be a waiting period. Chemical dependency experts believe that it takes about two years following treatment for chemical dependency to incorporate the necessary emotional, behavior, and social changes into daily living. Therefore, the advisory committee recommended that foster care applicants treated for chemical dependency be chemical-free for 24 months following

treatment. The two year period is needed and reasonable because it agrees with standards in the chemical dependency treatment field and because it was found to be suitable for incorporation into this rule by the advisory committee.

**Item D.** The requirement that the applicant help the agency get 3 letters of reference is needed and reasonable because it is essentially unchanged from the current rule at part 9545.0220, subpart 1, item F. The rule prescribes the information that must be included in letters of reference. The personal references are necessary and reasonable to give the licensing agency specific information from community members to assist the licensing agency in their assessment of a given applicant.

**Item E.** The requirement to obtain previous foster care studies on the applicant is reasonable so that the licensing agency does not waste limited resources by duplicating previously completed studies. It is also necessary and reasonable to not require that the applicant to duplicate the information provided to the previous licensing agency.

**Item F.** It is reasonable and necessary for foster parents to demonstrate that they can properly care for children with special needs. This requirement is needed and reasonable because it is consistent with the current family foster care rule at part 9545.0090, item A, subitem (3).

**Item G.** Item B reduced the previous rule's requirement of a physician's statement from every applicant and household member to a statement from the applicant and household members that they are physically able to care for children and indicate any limitations. However, the licensing agency may have questions about an applicant's suitability as a foster parent. It is reasonable and necessary for the licensing agency to evaluate the applicant's ability to provide a safe environment and to request a professional evaluation if the licensing agency has a reason to be concerned that the applicant may not be physically or emotionally able to provide a safe home that reflects the required standards of this rule. This item is necessary and reasonable, because it is consistent with the current family foster care rule, part 9545.0120.

**Subpart 4. Home study of applicant.** It is necessary and reasonable to expect that prospective foster parents participate in conducting a home study, because it is an integral part of the agency's effort to gather information so the agency can determine whether or not to license the applicant. Among the most important factors of a successful foster parent is the foster parent's ability to address the foster parent's own life issues in a manner that is respectful of others. Successfully navigating the developmental and relational issues of the foster parent's own life provides some assurance that the foster parent will be able to appropriately respond to the issues of others. To that extent a home study is an opportunity to examine the foster parent's own development and life experiences and to assess the impact

on the foster parent's ability to respond to foster children, the foster children's parents, social service agencies, and others involved in implementing a case plan. The involvement of prospective foster parents, all children living with them and the placing agency is necessary to assure appropriate decision making on the part of prospective foster parents and the licensing agency.

The advisory committee, foster care managers, and foster parents have contributed to identifying the factors to be addressed which are relevant to the task of foster parenting. The identified factors are needed and reasonable because they have been drawn from the current rule at part 9545.0090, item B. These factors are also found in foster care literature and foster care training programs.

The proposed rule requires a commissioner's designated home study format to be used by all licensing agencies. This is reasonable and necessary to establish a degree of standardization in all home study processes, done by various Minnesota licensing agencies and county social service agencies throughout the state. It is reasonable to have a standardized home study format which will help ensure that all applicants will be treated fairly.

This rule departs from the previous rule in its expectations that prospective foster parents demonstrate their ability to address a variety of issues during the licensing process. It is necessary and reasonable to require foster parents to demonstrate their capability to perform multiple tasks and responsibilities in items A to J, because the advisory committee felt it was more equitable to allow prospective foster parents to demonstrate their understanding and capability than to have a licensing agency deduce the foster parent's understanding of the job foster parents must do and the foster parent's ability to their job through the interviews and references. The advisory committee's opinion was rooted in the belief that understanding foster care concepts and determining the foster parent's ability to meet the licensing agency's expectations for foster parents can be affirmatively demonstrated by foster parents during the application process.

## **2960.3070 FOSTER PARENT TRAINING**

**Subpart 1. Orientation.** It is reasonable and necessary that foster parents be expected to complete an orientation program before having children placed with them, because foster parents have specific responsibilities to the placing agency, the child, the child's family, and the supervising agency.

The advisory committee did not recommend a change from the requirement in the current rule at part 9545.0150, item A, of six hours of orientation for prospective foster parents. The advisory committee, in recognition of the increased emphasis on placing children with relatives, and the emergency nature of a placement with relatives, recommended that

relatives be required to complete the orientation within 30 days following the initial placement of the child, rather than before the child was placed with relatives.

The advisory committee also believed that foster parent orientations throughout the state should be standardized to the extent that the orientation would address similar issues. Therefore, it is necessary and reasonable that the revised rule more explicitly defines the topics to be addressed during foster parent orientation. It is necessary and reasonable to require that the orientation session includes training on cultural competency, because Minnesota Statutes, section 260C.212, requires that foster parents attend training on understanding and validating the cultural background of all children in the foster home. Children of minority racial and ethnic backgrounds are disproportionately represented in the foster care system. If foster parents are to adequately address the needs of foster children and participate in implementation of case plans, they must be able to understand and work within the context of different cultures.

**Subpart 2. In-service training.** It is reasonable and necessary to expect foster parents to take ongoing training, because being a foster parent is a serious responsibility and is often challenging, and foster parents need training to help them accomplish the duties of a foster parent. Foster parents often must deal with foster children's challenging behaviors. Foster parents need to improve their behavior management skills, learn about the foster care system and related social service system, and understand foster care legal requirements. It is necessary and reasonable to require foster parents to increase their knowledge about foster care and improve their parenting skills.

The requirement of annual training is needed and reasonable because the requirement is also in the current rule at part 9545.0150. The current rule permits foster parents living in the same home to combine their hours of training to comply with the 12-hour annual training requirement. The advisory committee strongly recommended that foster parents not be allowed to combine their hours of training. The advisory committee recommended that each foster parent in a household should be required to obtain 12 hours of annual training. The challenge of providing foster care makes it necessary for all foster parents to constantly develop their understanding and skills in areas that are related to providing foster care. It is reasonable to follow the advice of the advisory committee because the committee members have expertise and experience caring for children in out of home placement.

**Subpart 3. Medical equipment training.** It is reasonable and necessary to require foster parents to have additional training to care for children who rely on medical equipment to sustain life or monitor a medical condition, because this training is required in Minnesota Statutes, section 245A.155. Foster children who have medical conditions which require medical equipment to sustain the child's life or monitor the medical condition rely on foster parents to care for them generally and to provide the assistance necessary to operate any

special medical equipment which the child needs. It is necessary and reasonable to expect that a foster parent who agrees to care for a child with a special medical need be able to provide the care necessary to meet the child's special medical need. It is necessary and reasonable to require that foster parents have sufficient training to correctly operate a foster child's medical equipment, because failure to correctly operate medical equipment which sustains the child or monitors a foster child's medical condition could result in serious illness or the worsening of the condition or death.

## **2960.3080 PLACEMENT, CONTINUED STAY AND DISCHARGE**

**Subpart 1. Placement criteria.** It is necessary and reasonable for foster settings to develop a statement of intended use to identify and define capacity, type of placement and supervision in the foster home, because the placing agency needs to know whether a foster home would be willing to accept a child and if the foster home would be a good fit for the foster child. Foster parents receive foster children into their own home and are expected to incorporate the child into most aspects of family life, therefore, it is reasonable to place a child who would more easily fit in to the foster home's family life. Foster parents are best able to make a judgment about whether a prospective foster child would fit into their home. Foster parents are currently allowed to accept or decline a placement of a prospective foster child, and it is reasonable for this practice to continue.

**Subpart 2. Screening.** This section recognizes the responsibility of foster parents to collaborate with the child-placing agency to assure proper screening of the children, but does not give the foster parents the responsibility to perform the screening. This limited screening responsibility requirement is necessary and reasonable because it allows foster parents to appropriately participate in a screening process, but does not expect foster parents to have the skills or resources to screen a child as might be the expectation for an institutional setting which typically screens children.

**Subpart 3. Child's property.** It is necessary and reasonable to allow children to bring personal possessions with them as agreed upon by the child, foster parents and agency, because bringing personal possessions into the foster home gives the child a degree of comfort and connection with the child's home environment and past. However, it is reasonable to limit the accumulation of a child's possessions because foster homes typically have limited storage capacity. Requiring that the foster parents inventory the child's possessions on entrance to the foster home and departure from the foster home is reasonable, because it ensures accountability for the child's possessions.

**Subpart 4. Information about foster children.** It is necessary and reasonable to require that the placing agency obtain the information required in this subpart and give it to the foster parent, because the placing agency has this duty according to Minnesota Statutes, section

**260C.212. It is necessary and reasonable to require the placing agency to provide to the foster parents relevant information about a foster child so the foster parents can meet the child's needs and fully participate in the case plan. The child's needs are best met through sharing information about the child between the placing agency and the foster parent.**

**Subpart 5. Cooperation required. The requirement for cooperation between the placing agency and the foster parent is necessary and reasonable, because it is in the current rule at part 9545.0100. It is necessary and reasonable to expect foster parents to share information about the foster child which they acquire while caring for the foster child with the placing agency, because the placing agency is legally responsible to meet the needs of the child and needs to know about the foster child, so it can meet the child's needs. The placing agency has the legal responsibility for the child and must cooperate with persons who are caring for the foster child and ensure implementation of the case plan.**

**Subpart 6. Foster child services. This subpart is necessary and reasonable because it is similar to the expectations listed in an age-of -child format in the current rule, at part 9545.0210.**

**Item A. This requires the foster parent to work with the placing agency to develop a plan to meet the child's immediate needs. This requirement is necessary and reasonable because it recognizes the placing agency's responsibility to ensure that a child's immediate needs are identified and shared with the foster parent. It also recognizes that some of the child's needs surface over time and that the foster parent, as the caretaker of the child, has a responsibility to identify the child's needs and work with the agency. Requiring cooperation between the license holder is needed and reasonable because it is required in the current rule at part 9545.0100.**

**Item B. It is reasonable to expect a foster parent to encourage age-appropriate exercise and recreation because a child's well-being requires such activity. While incorporated into the current foster care rule, at part 9545.0210, it is articulated in this rule in a more succinct and significantly less prescriptive manner.**

**Item C. This requirement to consult with the placing agency is similar to the requirement to share information with the placing agency in item A. The same policy justification in item A applies to item C, in addition to the general requirement for cooperation in the current rule at part 9545.0100. In addition, to recognizing that the placing agency has the legal responsibility for the child, this requirement emphasizes the need for foster parents and the placing agency to work as a team to ensure that the best interest of the child is served.**

**Item D. Telling the foster child about family routines, rules and household responsibilities is one of many ways that a foster parent helps the child become accustomed to new surroundings**

and begins to incorporate the child into family life. It is necessary to require that the foster parent tell the child about foster home rules and the foster parent's behavior expectations, and other foster home details, so that the foster child knows what is expected and can try to meet expectations.

Item E. It is reasonable to expect foster parents to know the whereabouts of the children under their care because foster parents stand in place of the child's legal parents, and generally parents are expected to know their children's whereabouts. This expectation is necessary and reasonable because it is similar to the current rule requirements, at part 9545.0190, subparts 4 and 6, item C. The safety of the foster child requires that foster parents know where the child is. The degree of supervision required will vary depending of the maturity, background, and needs of the individual child. Therefore, it is both necessary and reasonable that foster parents be guided by the case plan or court order in deciding how closely to supervise the child. It is also reasonable to expect the foster parent to notify the placing agency if the child is missing or runs away because the placing agency has the legal responsibility for the child.

Subpart 7. Foster child diet. It is necessary and reasonable as part of the foster parent's duty to provide a safe and healthy environment, to expect foster parents to provide a safe and healthy diet for the child which takes into account the child's medical needs. It is also reasonable to expect that the foster parents will provide food that is appropriately prepared, because this is a common expectation that all people have for the food they eat. This requirement is needed and reasonable because it is similar to the requirement in the current rule, at part 9545.0200.

Subpart 8. Discipline. It is necessary and reasonable to require that license holders consider the child's background and condition when deciding on disciplinary action, because certain behaviors may be symptomatic of underlying mental health issues or may be cultural or gender related behavior. Such behaviors may merit behavior management rather than discipline of the child. It is reasonable to consider the child's history and condition, because certain types of discipline may be inappropriate for a child because of the child's background or condition, such as a child who may have a history of being the victim of abuse which may cause the child to react negatively to being held or restrained.

Item A. It is necessary and reasonable to reference a list of punishments that the license holder must not subject children to, because many of the listed punishments would be considered abuse or neglect under Minnesota Statutes, section 625.556, subdivision 2 or would be forbidden under Minnesota Statutes, sections 144.651 and 245.826. This item is necessary and reasonable because it contains some of the requirements in the current rule, at part 9545.0160. This item is also necessary and reasonable because it is comparable to part 9545.0995

**Item B. Requirements that no child shall be allowed to punish another child or group of children is reasonable and necessary to protect the safety of children and to prevent the license holder from shifting the responsibility for the care of the children to another child. It is the foster parent's responsibility to act as the person in charge of the foster home and it is inappropriate to delegate an important duty, such as discipline, to a child. This item is also necessary and reasonable, because some of the prohibited practices listed are also prohibited in the current rule at part 9545.0160.**

**It is reasonable and necessary for the placing-agency to assist the license holder with the care of the child by providing direction to the foster parent regarding the child's discipline-related needs in the case plan. It is also reasonable and necessary that the child's age is considered when utilizing time-out as a discipline.**

**It is reasonable and necessary to ensure children's safety and not allow mechanical restraints or seclusion to be used in a family foster home setting, because these behavior management methods can be harmful to the child and the foster parents do not have sufficient training to use the methods without risk of harm to the child.**

**It is reasonable and necessary that foster parents who care for foster children with mental retardation or a related condition be aware of additional rules that are applicable to the care of these children.**

**Subpart 9. Visitation and communication. It is reasonable and necessary that the foster parents follow the visitation and communication plan that is part of the child's case plan. Minnesota Statutes, section 260C.201, subpart 5, requires the placing agency to develop a reasonable visitation and communication plan with the foster child's family. Minnesota Statutes, section 260C.212, subpart 1, paragraph (e), makes the visitation plan a part of the child's placement plan which is subject to court review. Visitation is considered a central element in the reunification of a child with the child's family. It is reasonable and necessary that foster parents follow the visitation plan, and work with the placing-agency and the child's family to implement the visitation plan.**

**Subpart 10. Complaints and grievances. It is necessary and reasonable to require foster parents to develop and follow grievance procedures according to Laws 1995, Chapter 226, Article 3, section 60, subdivision 2, clause (1), (ii), which states that the rule standards must require that programs have "appropriate grievance and appeal procedures for clients and families." It is reasonable and necessary that the licensing agency and the foster parent work together to develop a written complaint and grievance procedure for foster children, because the licensing agency and the foster parent both have legal responsibilities for the proper care of foster children.**

**It is reasonable to require that the written grievance procedure include a requirement that the agency or foster parents provide the necessary forms and assistance, because many residents and their parents may have limited education or may need help to complete a form for other reasons . It is also reasonable to require the foster parent to notify the placing and licensing agency about a written complaint and the resolution of the complaint, so that the agency is aware of alleged problems and can help resolve complaints, and if necessary act to protect the child.**

**Subpart 11. Discharge. It is necessary and reasonable to require license holders to comply with the provision of Laws 1995, Chapter 226, Article 3, section 60, subdivision 2 (2) (iii), which requires that youths are discharged based on successful completion of individual goals and not automatically discharged for behavior transgressions.**

**It is also necessary to recognize that foster children usually leave their foster home due to the completion of the case plan and the children are returned to their family.**

**It is believed that children benefit from stable relationships and that it is harmful to move children from foster home to foster home. Minnesota Statutes, section 260C.212, subdivision 3 requires that the placing agency not change the child's placement unless the agency specifically documents that the current placement is unsuitable or another placement is in the best interests of the child.**

**In the instance of an unplanned discharge, it is necessary to recognize the children's need for stability, placing agencies responsibility to limit multiple placements for children, and the foster families need for support. It is necessary and reasonable to require that the foster family confer with the licensing agency, placing agency and other relevant individuals before the child is discharged from the home, because one of the interested parties may be able to suggest an approach which will avoid an unplanned discharge and keep the foster child in the foster home. It is necessary for this review process to be timely, because the child and foster parents need to resolve questions about the child's placement and return to stability. A timely review process will let the placing-agency, licensing-agency and the foster family determine if additional strategies could support this placement and determine and document the needs of the child and determine the placement that is in the best interest of the child.**

**It is necessary and reasonable to ensure the safety of the child and others, and if required, to temporarily remove the child from the foster home during the review period if the foster child is in danger or is a danger to self or others.**

## **2960.3090 RESPITE AND SUBSTITUTE CARE**

**Subpart 1. Notice requirement.** The requirement for approval of plans for supervision of children when the foster parent is away from home is needed and reasonable because it is similar to the requirement in the current rule at part 9545.0130.

It is necessary and reasonable to require the license holder and placing agency to agree to arrangements for respite care and substitute care of foster children, because the foster parent will probably need to be temporarily away from the foster child for some reason at some time during a foster child's stay in a foster home. It is also necessary to require the foster parent to involve the placing agency in the arrangements for respite and substitute care because the placing agency is legally responsible for the child, and has the right to know who is caring for the child. The ten days advance notice is reasonable because in non-emergency situations, a foster parent would have sufficient time to arrange for substitute and respite care and receive the placing agency's approval. The ten-day period allows enough time for the foster parent and the placing agency to come to an agreement.

**Subpart 2. Qualifications of long-term substitute caregiver.** It is reasonable and necessary to require that the substitute caregiver be qualified. The placing agency has an obligation to the child and child's parents and the community to ensure that any person providing substitute care does not pose a threat to the child and is able to meet the child's needs. It is reasonable and necessary to require that long-term substitute caregivers meet minimum requirements and ensure that the child is in good hands. Part 9545.0130 is currently used as a basis for review of the substitute caregiver.

**Subpart 3. Short-term substitute caregiver.** Short-term caregivers are often referred to as "babysitters" who are expected to provide child care for a very limited period of time. Because a short-term substitute caregiver or babysitter will usually care for a child for only a few hours, it is unnecessary to require a high level of experience and qualification similar to those required of long-term caregivers. But the foster child's safety must be protected, so it is reasonable and necessary to require that the placing agency approve of the potential short-term substitute caregiver or babysitter and determine if the person is appropriate for a specific foster child. It is also reasonable to require that any person that cares for a child who relies on medical equipment to sustain life or monitor a medical condition have appropriate training and enough information to care for a child who relies on the equipment.

**Subparts 4 and 5. Information to respite caregivers, and Information to substitute caregivers.** Respite caregivers and substitute caregivers assume significant responsibility for the health and well being of children while they care for the children. Therefore, it is necessary and reasonable to require that the license holder give enough information to enable the respite and substitute caregiver to properly care for the foster child and discharge their responsibility.

**Subpart 6. Overnights and short trips.** Foster children need to live a normal a life to the

extent possible and should not be denied the opportunities to visit friends overnight or go on short trips. Frequently these experiences occur with friends, sports groups or other structured activities. It is reasonable and necessary that such activities be consistent with the case plan, because the care plan directs the care of the child and contains requirements that placing agency has determined are necessary to protect the child. It is reasonable and necessary that the overnights and short trips occur with the knowledge, guidance and support of the placing agency, because the placing agency is responsible for the child. .

**Subpart 7. Foster residence settings.** It is necessary and reasonable to advise foster residence license holders and caregivers and others that the use of long-term and short-term substitute caregivers and respite caregivers is not permitted in a foster residence setting. This requirement is necessary and reasonable because foster residence setting license holders use trained staff to care for residents, many of whom are severely disabled and need special care, and it would not be prudent to allow the license holder to use volunteers who are not trained to care for disabled residents. It is reasonable to require foster residence setting license holders to employ and train staff who could function in the same manner as a substitute care giver when the staff person is absent from the foster residence setting foster home.

## **2960.3100 RECORDS**

**Subpart 1. Foster care license records.** It is necessary and reasonable to require that foster parents cooperate with the licensing agency to ensure the licensing agency has the records and information necessary to evaluate the foster home, foster parents and know about the strengths and weaknesses of the foster family. The evaluation by the agency of the foster home, foster parents and foster family is necessary to determine; whether to license the foster home, the number of foster children to place in the foster home, and to consider which children to place in the foster home. The requirements of this part are also necessary and reasonable, because the records retained by the license holder and foster parents are necessary to determine whether the license holder has complied with the foster care licensing rule.

Annual evaluations of the license holder are necessary and reasonable to ensure that the license holder continues to provide quality foster care and complies with the licensing rule. The topics reviewed in item G are needed and reasonable because they are indicators of problems at the foster home. The annual evaluation is also necessary to identify and address problem areas at the foster home, and to help develop training plans for foster parents which help foster parents increase their knowledge and skills regarding the care of children or are intended to address a problem area identified in the annual evaluation.

The requirements of this part are necessary and reasonable because they are similar to the record keeping requirements of part 9545.0220.

**Subpart 2. Foster child records. It is necessary and reasonable to require the foster family to keep records for each foster child regarding the care the child has received while in the family's foster home. The requirement to keep records about the foster child is necessary because the placing agency must know about the child's care in the foster home, because the placing agency has legal responsibility for the child. It is also necessary to keep records to allow the licensing agency to review the records to determine if the license holder is complying with the applicable licensing rules.**

## **ADDITIONAL REQUIREMENTS FOR FOSTER RESIDENCE SETTINGS**

### **INTRODUCTION**

**The additional requirements for foster residence settings were established to address the requirements of a foster home where the license holder does not live at the foster home. The foster residence setting license holder hires staff to care for the foster children at the foster home.**

**Many of the foster residence setting foster homes care for children with developmental disabilities. These homes have a maximum of four children and are usually managed by a corporation or partnership. In addition to the foster homes that care for children with developmental disabilities, other foster residence settings function like group homes which care for children with other needs.**

**Many foster residence settings care for children with developmental disabilities who would have lived or used to live in state operated regional treatment centers. To reduce the number of children and adults in regional treatment centers the Community Service Alternative waiver plan was established by the legislature and is governed by parts 9525.1800 to 9525.1930. Parts 9525.1800 to 9525.1930 established a program that uses alternative funds to support an adult or child with developmental disabilities to live in the community. The waiver plan has created foster homes for children in residential neighborhoods.**

### **2960.3200 ADDITIONAL REQUIREMENTS**

**It is necessary and reasonable to define consistent standards for foster residence settings, because they are different from foster family settings. The use of hired staff on a consistent basis and the fact that the license holder does not live at the foster home require that there be rules to ensure that the children get the care and supervision that they need and that the home has sufficient management to ensure that it is operated in a safe and effective manner. It is reasonable and necessary to have standards that address a foster setting where care for the children is directed by a business that owns the residencies and hires staff to provide for the**

daily care for the children. Issues regarding staff and communications must be addressed to ensure that children are safe and get good care.

It is necessary and reasonable to require foster residence settings to have different training requirements than foster family settings license holders, because the staff of a foster residence setting are not the same as a license holder in a foster family setting.

#### **2960.3210 STAFF TRAINING REQUIREMENTS**

**Subpart 1. Orientation.** The orientation requirements are necessary and reasonable to ensure that staff know enough about foster care and their duties to adequately care for the children in their care and observe the legal requirements about child care. The orientation requirements also set a standard which guides license holders who will provide training to foster care staff. It necessary and reasonable to require orientation training because orientation training provides important information that staff will need to work with foster children. The requirement that staff have at least six hours of orientation before working with children is reasonable because it is similar to the six hour orientation requirement for foster parents in part 2960.3070, and because it the minimum amount of time that is needed to gain some understanding of the issues related to the care of foster children. A license holder may require that staff have additional orientation training beyond the six hour requirement.

**Subpart 2. Personnel training.** The staff training requirements for foster residence settings is necessary and reasonable, because the requirements are consistent with training requirements for staff in other residential care settings in parts 2960.0100 and 2960.0150. It is necessary and reasonable to require that staff have enough training to meet the needs of the children in care, because foster children depend on staff in a foster residence setting for care. In addition this part is reasonable, because it provides flexibility to the license holder to provide staff training which considers the needs of the foster children who are going to be served by this program.

**Subpart 3. Documentation of training** It is reasonable and necessary to require a license holder to maintain a record of each employee's orientation and training hours to ensure compliance with the rule. It is also necessary and reasonable to maintain a record of staff training so that the license holder will know what kind of training each staff person received and the amount of each kind of training staff received, so that the license holder can monitor the effects of training on staff's work performance and plan future staff training.

#### **2960.3220 STAFFING PATTERNS AND PERSONNEL POLICIES**

**Subpart 1. Job description.** It is necessary and reasonable to require that the license holder provide a job description for each position; define responsibilities and duties for each position; and list qualification staff need to perform those duties, because it is similar to the

requirements in part 2960.0150, subpart 1. It is also reasonable and necessary to require that license holders have job descriptions, because it helps the license holder divide responsibilities and duties among staff in an organized fashion, and sets a standard which the license holder can apply to persons who apply for or perform the work. The license holder should have a plan, including job descriptions, for organizing the work which staff must perform to care for foster children.

**Subpart 2. Recruitment of culturally balanced staff.** It is reasonable and necessary for the license holder to be responsible to meet the needs of the children placed in the facility. Minnesota Statutes, section 260C.212, subdivision 2 includes a child's religion and culture as one of the factors to be considered in placement decisions. By law, the child's religion and culture are among the factors to be considered when determining the child's individual needs and deciding the child's placement. It is reasonable and necessary for the license holder to recruit, hire, and retain staff who can respond to the child's need to associate with and have positive role models who are of the same race or ethnic background as the child, or require that the license holder provide opportunities for the child to associate with role models with a similar cultural and racial background.

It is necessary and reasonable to require that license holders have as a goal that the license holder and their staff understand and validate a child's cultural heritage according to Minnesota Statutes, section 260C.212, subdivision 11. Requiring license holders to recruit a culturally balanced staff furthers the requirements in Minnesota Statutes, section 260C.212, to provide a foster child with foster parents and staff who can give the child a positive view of the child's cultural background.

**Subpart 3. Professional licensure.** It is reasonable and necessary for the license holder to maintain a record of the staff's qualifications for a position, which includes information about staff's professional licensure, because licensure is often required by law for persons who provide professional services such as mental health or chemical dependency counseling and medical care. Professional licensure is regarded as general proof of qualification to perform certain tasks according to the law which grants the professional license.

**Subpart 4. Staffing plan.** It is necessary and reasonable for the licensing agency to require that the license holder have a staffing plan to meet the needs of each child in care, because the foster children rely on staff to meet the foster child's needs. It is reasonable that this plan designate a staff member in charge of the facility, as well as address the program services offered to the child, the physical features of the facility and the condition of the children in care, because those elements are a logical part of the conditions to be considered when developing a plan which will ensure that the child's needs are met. It is also necessary and reasonable to require that the license holder have a staffing plan, because a staffing plan is required of other residential programs that employ staff according to part 2960.0150, subpart

3.

**Subpart 5. License holder and staff qualifications.** Children placed in foster care often have special needs including physical, mental, emotional, or behavioral needs. It is necessary reasonable to require that license holder and staff have the education and experience to competently perform the activities described in the license holder's statement of intended use and meet the needs of foster children in the foster home. It is reasonable and necessary that the license holder and staff be able to meet the foster child's needs, because foster children rely on staff and the license holder to meet their needs and the purpose of placing a child in foster care is to ensure that the child's needs are met and the child is safe.

#### **2960.3230 COMMUNICATIONS AND DOCUMENTATION.**

**Subpart 1. Communication plan.** This subpart requires the license holder to have a communications plan which will ensure that important information about a foster child is communicated to the license holder and staff. It is necessary and reasonable to require that the license holder and staff communicate important information about the child and give the child appropriate consistent care. It is important that the child's caregivers know what was done for the child in order to avoid situations where an important task is inappropriately repeated or not done at all. It would be dangerous to provide a foster child with one too many doses of a medication or one too few doses of a medication. It could also be harmful to the child to fail to let other staff know about a serious incident or emotional problem that a foster child had, because other staff may need to help the child deal with the child's problem. It is necessary that the facility have a communication plan so that staff can better provide safe, effective and consistence care for children with multiple needs.

**Subpart 2. Documentation.** It is reasonable and necessary to require the license holder to maintain documentation regarding the child's care, because the placing agency is responsible for the child and needs to know what specific things were done for a child by the license holder, so that the agency can determine if the license holder followed the child's care plan and if the care plan is effective. It is necessary and reasonable to require the license holder to keep records in accordance with Minnesota Laws about outcome measures, because the law cited provides part of the statutory authority for this rule chapter. It is necessary and reasonable to require the license holder to provide information about the results of care in residential programs, because it is required by law and it allows program effectiveness to be analyzed by the public agencies who pay for the care of most of the children in residential programs.

#### **ADDITIONAL REQUIREMENTS FOR FOSTER FAMILY SETTINGS THAT OFFER TREATMENT FOSTER CARE SERVICES.**

## INTRODUCTION

Minnesota Statutes, section 256.01, subdivision 2, (25) authorized the department of Human Services to develop treatment foster care standards. This law was adopted during the 1999 legislative session. A workgroup made up of county agency staff, private child foster care placing agency staff, foster parents, and other interested persons began meeting in January 2000. The treatment foster care workgroup had 32 members.

The treatment foster care workgroup used the 1995 Program Standards as developed by the Foster Family-based Treatment Association<sup>1</sup>. This Association is nationally recognized as a professional organization that has developed the standards for treatment foster care in a family setting, based upon their experience and expertise in this area. The workgroup recommended standards for treatment foster care in a foster family setting to DHS. These recommendations were the source of the additional requirements for treatment foster care services in parts 2969.3300 to 2960.3340. The treatment foster care standards, rule sections 2960.3300 through 2960.3340 were reviewed by the workgroup on June 20, 2001.

## RULE ANALYSIS

### 2960.3300 ADDITIONAL REQUIREMENTS

Minnesota Statutes, section 256.01, subdivision 2, (25) authorized the development of treatment foster care standards. It is necessary and reasonable to follow the requirements of statute and list the components of specialized therapeutic services which comprise treatment foster care. It is reasonable and necessary to define treatment foster care, so that it can be recognized as a specific service and to distinguish it from foster care.

Subpart 1. **Foster family setting requirements.** This subpart tells which rule parts apply to a foster family setting that wishes to provide treatment foster care services. It is reasonable and necessary to tell the license holders and others about which rule parts apply to a foster family setting that intends to provide the treatment foster care service.

### 2960.3310 ADMISSION, TREATMENT AND DISCHARGE

Subpart 1. **Generally.** This subpart describes the children who are served by a treatment

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<sup>1</sup>.Treatment Standards for Treatment Foster Care, 1995. Foster Family-based Treatment Association, 44 West 33<sup>rd</sup> Street, Suite 601, New York, NY, 10001.

foster care program. It is reasonable and necessary to describe treatment foster care in terms of the population of children who will be served, because license holders and others need to know the purpose of treatment foster care programs. The services provided by treatment foster care are needed and reasonable, because the treatment foster care workgroup identified treatment foster care as an appropriate and desirable alternative to more restrictive settings for children with severe emotional disturbance, developmental disabilities, serious medical condition, or serious behavioral problems. These serious behavioral problems may include but are not limited to sexual offenses, assaultive behaviors, or substance abuse.

**Subpart 2. Admission.** This subpart describes the admission and treatment team requirements for treatment foster care programs. The treatment foster care workgroup agreed that selection of treatment foster care should be based on the child's need for treatment, rather than be based on a particular diagnosis classification. It is reasonable and necessary that program standards include a means to determine who to admit, so that only the foster children who need this type of service will be provided this service. It is also necessary to determine admission standards for a treatment foster care program on the basis of the child's individual needs for treatment, because the purpose of the program is to meet the individual child's needs. This requirement is necessary and reasonable, because it is consistent with Minnesota Statutes, section 260C.212, subdivision 2, which requires placement decisions to be based on individual determinations considering the child's best interest.

It is reasonable and necessary and in a child's best interest that a licensed professional, who is authorized by law to direct treatment and who is familiar with the child's individual needs and the services offered at the treatment foster home, be required to recommend admission into a treatment foster care program, because these professionals are qualified to describe the child's condition, direct treatment, specify complicated measurement criteria, and determine the appropriate treatment setting for the child. It is necessary and reasonable to require that a licensed professional determine that a child needs treatment in a treatment foster setting, because the professional who makes a diagnosis and recommends treatment must be qualified to perform these activities according to laws which govern the licensed profession. It is also reasonable to define licensed professional broadly and recognize the importance of allowing admission and provision of treatment foster care to be guided by one of several qualified, licensed, professionals, depending on the child's needs, because a child may have multiple treatment needs and more than one professional could be qualified to direct treatment.

It is also reasonable and necessary that the treatment team be established to develop and execute a treatment plan for the child when the child is admitted. It is necessary for this team to begin to working together upon the child's admission to support the child, and to develop a treatment plan, because treatment foster parents are not expected to function independently

regarding treatment planning.

The treatment foster care workgroup concluded, “treatment foster parents are asked to perform tasks central to the treatment process in a manner consistent with the child’s treatment plan and the decisions of the treatment team.” It is necessary and reasonable for the treatment team to be assembled upon admission to support the child’s treatment and help direct the foster parents.

**Subpart 3. Treatment.** This subpart explains the requirements for the child’s treatment plan. Upon admission the child is placed with a treatment foster care family. It is reasonable and necessary that the treatment foster family have a treatment plan within 10 days of placement, because the child is living with the treatment foster family and the foster parents need to have direction, such as the direction in the treatment plan, about how to correctly treat the foster child.

**Item A.** It is necessary and reasonable to require that the treatment goals address the child’s needs as determined by a licensed professional directing treatment. When a foster child is admitted into a treatment foster care program the program acknowledges that this child has significant needs and is at risk of placement in a more restrictive residential setting, therefore it is necessary to require that the program provide timely appropriate services. The treatment plan is used as an instrument to identify the goals and steps to be taken by the program to address the child’s needs and avoid the risk of admission to a more restrictive setting .

It is reasonable and necessary to require that the treatment plan be consistent with the placement or case plans developed by the placing agency, because the placing agency has the legal responsibility for the child and the child is placed in the foster home to achieve the goals in the child’s case plan.

It is necessary and reasonable to require that outcomes be identified and progress towards the outcomes be measurable, because it is required by Laws , 1995, Chapter 226, Article 3, section 60, subdivision 2, paragraph (1), (iii). It is also necessary and reasonable to require identified measurable outcomes, because it is consistent with the use of treatment plans in the treatment field.

The treatment foster care workgroup agreed that “a treatment parent shall keep a systematic and descriptive record of the child’s behavior and progress in targeted areas on a weekly or daily basis with frequency based on the child’s treatment plan.” It is reasonable and necessary to require that daily observations be documented by the treatment foster parents because the workgroup also concluded that treatment foster parents contribute vital input based on their observations of the child in the treatment home, in contact with parents and family members, and in participation in school and community life. This requirement is

reasonable, because it is consistent with the Foster Family-based Treatment Association Standards.

**Item B.** It is reasonable and necessary to require that the treatment plan identify treatment strategies to be used by the foster parents, because the treatment plan will guide the activities of the treatment foster parent, and because the treatment foster care workgroup noted that the treatment foster parent assumes the primary responsibility for implementing the in-home treatment strategies specified in the treatment plan.

**Item C.** It is reasonable and necessary for the treatment plan to include specific supports and services to be used with the child because the foster parents use the information in the plan to guide their treatment activity for the child. The more informative and comprehensive the treatment plan is, the more likely it will be that the foster parents will use the plan to guide their actions and their care for the child.

**Item D.** It is reasonable that a treatment foster care social worker be responsible for the development and documentation of the treatment plan because it is consistent with industry standards. Requiring the treatment foster care social worker to develop the treatment plan is necessary and reasonable because it assigns the responsibility to a qualified person and allows the foster family to focus on providing care to the child and implementing the in-home treatment strategies and documenting observations of the child. It is reasonable and necessary that the treatment plan be evaluated routinely and that treatment teams have a role in the evaluations, because it is common social work practice for families who are currently providing treatment foster care to have a social worker visit their home and document the child's care monthly, and treatment teams routinely meet on a quarterly basis.

**Subpart 4. Discharge.** It is reasonable and necessary that the treatment foster care plan define outcomes that the child needs to meet for discharge from treatment foster care.

It is reasonable and necessary that treatment foster care standards be consistent with foster care standards, and that unplanned discharges follow the review process outlined in rule part 2960.3080, subpart 11, for the same reasons discussed in that subpart. It is also reasonable to apply consistent standards, because consistent standards make compliance easier for foster parents and make administration easier for the licensing agency. It is reasonable and necessary for the treatment foster care agency to review and evaluate the treatment foster parent's skills if the treatment foster parents request an unplanned discharge of the child, because the unplanned discharge may mean that the foster parent does not understand how to do some of the duties that are assigned to the foster parent or that the foster parent needs more training. This review and evaluation is reasonable and necessary to determine the suitability of a treatment foster parent and to avoid future unsuccessful placements. The review may result in the treatment foster parent obtaining additional qualifications and

training or professional supports that decrease the likelihood of placement disruption.

## **2960.3320 TREATMENT FOSTER CARE PROVIDER QUALIFICATIONS**

**Subpart 1. Treatment foster parent qualifications.** This subpart notes the added qualifications that a treatment foster care provider must have. Requiring that treatment foster care parents have qualifications which are in addition to qualifications of regular foster care parents is necessary and reasonable, because the additional qualifications help to define a standard for treatment foster care that differs from foster care.

The additional qualifications are necessary and reasonable for treatment foster care providers, because these providers are expected to offer additional services and to meet special needs. The qualifications are needed and reasonable because they are consistent with the recommendations of the treatment foster care work group and the 1995 Program Standards for Treatment Foster Care as developed by the Foster Family-based Treatment Association Standards.

**Subpart 2. Intended use.** This subpart requires that the statement of intended use for the treatment foster home must indicate that the foster home will be used as a treatment foster home. Foster parents began supporting the concept of a statement of intended use at the 1997 Foster Parent Association Meeting, as well as at various presentations throughout the state since that date. County foster care supervisors from the metro area and throughout the state elicited support for the statement of intended use concept. The public advisory committee believed that foster parents' capabilities and the types of children they could best serve will vary and that it is reasonable to require foster parents to explain what types of care they intend to provide to the child in their home. It is necessary and reasonable to require a foster parent to let the agency know what types of children the foster parent is able to take care of, because the placing agency needs to know which children are suitable to place in the foster home.

## **2960.3330 TREATMENT FOSTER CARE TRAINING**

**Subpart 1. Initial training required.** This subpart describes the initial training required for a treatment foster parent. The initial training requirements are necessary and reasonable, because they prepare treatment foster parents to take care of foster children with significant or multiple problems. The additional needs of a treatment foster child requires that treatment foster parents have more skills and knowledge about how to care for children with problems. The six hours of orientation required for regular foster parents is not enough time to learn and develop the additional skills necessary to care for treatment foster children. Foster children rely on foster parents from the first moment that the foster child is in the foster home, so the foster parents must be ready to take care of the foster child before the child arrives at the

foster home.

**Subpart 2. Annual training required.** This subpart describes the annual training required for treatment foster parents. These training requirements are necessary and reasonable because they allow treatment foster parents to continually improve and update the skills they need to take care of treatment foster children. The twelve hours of training required for regular foster parents is not enough time to work on skills and learn new techniques to serve treatment foster children.

The additional training requirements in subparts 1 and 2 are necessary and reasonable for treatment foster care providers, because the training requirements of this subpart are more extensive and are designed to address the unique training needs of treatment foster care providers. The training requirements are reasonable because they are consistent with the recommendations of the treatment foster care work group and the 1995 Program Standards for Treatment Foster Care as developed by the Foster Family-based Treatment Association Standards.

**Subpart 3. Exemption.** It is necessary and reasonable to exempt treatment foster parents from the training requirements of other foster care rule parts, because it is important to have a clear training requirement specifically for treatment foster parents and to remove possible conflicting training requirements in other parts of the foster care licensing rule from consideration for the foster homes that provide treatment foster care.

#### **2960.3340 TREATMENT FOSTER HOME CAPACITY**

**Subpart 1. Treatment foster home capacity.** This subpart describes the capacity limits for a treatment foster home. The treatment foster home capacity limits are reasonable and necessary, because they are consistent with the recommendations of the treatment foster care workgroup: “The number of children placed with a treatment family must take into account the challenging nature of the children served, the intensity of the services required, the skills, experience and support networks of the treatment parents and the ability of the family to meet the individual needs of each person in the home. The number of children placed in one treatment home shall not exceed two without special justification. With consideration to the children’s ages, such justification may include the need to place a sibling group, or the extraordinary abilities of a particular family in relationship to the special needs of a particular child, or a long-term placement or assurances of a child to adult ratio of two to one.”

The capacity limit of two children in each treatment foster care home is also reasonable, because it is consistent with the 1995 Program Standards for Treatment Foster Care as developed by Foster Family-based Treatment Association.

**Subpart 2. Continuing care.** This subpart grants an exception to the limits on the continued stay of a child who attains the child's treatment goals. Children in a treatment foster care home may attain their treatment goals during their stay at the home and be ready to be discharged from the home. Some of the foster children will not be returning home to their parents or other permanent living arrangement after staying in a treatment foster care home. The foster child's case plan identifies the need for a permanent living arrangement for the child. This subpart allows the foster child to stay in a treatment foster home, even though the child no longer needs treatment, if the child would benefit from continuing to stay in the foster home and the case plan allows the child to stay in the foster home. It is necessary and reasonable to allow a foster child to stay in a foster home if the child needs to stay in the home to attain the case plan goal of having a permanent home, because the stay will provide continuity of care and benefit the child, but moving the child to a different foster home might have a negative impact on the child.

**Subpart 3. Capacity limit variance.** This subpart describes requirements for a capacity limit variance in a treatment foster care home. It is reasonable and necessary that the variance requirements address the individual treatment needs of children placed together and address specific vulnerabilities of children, because children who are placed in treatment foster care have special needs and vulnerabilities. The treatment foster care workgroup recommended that if the number of children in the treatment foster home exceeds two children, then the license holder should have a special justification for caring for more children and should provide a adult to child ratio of at least one adult for every two children. It is therefore necessary and reasonable that the variance requirements address additional support services to that would be provided to support the foster home, because the added number of treatment foster children justifies the added support to the foster home.

## **REPEALER**

The repealer is a list of existing rules that must be repealed upon the effective date of Chapter 2960. It is necessary and reasonable to repeal the rules listed, because repealing the existing rules upon the effective date of Chapter 2960 lets license holders know which rules must be followed at a particular time and avoids confusion which would result if the requirements of more than one rule overlapped for a period of time.

It is also reasonable and necessary to tell people to use the effective date of the rule rather than any other date, because the rule becomes effective at a time other than the 5 working days waiting period mentioned in Minnesota Statutes, section 14.18, subdivision 1. It is necessary and reasonable to choose a later effective date, because the departments need time to train department staff, county licensors and license holders about the rule and the departments need time to develop procedures required by the rule.

**CONCLUSION**

**Based on the foregoing, the proposed rules are both needed and reasonable.**

**This Statement of Need and Reasonableness was completed December 23, 2002**

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