

March 5, 2003

RESPONSES TO WRITTEN COMMENTS ABOUT PROPOSED CHAPTER 2960

**Minnesota Departments of Human Services and Corrections
In the Matter of the 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**

General comments about the rule:

Comment: Mr. Gothriel J. LeFleur and Mr. Tom Bezek, on behalf of Hennepin County Community Corrections, and others commented that the rule will cause costs of providing care in licensed facilities to rise, but the rule does not include increased funding. Therefore, the rule should be viewed as an unfunded mandate.

Response: General comments about the rule increasing costs are difficult to respond to. Many commentators did not provide enough detail to determine if their comments had a reasonable basis in fact. In addition, it should be noted that Chapter 2960 is intended to be a licensing rule, not a funding rule. The departments intend to address funding issues through other processes, such as the legislative process and budget process. The departments support the proposed rule and wish to continue the promulgation process and have made some changes to the proposed enactment dates of rule parts as noted in the parts of this document entitled “Repealer and Effective Date”. The departments have also agreed to make other changes to the rule which are likely to reduce the cost of rule compliance or spread out the cost of rule compliance over several years.

Comment: Mr. Gothriel LeFleur and Mr. Tom Bezek, on behalf of Hennepin County Community Corrections, commented that the rule implies that there are substantive differences between correctional placements and other kinds of placements.

Response: Rule parts 2960.0010 to 2960.0220 are common licensing standards which apply to both correctional and other placements. Licensing and certification standards vary based upon the services offered by the facility, rather than by whether a child is a correctional or an other type of placement.

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that the rule is not needed.

Response: The State of Minnesota determined the need for Chapter 2960 when Laws of

Minnesota, 1995, Chapter 226, Article 3, section 60, became law. The law was in response to recommendations of a December 1994 report prepared by a panel of experts who comprised the Task Force on Juvenile Programming, Evaluation and Planning. It requires that residential licensing rules with common licensing standards be adopted. Chapter 2960 is reasonable because it fulfills the requirements of its enabling legislation and Chapter 2960 is necessary to carry out the aims of its enabling legislation. In addition, the need for the rule was corroborated by several persons who commented that the rule is needed to enhance federal funding of licensed programs and to update outmoded rules.

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that the rule is too prescriptive.

Response: The comment is nebulous and difficult to respond to on a part-by-part basis. Licensing standards often contain requirements which set standards and prescribe how a standard must be met. Chapter 2960 generally does not prescribe both the standard and the way to meet the standard unless it is intended to protect the rights, health and safety of residents and others, or to meet a specific goal identified in law or other regulation.

2960.0010 PURPOSE AND APPLICABILITY

2960.0020 DEFINITIONS

Comment: Mr. Gothriel LeFleur on behalf of Hennepin County Community Corrections, commented that the rule should include a definition of the term “correctional placement”.

Response: The term “correctional placement” is not ambiguous and the term is not used in the rule. The departments therefore determined that there is no need to define this term in part 2960.0020.

Comment: Mr. John Brandt, on behalf of Maple Tree, and others commented that the rule should define the term “medically licensed person” and that the term should include a physician, physician assistant, RN, LPN, and nurse practitioner.

Response: The department would also like to define the term “medically licensed person”. In keeping with the comments from John Brandt, that the use of this term makes more sense than naming specific categories of medical license in each rule part where medical licensure of staff and others is an issue. The departments propose to define the term “Medically licensed person” in part 2960.0020, with the appropriate subpart number as follows: “Medically licensed person” means a person who is licensed or permitted by a Minnesota health related board to practice in Minnesota, and is practicing within the scope of the person’s health related license.” The addition of this term to the rule simplifies and clarifies the rule and is

not a substantial change to the rule, because it does not create a new requirement. This term would be used to replace existing references in the rule to persons in specific categories of medically licensed practice, such as the words “nurse” and “doctor”. The departments concur with the following examples cited [with rule number citations corrected as necessary] by Mr. Brandt: part 2960.0080, subpart 11, item A, subitem (1), item D, subitems (1) and (5); part 2960.0270, subpart 4, items B and F; part 2960.0450, subpart 3, item C; part 2960.0520, subpart 2, item B; part 2960.0590, item C, subitem (2); part 2960.0620, subparts 2, 3, and 4.

Comment: Mr. John Brandt, on behalf of Maple Tree, and others commented that the rule should clarify the meaning of the term “parent” as it relates to the license holder’s duties to notify the parent of a resident who is 18 years of age or older.

Response: The department agrees that the term “parent” should be defined to help clarify the duty of a license holder to notify a parent of a resident who is 18 years of age or older. The departments propose to amend the rule by adding the term “parent” to part 2960.0020, as follows; “Parent” means the parent, with parental rights, or guardian of a resident under 18 years of age.” Defining the term “parent” in the rule is not a substantial change, because it clarifies what is meant by the term and does not create a new requirement.

Subpart 6. Basic Services.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the definition of the term “basic services” should include “education” as a basic service.

Response: The departments agree that education is an important service provided to residents. However, the local school district, rather than the license holder, usually provides education services to residents. Many residents do not get education services at the licensed facility, so it is not reasonable to require that all licensed facilities provide education at the licensed facility as a “basic service”. The departments do not intend to amend part 2960.0020, subpart 6 and support the definition of the term “basic services” as proposed.

Subpart 15. Chemical irritant.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the definition of the term “chemical irritant” includes a reference to the “Department of Health”, and asks which chemical irritants are approved by the Minnesota Department of Health.

Response: The departments agree that the Department of Health does not yet have an approved chemical irritant list. Therefore, the departments propose to remove the phrase “~~approved by the Department of Health~~” from the definition of the term “chemical irritant”. The change in the definition of the term “chemical irritant” clarifies the rule and corrects an

error and is not a substantial change, because it does not change the meaning of the term.

Subpart 22. Correctional program services

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the definition of the term “correctional program services” should be changed by eliminating the second sentence.

Response: The departments agree with Mr. Le Fleur’s comment and agree to eliminate the second sentence as follows: ~~“Correctional program services hold residents accountable for their behavior and assume that residents behave in illegal or unacceptable ways as a result of a faulty reasoning process.”~~ The change in the definition of the term “correctional program services” clarifies the meaning of the term and is not a substantial change.

Subpart 40. House parent model.

Comment: Mr. John Brandt, on behalf of Maple Tree, commented that the definition of “house parent model” should be changed to include programs with shift staff, respite staff, and professional support staff.

Response: The departments support part 2960.0020, subpart 40, as proposed for the reasons stated in the Statement of Need and Reasonableness at page 31. In addition, the definition proposed by Mr. Brandt would include staffing configurations so broadly stated as to include almost any configuration and the facility would cease to be “home-like” and be more institutional in nature.

Subpart 57. Program director

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the definition of the term “program director” should be changed to delete the reference to “rehabilitation or corrections” and substitute the word “residential”.

Response: The departments agree that the definition would be improved by substituting the word “residential” for the words “~~rehabilitation or corrections~~”. The change is not a substantial change, because it clarifies the definition of the term “program director”.

Subpart 59. Resident.

Comment: John Brandt, on behalf of Mapletree, commented that the definition of the term “resident” at part 2960.0020, subpart 59, should be changed to include 18, 19, and 20 year olds.

Response: The departments support part 2960.0020, subpart 59, as proposed for the reasons noted in the Statement of Need and Reasonableness on page 34.

Subpart 62. Residential program.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children [NACAC], commented that the part 2960.0020, subpart 62 should be amended by adding the words: **“including family reunification services”**.

Response: The departments support the definition of the term “residential program” as proposed. Many programs licensed under this rule support family reunification as a part of the service they offer, but do so at the direction of the placing agency. The placing agency determines whether residents are reunited with their families or the resident is prepared for independent living following placement.

Subpart 65. Seclusion

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the definition of the term “seclusion” should be changed.

Response: The department believes that the definition of the term “seclusion” as proposed is accurate and in keeping with the way the term is used in the residential care field. The departments do not agree to a change.

Subpart 71. Target population.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children [NACAC], commented that the definition of “target population” should be changed to emphasize the resident’s “needs” rather than “characteristics”.

Response: The departments agree that the definition should be changed. The departments propose to change part 2960.0020, subpart 71 as follows: **“‘Target population’ means youth experiencing special problems who have specific characteristics needs that require residential program services. The change to the definition of “target population” clarifies the meaning of term and is not a substantial change.**

Subpart 73. Time-out .

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the definition of the term “time-out” should be changed.

Response: The department believes that the definition of the term “time-out” as proposed is accurate and in keeping with the way the term is used in the residential care field. The departments do not propose to change this definition.

2960.0030 ADMINISTRATIVE LICENSING

Subpart 2. Application and license requirements.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children

[NACAC], commented that part 2960.0030, subpart 2, item B, subitem (3), should be changed to substitute the word “in-state” for the word “state” in reference to the local licensed entity.

Response: The departments agree to clarify the rule in this regard by substituting the word “Minnesota” for the word “state”. The proposed language would be as follows: “A program operating in Minnesota which has headquarters outside of the state must provide the name of the Minnesota license holder.” The change to this part is not a substantial change, because it clarifies, but does not change the intent of the rule.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the requirement in part 2960.0030, subpart 2, item B, subitem (6) is burdensome and asks about the applicability of the requirement.

Response: The departments do not believe that this requirement is burdensome because existing licensed programs and applicants know the characteristics of their community. It is not burdensome to ask the license holder to write the information they already know on the license application. In addition, Minnesota Laws, 1995, Chapter 226, article 3, section 60, subdivision 2, (1) (i) requires that the license holder have a board or advisory committee which represents community interests. The license holder would be required by this part of the rule’s enabling legislation to assess and determine community interests, in order to have a board or advisory committee that reflects community interests. This rule requirement merely requires that the license holder record on the license form the information that the license holder would gather about the community. This rule requirement is necessary and reasonable because it is consistent with the rule’s enabling legislation.

Subpart 6. Variance standards.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children [NACAC], commented that part 2960.0030, subpart 6, regarding variance standards be amended to include language about “equal or superior” standards and “emotional and developmental needs”.

Response: The departments do not support the changes recommended to the proposed rule by Ms Ford. The departments support part 2960.0030, subpart 6 as it was proposed for reasons stated in the Statement of Need and Reasonableness on page 38.

2960.0040 STATEMENT OF INTENDED USE

2960.0050 RESIDENT RIGHTS AND BASIC SERVICES

Subpart 1. Basic rights.

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that part 2960.0050, subpart 1, item J should be changed as follows; “right to

reasonable communication and visitation with adults outside the facility, ~~such as~~ which may include a parent, extended family members, siblings, a legal guardian, a caseworker, an attorney...”

Response: The departments agree with Mr. Benjamin’s request to clarify the rule and agrees to change the rule as requested.

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that the requirements of part 2960.0050, subpart 1, item M should not apply to detention programs because the length of a resident’s stay is usually short.

Response: The departments agree with Mr. Benjamin that the nature of detention programs includes short resident stays. The departments believe that it is the intent of subpart 2 of this part to allow detention programs or other programs to develop operational policies and procedures that are used to determine what is a reasonable amount of property. Detention programs may use the rule to determine what is a reasonable amount of property. Therefore, it is not necessary to exempt detention programs from part 2960.0050, subpart 1, item M.

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that the rule requirement in part 2960.0050, subpart 3, item B, should be changed to require that information in item A of this subpart be available to the resident’s parents, guardian, or custodian, rather than require that the information be given out whether it is wanted or not.

Response: The departments agree to modify part 2960.0050, subpart 3, item B as follows: “~~The information in item A must be provided to~~ The license holder must tell the resident’s parent, guardian, or custodian within a reasonable time after admission to the facility that the information in item A is available.” This modification ensures that the license holder must tell resident’s parents and others about the resident’s basic rights in the facility, but does not require that license holder send the rights information to parents and others, whether the parents and others want it or not. Providing information which will not be read costs the license holder money and is not beneficial to the resident and resident’s parents or guardian. The intent of this rule requirement was to require that information about the resident’s rights be available to a resident’s parents or guardian who want the information and would be likely to read the information. The proposed change to the rule is not a substantial change, because it clarifies the intent of the rule and does not change the intent of the rule.

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that the rule requirements of part 2960.0050, subpart 3, item E, be removed from the rule.

Response: The departments do not agree. While it is true that the Ombudsman's resources have been diminished, the office still exists and its help should be available to residents in a correctional placement.

2960.0060 PROGRAM OUTCOMES MEASUREMENT, EVALUATION AND COMMUNITY INVOLVEMENT

Subpart 2. Outcome measures.

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that the rule requirements of part 2960.0060, subpart 2, be changed to remove the authority of the commissioners to direct license holders to measure specific factors related to outcomes.

Response: The departments do not agree to change the rule. Minnesota Statutes, section 241.021 and Chapter 245A, and Minnesota Laws 1995, Chapter 226, article 3, section 60, subdivision 2, paragraph (1) (iii) grant the commissioners authority to promulgate rules which include requirements to collect data, which includes outcome measurement. Outcome measures are important, because they provide a method to measure whether a treatment approach produces a desirable result, such as the resident's ability to live independently after residing in a transitional services program would be a measure of the effectiveness of a transitional services program. Outcome measures can be individualized to allow a determination of whether a resident met treatment goals while in the licensed program.

Comment: Ms. Mary Regan, on behalf of the Minnesota Council of Child Caring Agencies [MCCCA], commented that parts 2960.0060, subpart 2 and 2960.0140, subpart 1, may not fit well with a demographic data system operated by the MCCCA.

Response: Chapter 2960 was not intended to help or hinder a demographic data system operated by a third party. The authority of the commissioners to require data collection remains in statute as noted above.

Comment: Ms. Jan Gibson Talbot, on behalf of the Hearthstone of Minnesota, commented that part 2960.0060, subpart 2, would be costly and involved. Ms. Gibson Talbot suggested that legislative appropriations be sought.

Response: The departments can not determine whether the costs cited by Ms. Gibson Talbot are accurate, or if an appropriation is needed to meet the requirements, because the future data requests from the legislature and the departments have not been determined at this time. It is possible that a facility's existing computer and computer programs could be used, rather than assuming that a new computer and specialized programs would have to be purchased.

Subpart 3. Program evaluation.

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that the rule requirements should be changed in part 2960.0060, subpart 3, item A, subitem (5), to exempt detention facilities from the client family satisfaction survey requirement.

Response. The departments do not agree to change the rule as requested. Minnesota Laws 1995, Chapter 226, article 3, section 60, subdivision 2, paragraph (iii), require that rule include program management standards including a client and family satisfaction survey. Resident and family satisfaction surveys are also important, because they are a way to look at whether the facility is providing quality services that meet the goal of the agency that operates the detention center. It is possible that detention programs may find that many persons who are detained are not happy to be in detention, but are not necessarily unhappy with the detention facility.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children [NACAC], commented that the rule requirements in part 2960.0060, subpart 3, item A, should be changed by including new requirements numbered subitems (8) to (12).

Response: The departments support part 2960.0060, subpart 3, item A, as proposed for reasons stated in the Statement of Need and Reasonableness on page 41. In addition, some of the proposed items may be redundant to the requirements of subparts 1 and 2 of this part and the requirements of part 2960.0140.

2960.0070 ADMISSION POLICY AND PROCESS

Subpart 2. Admission criteria.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children [NACAC], commented that part 2960.0070, subpart 2, items B and C should begin with the word “address” rather than the existing word “consider”.

Response: The departments support the wording of part 2960.00070, subpart 2, items B and C as proposed. A review of the suggested semantic change using the American Heritage Dictionary, Second College Edition, indicates that the term “consider” is most appropriate, because it requires the license holder “to think about carefully and seriously” the admission of a resident, which is the action that the departments want the license holder to take.

Subpart 3. Resident admission documentation.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, and others commented that detention facilities should be exempt from the requirement in part

2960.0070, subpart 3, item B, subitem (9), which requires the license holder to describe the resident's assets and strengths and get related information from the resident's family.

Response: The departments do not agree that detention facilities should be exempt from this requirement, because detention facilities need this information to properly care for residents. It is not sufficient to focus on the resident's problems noted in subitem (8). The departments support the rule part as proposed.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children [NACAC], commented that part 2960.0070, subpart 3, should be changed by adding a new subitem (12) regarding the placing agencies case plan and permanency planning goals.

Response: The departments do not agree to amend part 2960.0070, subpart 3, as suggested. While it is a useful suggestion to include case plan and permanency goals, many residents do not have case plans and the permanency planning goals of many residents are not finally determined at the time of placement. Therefore the department proposes to add a new subitem (12) to part 2960.0070, subpart 3, as follows: "(12) Placing agency's case plan goals for the resident, if available." The inclusion of the case plan goals for the resident is not a substantial change because the information about the child's case plan goals would normally be recorded by the license holder during admission or soon after admission and is a normal practice in the residential care field.

Subpart 5. Resident screening.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the screening requirements in this subpart are "unfunded mandates" and that no facility can comply with the requirements.

Response: The departments do not agree that no facility can comply with these requirements. Many DHS licensed programs successfully screen children at admission. The definition of the term "screening" in part 2960.0020, subpart 64, does not require the license holder to gather in-depth or definitive information about a resident. The departments believe that the information gathered about a resident by screening can be done by existing employees who are trained to gather the information. The need for a more thorough review of the resident by means of an assessment, is determined by screening. The screening is needed to protect the health and safety of residents, because it will likely detect serious conditions which require assessment or treatment.

Comment: Ms. Jan Gibson Talbot, on behalf of the Hearthstone of Minnesota, commented that part 2960.0070, subpart 5, be changed to require that the departments be required to secure needed training funds, before implementing subpart 5.

Response: The departments do not agree to amend part 2960.0070, subpart 5, to include a requirement that needed training funds be secured before the rule becomes effective. Future legislative appropriations are speculative and vague and in any case, are not a subject of this facility licensing rule.

2960.0080 FACILITY OPERATIONAL SERVICES, POLICIES, AND PRACTICES

Subpart 3. Cooperation in treatment and basic service delivery.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children [NACAC], commented that the requirements of part 2960.0080, subpart 3, item B should be changed to add the following language: “coordinate the placing agency’s case plan with the facility’s plan for services or treatment, and work with the placing agency to identify the projected length of stay and conditions under which the family will be reunited, if appropriate, or specify the alternative permanency plan, and how the facility will help to assist with that alternative plan.”

Response: The departments agree that the subpart should be strengthened to indicate the license holder’s role and that it could be done without making the subpart substantially different. The department prefers to word the change differently as follows: “coordinate the license holder’s plan for services to the resident with the placing agency’s case plan for the resident and work with the placing agency to identify the resident’s projected length of stay and conditions under which the family will be reunited, if appropriate, or specify the alternative permanency plan and what the license holder will do to help carry out the plan.” The departments’ proposed change to part 2960.0080, subpart 3, item A clarifies the license holders role by listing the activities the license holder would usually undertake and is not a substantial change.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children [NACAC], commented that part 2960.0080, subpart 3, item B should be changed to add language about the child’s future functioning in a family and referring to the case plan.

Response: The department generally agrees, with a minor alteration, to the change to part 2960.0080, subpart 3, item B, proposed by Ms. Ford. Item B would read as follows: “B. Identify and share information about the resident’s treatment and major treatment outcomes the resident will achieve while in the facility, including attaining developmentally appropriate life skills that the resident needs to have in order to be functional in a family and in the community, with persons who are directly involved in the resident’s treatment plan, in accordance with the resident’s case plan.” Adding the references to family and case plan to item B describe practices which are in keeping with normal practices in the residential care field. The amendment to part 2960.0080, subpart 3, item B, is clarification of the intent of the rule and is not a substantial change to the rule.

Subpart 5. Discipline policy and procedures required.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the requirements of part 2960.0080, subpart 5, item A, subitem (7), regarding the use of restrictive procedures when there is a staff shortage “could adversely affect the health and safety of staff and residents” and requires the facility to maintain normal program levels.

Response: The proposed rule does not require that the license holder maintain normal program levels when there is a staff shortage. The rule requires that restrictive procedures not be substituted for staff. It is reasonable to discourage facilities from using unwarranted restrictions of residents because there is a staff shortage. The departments support part 2960.0080, subpart 5, item A, subitem (7) as proposed.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the requirements of part 2960.0080, subpart 5, item D, subitem (4) be changed to allow the use of locked time-out rooms.

Response: The term “time-out” in the residential care field is usually understood to not include the use of locked rooms. The use of locked rooms would make “time-out” difficult to distinguish from “seclusion”. The departments support part 2960.0080, subpart 5, item B, subitem (4) as proposed.

Subpart 6 Daily resident activities.

Comment: Mr. John Brandt, on behalf of Maple Tree, and others have commented that the rule requirements of this part should be changed to remove the requirement that the license holder “immediately notify” the referring or placing agency if a resident runs away or is missing.

Response: The departments support the requirement as proposed in the rule for the reasons stated in the Statement of Need and Reasonableness at page 47. The license holder has custody of and responsibility for the resident and should be able to establish the resident’s whereabouts. The change to this subpart proposed by Mr. Brandt is conditional and too vague to be readily enforceable.

Subpart 7. Culturally appropriate care.

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that the rule requirements of part 2960.0080, subpart 7, items A, B and C should not apply to detention facilities.

Response: The departments do not agree to the proposed change. Approximately fifty percent of the residents in detention programs are children of color. Facility residents need appropriate programming, which includes culturally appropriate care requirements of this

subpart.

Subpart 10. Exercise and recreation.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that there is no definition of the term “individualized exercise” in the rule, and proposes that the rule be changed to allow the license holder to provide residents with “appropriate recreation”.

Response: The departments agree with Mr. LeFleur’s remark and agree to change the rule to read as follows; “The license holder must develop and implement a plan that offers ~~individualized exercise and~~ appropriate recreation for residents.”

Subpart 11. Health and hygiene services.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, and others commented that part 2960.0080, subpart 11, item A should be amended to include the word “emergency” before the words “mental health” and “dental care”.

Response: The departments are concerned because the requirements apply to all residential programs, and it is not appropriate to limit mental health and dental care to emergency services in all residential settings. Because many license holders care for residents for longer periods, including periods beyond a year, it would be dangerous to the health and safety of residents to require that license holders provide residents with access to only emergency mental health and dental services. Detention facilities have custody of residents and as such, the facility is the only source of medical care for residents. The departments propose that language be added to part 2960.0270 that further explain the responsibilities of detention facilities to care for detention facility residents. The departments support part 2960.0080, subpart 11 item A as proposed.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the requirements of part 2960.0080, subpart 11, item D, subitem (2) violate various laws and do not allow appropriate care.

Response: The departments support providing appropriate care to residents. Mr. LeFleur failed to point out which laws are violated and the departments are not aware of the specific laws that the requirements violate, but would not require that the license holder violate a law to comply with a part of Chapter 2960. The departments agree that some changes need to be made to this subitem regarding the requirement that the license holder may not administer the medication until a court order is obtained to allow the medication to be administered. Some medication must be stopped gradually to avoid harming a patient, so it could be dangerous to the resident to require that the license holder stop every kind of medication if continuance is not approved by the resident’s parents. The departments propose to modify the second

sentence in subitem (2) as follows: “If permission is denied and the parent has the legal right to deny permission then the medication ~~may not be administered~~ will be discontinued under the supervision of a physician unless ~~until~~ a court order to continue the medication is obtained.”

Comment: Ms. Jan Gibson Talbot, on behalf of the Hearthstone of Minnesota, and others commented that part 2960.0080, subpart 11, item D, subitem (5), requires staff who administer medication to have a certificate verifying completion of a medication aide training program. Ms. Gibson Talbot suggests that the state pay for or directly provide the required training.

Response: The departments do not intend to offer the requested training program at this time. The facilities costs of various kinds of staff training should be recoverable as a cost of doing business which is reflected in the price set for the services offered by the program.

Comment: Ms. Jan Gibson Talbot, on behalf of the Hearthstone of Minnesota, and others commented that part 2960.0080, subpart 11, item D, subitem (5) (last sentence) should be changed to allow less frequent review of the facility’s medication administration, than the weekly review required in the rule as proposed.

Response: The departments agree to change the last sentence in part 2960.0080, subpart 11, item D, subitem (5) as follows: “A medically licensed person must provide consultation and ongoing review of the license holders’s administration of medications ~~at least weekly~~ and timely review of medication errors.”

Subpart 13. Resident clothing, bedding, and laundry.

Comment: Mr. Dan Saad, on behalf of Safe Haven programs, commented that the rule requirement in part 2960.0080, subpart 13, item B, regarding fire retardant mattresses, is costly and should be changed to allow existing mattresses to be “grand fathered in” and replaced with fire retardant mattresses when the existing mattresses are replaced.

Response: The departments agree to add a sentence to item B as follows: “Existing non-fire retardant mattresses may continue to be used until they are replaced, provided that the existing mattresses are replaced no later than ten years after the effective date of this rule.” The rule change is reasonable, because it recognizes that many licensed programs may not be able to afford to replace all mattresses with fire retardant mattresses upon the effective date of the rule. A period of 10 years should allow license holders to incur the expense of mattress replacement gradually and avoid severe fiscal strain.

Subpart 15. Communication and visitation.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, requested that part 2960.0080, subpart 15, item B, be changed.

Response: The departments support the requirements of part 2960.0080, subpart 15, item B, for the reasons noted in the Statement of Need and Reasonableness on page 52.

Subpart 18. Resident and family grievance procedures.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the requirements in part 2960.0080, subpart 18, item A, should distinguish between resident and family grievances.

Response: The departments support the requirements of part 2960.0080, subpart 18, item A, because the rule requirements are justified for reasons noted in the Statement of Need and Reasonableness on pages 52 and 53. In addition, it should be noted that the rule does not prohibit the facility from making a distinction between the handling of resident and family grievances. The license holder's written grievance procedure could make a distinction between the handling of resident and family grievances under the rule. The rule allows flexibility in handling resident and family grievances, provided that the license holder meet the proposed requirements of this subpart.

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association and others, commented that the rule requirements of part 2960.0080, subpart 18, item A, should be changed by deleting "concerned person" from the list of those who can make a complaint, suggestion or express concern about the resident's care at the facility.

Response: The departments support the requirements of part 2960.0080, subpart 18, item A, regarding a "concerned person", because a concerned person who is aware of a bad situation at a facility should be allowed to make a complaint, suggestion, or express concern about a resident's care at the facility, for the sake of the resident.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children [NACAC], commented that part 2960.0080, should include a new subpart 19, which details the requirements for family involvement in the resident's care.

Response: The departments generally agree, with a minor alteration, to Ms. Ford's suggestion for changing part 2960.0080, by adding a new subpart 19 which would read as follows: "Subpart 19. Family involvement. The license holder must list procedures and program plans which are in accordance with a resident's case plan, that facilitate the involvement of the resident's family or other concerned adult, in the resident's treatment or program activities."

2960.0090 DISCHARGE AND AFTERCARE
2960.0100 PERSONNEL POLICIES

Subpart 2. Recruitment of culturally balanced staff.

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that the rule requirements of part 2960.0100, subpart 2 be changed to exempt detention facilities from the requirements noted, or provide “cultural or racial community resources to the resident’s cultural or racial minority background.”

Response: The departments support part 2960.0100, subpart 2, as proposed, for reasons noted in the Statement of Need and Reasonableness, on pages 54 and 55.

Subpart 3. Orientation and in-service training.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children [NACAC], commented that part 2960.0100, subpart 3, item A, should include a new subitem (7) which talks about including best practices in orientation training.

Response: The departments do not support changing part 2960.0100, subpart 3, item A, by adding a new subitem (7). The concept of using best practices in care is worthwhile, but the specifics of determining best practices are vague. The departments do not wish to require license holders to pursue orientation training in this area at this time.

Subpart 6. License holder and staff qualifications.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, and others commented that the requirements of part 2960.0100, subpart 6, item B should be changed to delete the phrase “who work with female residents”.

Response: The departments supports the rule change request and agrees to change the requirements of part 2960.0100, subpart 6, item B as follows: “~~Staff who work with female residents~~ must be trained in gender-based needs and issues.” The revision of item B removes discriminatory language which is not needed or reasonable.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children [NACAC], commented that part 2960.0100, subpart 6, item A, should be deleted and replaced by language she proposed.

Response: The departments support the part 2960.0100, subpart 6, item A as proposed. The changes suggested by Ms. Ford amount to an increase in qualification. The changes suggested by Ms Ford are increased requirements which would be a substantial change from the requirements proposed by the departments. The changes suggested by Ms Ford may represent costly new requirements which programs could not afford and which may not be needed to successfully operate a program. The departments do not support the suggested changes to the rule at this time.

2960.0110 PHYSICAL ENVIRONMENT AND EQUIPMENT

2960.0120 PHYSICAL PLANT STANDARDS

ADDITIONAL STANDARDS FOR GROUP RESIDENTIAL SETTINGS

2960.0130 PURPOSE AND APPLICABILITY

2960.0140 QUALITY ASSURANCE, IMPROVEMENT, AND PROGRAM OUTCOMES

2960.0150 PERSONNEL POLICES

Subpart 3. Staffing plan

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the requirements of part 2960.0150, subpart 3, item D, subitem (3), should be changed to remove the reference to lavatory use.

Response: The departments support the requirements of part 2960.0150, subpart 3, item D, subitem (3), because direct visual supervision of residents by persons of the opposite gender during lavatory use may needlessly invade the privacy of the resident. Supervision by staff of the same gender is not generally required during counts and security checks.

Comment: Paula Shaefer and others commented that part 2960.0150, subpart 3, item D, should be changed to include the following sentence: “When female residents are in the residential program they must be supervised during the night time sleeping hours by a female staff.” Mary Regan and others on behalf of the MCCA have also proposed amending this item on page 50, lines 1 to 6 as follows: “The written staffing plan must include a contingency plan that ensures an immediate response by on-call staff of the same gender as the resident when supervision of a resident by staff of the same gender is required under subitems (1) to (4) and when necessary to meet the needs of the resident ~~who, according to the official records or documentation, has been victimized by a person of the opposite gender and who has demonstrated anxiety to staff about supervision by staff of the opposite gender.~~”

Response: The departments considered the language mentioned by Ms. Shaefer at an earlier time during the rule development process, but decided to not include the language because the departments were concerned about whether the requirement may be discriminatory. The departments were also concerned that Ms. Shaefer’s proposal does not allow the license holder to consider the needs of an individual resident, and is not supported by the facts. Ms. Shaefer’s proposed language does not recognize the needs of male residents, many of whom have also been subject to sexual abuse. The departments proposed alternate language to meet the needs of residents who need same gender supervision at night on page 50, lines 1 to

18.

The proposed amendment also does not consider the employment rights of male staff who work in licensed programs. The departments are concerned that the language proposed by Ms. Shaefer may be subjected to a level of legal review termed “intermediate scrutiny” and requires a factual showing of the need for discrimination, and a showing of the relationship of the remedy to the need is required to use gender employment criteria. Gender has not been determined to be a bona fide occupational qualification for night time supervision of residents. In a review of incidents of sexual abuse in DHS facilities, 46% of the victims were male, 54% percent of the victims were female, and 76% of the incidents were perpetrated by male staff, and 24% of the incidents were perpetrated by female staff. The facts do not support the gender specific staffing remedy. The departments are reluctant to require license holders to use gender staffing criteria.

The departments considered amending the requirements of part 2960.0150, subpart 3, item D as proposed by Mary Regan, but think the rule would be improved by connecting the needs of the resident to the assessment of the resident’s needs in part 2960.0070, subpart 5, item B, subitem 2. Therefore, this reference will be included following the deletion of the language proposed by Ms. Regan.

The departments propose to amend part 2960.0150, subpart 3 item D as follows: “The written staffing plan must include a contingency plan that ensures an immediate response by on-call staff of the same gender as the resident when supervision of a resident by staff of the same gender is required under subitems (1) to (4) and when necessary to meet the needs of the resident ~~who, according to the official records or documentation, has been victimized by a person of the opposite gender and who has demonstrated anxiety to staff about supervision by staff of the opposite gender~~ as determined in part 2960.0070, subpart 5, item B, subitem 2.” The proposed amendment does not illegally discriminate by gender, allows the license holder to consider and respond to the needs of an individual resident, and is supported by the facts as presented in each individual resident’s case.

Comment: Ms. Mary Regan, on behalf of the Minnesota Council of Child Caring Agencies [MCCCA], commented that part 2960.0150, subpart 3, item F, subitem (2) should be changed to allow up to ten residents in a house parent model facility.

Response: The departments agree with Ms Regan’s comments and agree to change part 2960.0150, subpart 3, item F, subitem (2) as follows: “(2) the program must have fewer than eleven residents; and”. Changing the capacity limit to ten residents is in keeping with current practice and seems to be operating well at this time. This change is not a substantial change, because it clarifies the departments’ intent to not change the capacity of a house parent model group home from the capacity limit in current practice.

Comment: Ms. Mary Regan, on behalf of the Minnesota Council of Child Caring Agencies [MCCCA], commented that part 2960.0150, subpart 3, item G, creates unreasonable burdens for license holders to control the education of residents. She goes on to note that the burden is unreasonable, because license holders do not control the residents' education. The local school district controls the resident's education.

Response: The departments agree with Ms Regan's comment and agree to delete part 2960.0150, subpart 3, item G from the rule.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children [NACAC], commented that part 2960.0150, subpart 3, item J, should be changed to substitute the word "address" for the word "consider" in the second sentence of this item.

Response: The departments do not agree to change part 2960.0150, subpart 3, item J, as requested by Ms. Ford. A review of the suggested semantic change using the American Heritage Dictionary, Second College Edition, indicates that the term "consider" is most appropriate, because it requires the license holder "to think about carefully and seriously" the factors listed when developing the staffing plan, which is the action that the departments want the license holder to take.

Comment: Mr. John Brandt, on behalf of Maple Tree, and others commented that part 2960.0150, subpart 3, does not protect residents enough regarding the searching of residents. He suggests that a threshold criteria be set up to guide staff in these searches.

Response: The departments do not accept Mr. Brandt's suggested new added language. The rule does not require that facilities search residents. Some facilities, such as detention facilities, search residents for contraband at admission or at other times as needed to maintain safety and to protect residents and others. The departments support the rule as proposed with the modifications already agreed to above. Mr. Brandt's suggested changes would be a substantial change to the rule.

Subpart 4. Personnel training.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children [NACAC], commented that part 2960.0150, subpart 4, item B, should be changed by adding the following phrase to the second sentence in item B: "directly related to the needs of children in their care."

Response: The department agrees to the change to part 2960.0150, subpart 4, item B, suggested by Ms. Ford. The change suggested by Ms. Ford is not a substantial change. The change clarifies the intent of the rule regarding the type of training employees of licensed

programs should have.

2960.0160 ADMISSION POLICIES AND PROCESS

Subpart 2. Ability to meet resident needs.

Comment: Ms. Mary Ford, on behalf of the North American Council on Adoptable Children [NACAC], commented that part 2960.0160, subpart 2 should be changed substituting the word “that” for the word “whether”.

Response: The departments support the rule as proposed. The departments support the use of the word “whether”, because the departments are asking the license holder to determine which alternate possibility is correct. If the license holder can not meet the resident’s needs, then the license holder should not admit the resident.

Comment: Ms. Mary Regan, on behalf of the Minnesota Council of Child Caring Agencies [MCCCA] and others, commented that part 2960.0160, subpart 2, item D, should be changed to allow residents who are sexually abusive to share a room with another resident if an assessment of the resident’s behavior indicates that the resident is not likely to engage in sexually abusive behavior. Providing a single room to a resident who has engaged in sexual abuse should be provided if warranted, but not in cases where another response by the license holder is more appropriate.

Response: The departments agree that proposed part 2960.0160, subpart 2, item D should be changed as follows: “D. the resident is a sex offender. The license holder must assess the resident to determine which precautions may be appropriate, such as to give the resident an individual room and direct staff to pay attention to the resident’s interaction with others.”

2960.0170 CLASSIFICATION AND SEPARATION OF RESIDENTS

2960.0180 FACILITY OPERATIONAL SERVICE POLICIES AND PRACTICES

Subpart 2. Facility programs.

Comment: Ms. Mary Regan, on behalf of the Minnesota Council of Child Caring Agencies [MCCCA], commented that part 2960.0180, subpart 2, item A [She likely means item B.], subitem (3), should be deleted.

Response: The departments agree with Ms. Regan’s comments that part 2960.0180, subpart 2, item B, subitem (3) is duplicated at part 2960.0190, subpart 1, and should be deleted from the rule. The deletion of subitem (3) does not make the rule substantially different, because the requirements of subitem (3) are adequately addressed in part 2960.0190, subpart 1.

Subpart 4. Audio or visual recording of resident.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the requirements of part 2960.0180, subpart 4, regarding the resident's right to refuse all lawful audio or video recording may have negative effects on program security and the health and safety of the resident.

Response: The departments agree with Mr. LeFleur's comment and support the amending the requirements of part 2960.0180, subpart 4 as follows: "A resident must be informed when actions are being recorded and have the right to refuse any recording unless it is authorized by law or is necessary for program security or to protect the health and safety of a resident."

2960.0190 DISCHARGE AND AFTERCARE

2960.0200 PHYSICAL PLANT AND ENVIRONMENT

2960.0210 FACILITY AND EQUIPMENT

2960.0220 NEW CONSTRUCTION STANDARDS

ADDITIONAL STANDARDS FOR DETENTION SETTINGS

2960.0230 PURPOSE AND APPLICABILITY

2960.0240 PERSONNEL POLICIES

Subpart 1. Job descriptions and staff qualifications.

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that the rule requirements of part 2960.0240, subpart 1, item B, are problematic and asked that existing staff be exempt and that variances be granted in the future.

Response: The departments support the request from Mr. Benjamin regarding the need for staff to have a high school diploma and regarding staff who are younger than 21, and propose to change item B as follows: "B. Staff who supervise residents must be at least 21 years old and provide evidence of ~~at least a high school diploma or general education development degree~~ meeting the minimum literacy requirements established by the facility. Persons older than 18 years old but younger than 21 years old may be employed if they are enrolled or have completed course work in a post-secondary education program to pursue a degree in a behavioral science."

Subpart 3. Staffing plan.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the requirements of part 2960.0240, subpart 3, item D, subitem (3), should be changed to remove the reference to lavatory use.

Response: The departments support the requirements of part 2960.0240, subpart 3, item D, subitem (3), because direct visual supervision of residents by persons of the opposite gender during lavatory use may needlessly invade the privacy of the resident. Supervision by staff of the same gender is not generally required during counts and security checks. 75

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that the rule requirements of part 2960.0240, subpart 3, item D, subitem (3), should be changed by deleting subitem (3), because an employee might inadvertently see a resident of the opposite gender using the lavatory.

Response: The departments support the requirements of part 2960.0240, subpart 3, item D, subitem (3) as proposed. The inadvertent observation of a resident using the lavatory is not covered by subitem (3) because inadvertent observation is not the same as the requirement regarding “direct visual supervision”. Subitem (3) would not apply to the situation described in the comment.

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that the rule requirements of part 2960.0240, subpart 3, item F, subitem (2) should be changed as noted.

Response: The departments support the requirements of part 2960.0240, subpart 3, item F, subitem (2) as proposed for reasons set forth in the Statement of Need and Reasonableness on page 79.

2960.0250 ADMISSION AND RELEASE POLICY AND PROCESS

2960.0260 CLASSIFICATION, SEPARATION, AND SEGREGATION OF

RESIDENTS**Comment:** Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the title of this part should be changed to delete the word “segregation”.

Response: The departments agree with Mr. LeFleur’s suggestion, because this rule part does not deal with the segregation of residents. The title of this part should be as follows; “2960.0260 Classification and Separation ~~and Segregation~~ of Residents”

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

Subpart 4. Medical Services.

Comment: Mr. Gothriel LeFleur commented on part 2960.0080, subpart 11, regarding a detention program’s need to offer emergency mental health and dental care.

Response: The departments agree to add a second sentence to part 2960.0270, subpart 4, item B which would be as follows: “A resident must receive emergency mental health and dental care when needed”. The added sentence should provide guidance to detention programs who care for a resident with emergency mental health and dental needs. It is reasonable to require that the detention license holder provide these services to a resident who needs them, because the resident will probably not be able to arrange these services for the resident’s self while in detention.

Subpart 5. Visitation.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the requirements of part 2960.0270, subpart 5, item B, is an unfunded mandate and that 8 hours of visitation is more reasonable. Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that the rule requirement should be either eliminated or changed to a 4-6 hour requirement.

Response: The departments support the requirements of part 2960.0270, subpart 5, item B, for the reasons stated in the Statement of Need and Reasonableness on page 83, and because 8 hours is a sufficient amount of time to allow prospective visitors to arrange their schedules to accommodate a visit.

2960.0280 NEW CONSTRUCTION STANDARDS

2960.0290 PHYSICAL PLANT AND EQUIPMENT CODES

PROGRAM CERTIFICATION STANDARDS FOR SECURE PROGRAMS

2960.0300 PURPOSE AND APPLICABILITY

2960.0310 STATEMENT OF PROGRAM OBJECTIVES

2960.0320 PROGRAM SERVICES STANDARDS

2960.0330 ADMISSION AND CONTINUED STAY

2960.0340 SECURITY STANDARDS

Subpart 1. Supervision of non-employee service personnel.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the requirements of part 2960.0340, subpart 1, are not a good standard for use with contracted staff and volunteers who regularly visit the facility and are familiar with

the facility's policies and procedures.

Response: The departments support Mr. LeFleur's comments and agree to change the requirements of part 2960.0340, subpart 1, because general supervision of volunteers and licensed professional under contract to the facility is not necessary if the volunteers and contract employees have been trained regarding facility's policy's and procedures. The departments propose to modify the requirements of subpart 1 as follows: "A person working at the facility, who is not employed by the facility, must be under the general supervision of facility staff, unless that person has been trained in the facility's policies and procedures."

2960.0350 DISCHARGE

Subpart 1. Discharge criteria.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, commented that the requirements of part 2960.0350, subpart 1, item A, should not apply to a detention program.

Response: The departments support Mr. LeFleur's request to change the requirements of part 2960.0350, subpart 1, because detention facilities do not have treatment plans for residents. The departments propose to change the rule as follows: "The facility must have a written discharge criteria that allows discharge according to items A and B, except that detention facilities are exempt from preparing written criteria in item A and must prepare criteria for item C"

It has also come to our attention that detention facilities release residents because the time limit on the authority to hold a resident expires. Therefore the departments propose to add an item C as follows:

"C. The legal authority to hold the resident expires."

2960.0360 SECURITY POLICIES AND PROCEDURES

2960.0370 LOCKS AND KEYS

2960.0380 WEAPONS, TOOLS, EQUIPMENT, AND HAZARDOUS SUBSTANCE

2960.0390 COUNT PROCEDURE

2960.0400 HOSPITALIZATION OF RESIDENTS

2960.0410 RESTRICTIVE PROCEDURES

2960.0420 SECURE PHYSICAL PLANT STANDARDS.

CHEMICAL DEPENDENCY TREATMENT PROGRAM STANDARDS

2960.0430 PURPOSE

2960.0440 APPLICABILITY

2960.0450. CHEMICAL DEPENDENCY TREATMENT SERVICES

2960.0460 STAFF QUALIFICATIONS

2960.0470 STAFFING REQUIREMENTS

2960.0480 ADMISSION AND DISCHARGE POLICIES

2960.0490 INDIVIDUAL TREATMENT PLANS

2960.0500 TRANSITIONAL SERVICES CERTIFICATION

CERTIFICATION STANDARDS FOR SHELTER CARE SERVICES

2960.0510 PURPOSE AND APPLICABILITY

2960.0520 SERVICES

2960.0530 LIMITATIONS ON LENGTH OF STAY

CERTIFICATION STANDARDS FOR CORRECTIONAL PROGRAM SERVICES

2960.0540 PURPOSE AND APPLICABILITY

2960.0550 PROGRAM CERTIFICATION APPROVAL

2960.0560 PERSONNEL STANDARDS

2960.0570 FACILITY OPERATIONAL POLICIES AND PROCEDURES

**CERTIFICATION STANDARDS FOR PROGRAMS WHICH PROVIDE RESIDENTIAL
MENTAL TREATMENT FOR CHILDREN WITH SEVERE EMOTIONAL
DISTURBANCE**

2960.0580 PURPOSE

2960.0590 PROGRAM AND SERVICE STANDARDS

**2960.0600 DEVELOPING AND REVIEWING INDIVIDUAL TREATMENT PLAN
2960.0610 CRITERIA FOR CONTINUED STAY, DISCHARGE, AND DISCHARGE
PLANNING**

2960.0620 USE OF PSYCHOTROPIC MEDICATIONS.

**2960.0630 CLINICAL SUPERVISION BY A MENTAL HEALTH PROFESSIONAL
2960.0640 STAFF QUALIFICATIONS**

2960.0650 STAFF ORIENTATION

2960.0660 INDIVIDUAL STAFF DEVELOPMENT

2960.0670 ADMISSION

**2960.0680 STANDARDS GOVERNING THE USE OF RESTRICTIVE TECHNIQUES
AND PROCEDURES**

2960.0690 STAFFING PATTERN AND MINIMUM STAFF TO RESIDENT RATIO

2960.0700 STANDARDS GOVERNING TREATMENT IN A LOCKED

**CERTIFICATION STANDARDS FOR PROGRAMS WHICH INTEND TO USE
RESTRICTIVE PROCEDURES WITH RESIDENTS**

2960.0710 RESTRICTIVE PROCEDURES CERTIFICATION

Subpart 6. Use of physical holding or seclusion

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections, and others commented that the requirements of part 2960.0710, subpart 6, item D, should be changed to delete the requirement for constant and direct supervision of residents.

Response: The departments support the requirements of part 2960.0710, subpart 6, item D, because direct and constant supervision of residents in seclusion is necessary to protect the resident's health and safety as noted in the Statement of Need and Reasonableness on pages 154 and 155.

Comment: Mr. Gothriel LeFleur, on behalf of Hennepin County Community Corrections,

commented that the requirements of part 2960.0710, subpart 6, item L would require that Hennepin County seek a waiver for certain facilities and that the requirements are an unfunded mandate.

Response: The departments support the requirements of part 2960.0710, subpart 6, item L, as proposed. The departments will consider variance applications on a case-by-case basis. Chapter 2960 is intended to be used as a licensing rule.

Subpart 7. Use of mechanical restraints.

Comment: Mr. Todd Benjamin, on behalf of the Minnesota Juvenile Detention Association, commented that the rule requirements of part 2960.0710, subpart 7, item J, subitem (3) should not apply to detention centers.

Response: The departments support the requirements of part 2960.0710, subpart 7, item J, subitem (3) as proposed for the reasons stated in the Statement of Need and Reasonableness on pages 155, 156, and 157. It is reasonable to require that staff document why less restrictive measures failed or were not appropriate, because it documents that staff complied with the requirements of item B of this subpart.

REQUIREMENTS FOR FOSTER FAMILY SETTINGS, FOSTER RESIDENCE SETTINGS AND ADDITIONAL REQUIREMENTS FOR TREATMENT FOSTER CARE

Comment: Mr. Donald Priebe, on behalf of Homeward Bound and the Association of Residential Resources in Minnesota [ARRM], commented that foster homes licensed under Minnesota Statutes, Chapter 245B, with shift staff, should be exempted from the foster care rule requirements of Chapter 2960, except as noted in his February 13, 2003, letter to the Honorable Allan Klein.

Response: The departments support the proposed rule. Mr. Priebe's facilities are currently licensed under Minnesota Statutes, chapter 245B, and the existing foster care rules, parts 9545.0010 to 9545.0260. Counties and child placing agencies currently license foster care providers on behalf of the Department of Human Services, using the existing foster care rules. This licensing scheme has worked for several years. The existing foster care rules and the proposed foster care rules contain standards which are not found in Minnesota Statutes, Chapter 245B, that are needed to adequately regulate the foster homes and ensure the health and safety of the residents.

The departments had discussed with Mr. Priebe and ARRM earlier rule proposals to change the regulatory scheme for foster homes with shift staff. Under the scheme that was discussed, the Department of Human Services would have licensed Mr. Priebe's homes directly, rather than through the county or a child placing agency. A lack of financial resources makes it impossible for the departments to take over the licensing of foster care homes with shift staff from counties and child placing agencies. At the time the alternate regulatory scheme was discussed with Mr. Priebe, the

Department of Human Services had the reasonable expectation that it could find the resources to fund the added regulatory duties envisioned in the alternate regulatory scheme. The Department of Human Services now has the reasonable expectation that it will not be able to obtain the resources to fund the added duties envisioned in the alternate regulatory scheme. Therefore, the departments propose to have the counties and child placing agencies continue to issue foster care licenses to foster homes with shift staff.

The departments proposed licensing standards in parts 2960.3200 to 2960.3230 for licensing foster residence settings which would apply to Mr. Priebe's foster homes. The proposed standards are an improvement over the existing rule, because the proposed standards recognize the fact that these homes have staff, rather than foster parents, and allow counties and child placing agencies to apply licensing standards which include staffing standards.

Mr. Priebe and other members of ARRM may use the variance processes described in the proposed rule at part 2960.3020, subpart 9 and Minnesota Statutes, sections 245A.04, subdivision 9, and 245B.07, subdivision 13, to address individual licensing issues on a case-by-case basis.

2960.3000 Foster Family Settings

2960.3010 Definitions.

Subpart 29. Licensed professional

Comment: Two people expressed concern that the definition of "licensed professional" referenced physicians licensed under Minnesota Statutes Chapter 147 or qualified mental health professionals licensed under Minnesota Statutes, section 148B.18, Subdivision 10. The commentators suggested that the definition of mental health professional should be consistent with Minnesota Statute 245.4871 Subdivision 27.

Response: The Departments agree that this definition should be consistent with the Children's Mental Health Act and recommends that this definition be changed to reference Minnesota Statute section 148B.18 subdivision 10 and Minnesota Statute 245.4871 Subdivision 27. Part 2960.0010, subpart 29 should read as follows: "Licensed professional. "Licensed professional" means a person qualified to complete a diagnostic evaluation, including a physician licensed under Minnesota Statutes, chapter 147, or a qualified mental health professional licensed under Minnesota Statutes, section 148B.18, subdivision 10, or a person defined as a mental health professional in Minnesota Statutes, section 245.4871, subdivision 27."

Subpart 36. Respite care.

Comment: Faith Jaspersen commented that the definition of respite "care omits" the use of respite from kinship homes.

Response: The purpose of including respite care in this rule was to define the foster families' responsibilities when they use respite or substitute care. The definition of respite care does not exclude the use of kinship foster care providers. The Department does not recommend a change in this part of the proposed rule.

Subpart 43. Treatment foster care

Comment: One person suggested a change to the definition of treatment foster care.

Response: After the public hearing, one member of the treatment foster care committee suggested a change to the treatment foster care definition. The department discussed this suggestion with other committee members. Other committee members did not support changing the definition. The departments also considered the suggestion and do not recommend changing the definition that is currently in the proposed rule. The departments feel that the definition is accurate and is similar to the use of the term in the treatment foster care field. **The departments do not support a change in subpart 43.**

2960.3020 LICENSING PROCESS

2960.3030 CAPACITY LIMITS

Subpart 2. Capacity limits and Subpart 3. Exceptions to capacity limits.

Comment: Several people expressed concerns regarding the license limitation of a maximum of six foster children, which in certain circumstances could increase to a maximum of eight foster children in the home at one time. The comments included comments regarding the omission of the license category "Group Family Foster Care", from the proposed rule. Concern was expressed that the lack of the Group Family Foster Care category will leave a hole in the continuum of care for children in out-of-home placement.

Response: The departments examined the foster home capacity limits as noted in the Statement of Need and Reasonableness on pages 171 and 172. Cost analysis regarding the capacity limits is located on page 12 of Statement of Needs and Reasonableness. The departments do not support the requested change to the rule regarding "group family foster care" in the proposed rule.

Comment: Family Focus, a treatment foster care agency, wrote a letter that expressed a concern that many of its licensed families would need to reduce their license capacity to six or go out of business.

Response: Many of the foster homes with high numbers of residents who are currently licensed as Group Family Foster Care could be licensed as a Group Residential Setting, under parts 2960.0010 to 2960.0220 of the proposed rule. Licensing agencies, such as Family Focus, could assist the foster homes they license to meet the criteria for group residential settings and continue their supportive relationship with the foster provider. The departments do not support the requested change to this subpart.

Comment: Suzanne Douglas noted that keeping a child in the child's home community was not listed as an exception to the capacity limit.

Response: The department would like to change part 2960.3030, subpart 3, item A, as follows: "Placement is necessary to keep a sibling group together, to keep the child in the child's home community, or is necessary because the foster child was formerly living in the home..."

Keeping a child in the child's home community promotes a child's well being and improves continuity at school and in the community.

2960.3040 FOSTER FAMILY PHYSICAL ENVIRONMENT

Subpart 1. Fire and building codes.

Comment: Suzanne Douglas, on behalf of Hennepin County Children, Family and Adult Services, and others have commented that the rule did not list smoke detector and fire extinguisher requirements.

Response: The departments support the rule as proposed, which requires compliance with the fire code. The requirement for the smoke detector and fire extinguisher are in the fire code. The fire code and other codes may be amended in the future. It is reasonable to refer to these codes, rather than to enumerate the requirements of the codes, because the codes are long documents and because the code requirements change over time and the rule should require compliance with the current code. The departments will use a home safety checklist document for inspections. The departments keep the home safety checklist standards in compliance with current codes.

Subpart 2. Sleeping space.

Comment: A person commented that the requirements for sharing a bed should include an age limit of 8 years old for children sharing a bed.

Response: The departments support the proposed rule. The existing rule does not require a separate bed for every foster child. The proposed rule allows foster children to share a bed, but does not require foster children to share a bed. The proposed rule requirement recognizes that some foster children are accustomed to sharing a bed with a sibling and allows this to continue if it is appropriate. The placing agency and foster parent have discretion about whether to allow foster children who are siblings to share a bed.

2960.3050 FOSTER HOME SAFETY

Subpart 1. Inspection by licensing agency and Subpart 2. Additional inspections required

Comment: One person expressed concern that the proposed rule would require a health inspection of all family foster homes.

Response: A health inspection of each family foster home is not current practice and would represent significant work increase to the Department of Health and local inspectors. The Department of Human Services has used the Home Safety Checklist to review fire and health safety practices in the home. The departments recommend continuing the current practice of using the checklist.

The departments also recommend that the proposed rule allow an inspection by the Health Department or a local health inspector if the licenser is concerned about a home's safety. The departments propose to add a sentence at the end of part 2960.3050, subpart 1 as follows: "The licensing agency may require a health inspection if the foster home's conditions could present a risk to the health of a foster child."

The departments would like to change the name of part 2960.3050, subpart 2, as follows: "Fire code ~~Additional~~ inspections required" and delete references to health inspections on page 148, lines 2 to 4 of the Revisor's draft. The authority for health inspections is proposed to be contained in the last sentence of subpart 1 of this part.

Subpart 3. Emergency procedures.

Comment: One person suggested that the foster parents and the licensing agency review the emergency procedures at the time of each new placement.

Response: The current Home Safety Checklist requires that emergency procedures are planned, written and posted. This section of the proposed rule addresses what information needs to be included in the posted emergency procedures. Required orientation also includes information on emergency procedures. The departments support the proposed rule, because the requirements are adequate to ensure that there are appropriate emergency procedures in the foster home. The proposed change would cause some homes who have many placements during a year to have more reviews of the emergency procedures than would be reasonable. The departments do not support a change to subpart 3.

2960.3060 LICENSE HOLDER QUALIFICATION

Subpart 1. Experience.

Comment: Suzanne Douglas, on behalf of Hennepin County Children, Family and Adult Services, and others have commented that the word "or" should be inserted at the end of items A and B.

Response: The departments support the rule as proposed. The departments respond that there is no need to put the word "or" at the end of items A and B. Rule drafting standards used by the Revisor of Statutes allow the word "or" at the end of item C to indicate that items A, B, C, or D are applicable. The departments intend that the qualification in any one of the items A, B, C, or D satisfy the foster parent qualifications.

Subpart 3. Personal characteristics of applicants

Comment: Suzanne Douglas, on behalf of Hennepin County Children, Family and Adult Services, and others have commented that part 2960.3060, subpart 3, item B should be changed to include a requirement that the applicant be free of communicable disease.

Response: The departments agree to change the rule to clarify the rule and better protect the health and safety of foster children. The requirement that a foster parent be free of communicable disease may be misunderstood to include short term communicable diseases, such as the common cold, or may be misunderstood to include communicable diseases which are difficult to transmit in normal care of a child, such as the Hepatitis C infection. It would not be reasonable to refuse to license a person who has a cold at the time of consideration of the person's foster parent license application, because the contagious phase of the cold will end within a week and then the foster parent will be suitable to provide foster care services. The department has interpreted Ms. Douglas's comment to mean that she wants a foster parent to not pose a risk to the child's health. As changed to incorporate the essence of Ms. Douglas's suggested change, part 2969.3060, subpart 3, item B would read as follows: "B. The applicant and household members must provide a signed statement which indicates that they are receiving all necessary medical care, do not pose a risk to the child's health, and are physically able to care for foster children and indicate any limitations the applicant and household members may have."

Subpart 3. Personal characteristics of applicants.

Comment: One person expressed concern that according to item F, subitem (1), placement of a foster care applicant's child in out- of-home placement would be a disqualification to licensure in every situation.

Response: The Department wishes to clarify that under item F of the proposed rule, the agency must make a determination about the suitability of the applicant when the applicant has had a child in out-of-home placement. Therefore, the suitability of a given family is determined by the agency and subitem (1) is not an automatic barrier to becoming a foster parent. This standard does not represent a change in practice and is part of the existing licensing standards.

2960.3070 FOSTER PARENT TRAINING

Subpart 1. Orientation.

Comment: Suzanne Douglas, on behalf of Hennepin County Children, Family and Adult Services, and others have commented that the requirement that foster parents complete training in 30 days is not workable.

Response: Even though the agency is given 120 days to license a relative after an initial placement, it should be noted that the foster child is in the relative's foster home during this

time. The relative foster family needs the assistance of an agency to understand its responsibilities and role in caring for a child. If the agency waits until a relative foster family is licensed, that could mean a foster family has been caring for a child for up to 120 days, without the needed support and training from an agency. It is reasonable to expect an agency to support the child's placement with a relative, and not delay providing support and services to relative foster care providers in order to see if placement will last. A delay in providing training and other support to relative foster care providers may result in an increased likelihood of placement disruptions. The Department does not support a change to this subpart of the proposed rule.

Subpart 2. In-service training.

Comment: Suzanne Douglas, on behalf of Hennepin County Children, Family and Adult Services, and others have commented about the amount of training required and requiring training hours for both foster parents in the home. The concern was that foster parents would not have time to attend classes and care for children. It was also suggested that families would remove one parent's name from a license, and therefore eliminate the training requirement for this parent.

Response: The Statement of Need and Reasonableness addresses the issue regarding the need for both foster parents to complete annual training hours and the amount of training required at pages 179 and 180. The department does not support a change to subpart 2 of the proposed rule.

The testimony at the hearing suggested that training is limited to classroom training. The Department would consider any activity foster parents participate in to learn and enhance their skills and abilities to address individual children's needs as training hours and would not limit training to classroom events. Opportunities to learn about children's individual needs would include consultation with therapists, medical professionals, school professionals and social workers, as well as reading books or articles on these issues. A county or private agency social worker would assist a family in the development of an annual training plan and review the completed hours. The proposed rule does not require training for a license holder, rather it requires training for foster parents. Therefore, removing a name from a license application will not eliminate the need for that parent to complete training. Each parent must have the knowledge and skills necessary to meet the needs of children.

**2960.3080 PLACEMENT, CONTINUED STAY AND DISCHARGE
Subparts 3, 5, and 10.**

Comment: One person expressed concern that the proposed rule creates a more residential-type model rather than a family foster home. She identified tasks such as itemizing belongings, as well as keeping a medical record as not being consistent with a family model. Two people expressed concern about the requirement that foster parents need to develop a grievance procedure for foster children. They felt this grievance procedure was inconsistent with a family home setting, and the procedure should be the responsibility of the licensing agency.

Response: The Department is in agreement that part 2960.3080 subpart 3, should be amended to remove the requirement to inventory the children's belongings in the last two sentences of subpart 3. The inventory of children's belongings is a common practice in institutional settings, but is not a common practice in foster care and could be understood as a residential-type facility requirement.

The Department recognizes that a foster parent needs to do additional recording keeping over and above what they would do for their own family when they are caring for a child who has been placed with them. County social service agencies have the responsibility of ensuring that a child's physical, medical, and emotional needs are being met in a foster home. The foster parents usually are entrusted to make medical appointments, take a foster child to the appointments and follow the treatment instructions. It is reasonable and necessary to require foster parents to document illnesses, medical appointments, and their response to a child's need for care. The Department does not envision that this will be a complicated or detailed log, but rather the family's calendar hanging on the wall could be used to note the appointments and maintain the necessary information. The department does not support changing the grievance requirements in this part.

In response to the concern about grievances, the Statement of Need and Reasonableness, on page 183 notes that Laws 1995, Chapter 226, Article 3, Section 60, subdivision 2, clause (1), (ii) states that rule standards must require programs to have "appropriate grievance and appeal procedures for clients and families."

2960.3090 RESPITE AND SUBSTITUTE CARE

Subpart 2. Qualifications of long-term substitute caregiver and Subpart 3. Short-term substitute caregiver.

Comment: Several people requested that Subpart 2 be edited to remove the distinction between long- term substitute caregiver and short-term substitute caregiver. They also suggested a background check on all caregivers who come into the home. Concern was also expressed about the age of substitute caregivers.

Response: The departments do not support a change to this subpart. During the development of this rule foster families told the departments that they want to have the flexibility to make arrangements with family members and good friends to care for their foster children in the same way they would for their own children. They believed that only using other licensed foster families or requiring every substitute caregiver to have a background study was burdensome. The Department believed it was reasonable and necessary to require foster children to be in the care of an adult and to require a background study on the adult caregivers when the foster parent was going to be gone for an extended length of time. The Department believes that it is was reasonable for a foster family to be able to have good friends and family members substitute for them for a period of time not to exceed a weekend

without requiring a background study.

The proposed rule requires that the placing agency and the foster parent agree that the short-term substitute caregiver is able to meet the needs of the foster child. Therefore, the agency will know who is being used as a substitute caregiver in the foster home. The Department felt that the standards for short-term substitute care would not represent a significant risk to children in care.

2960.3100 RECORDS

Comment: Several people suggested that a lifebook on the foster children be given to and updated by foster parents, for all placements. The lifebook would be returned to the agency when a child leaves the foster home.

One person suggested that the foster parent's records of a child be returned to the licensing agency when the child is discharged from the home.

Response: The departments support the use of lifebooks as a good practice for children in out-of-home placement. However, the length of children's placements varies, and it is not reasonable to require lifebooks for every placement.

The provision to require the foster parents records to include a copy of the initial inventory of the child's belongs at admission should be deleted, as the Department agreed to remove this requirement based on public hearing comments. Therefore, the second sentence of part 2960.3100, subpart 2 would read as follows: "The record must include ~~the initial inventory of the child's belongings at admission;~~ the child's medical records, which includes records of illnesses and medical care provided to..."

The records itemized in this section are documentation which the foster parents are required to compile. While the licensing or placing agency may request a copy of the documents for their records, the foster parent should be able to maintain a copy of their reports. Only if the foster parents were using these records inappropriately would it violate data practices requirements. The basic agreement regarding the placement of the child and the responsibilities of the placing agency and the birth parents is in the out-of-home placement plan. Foster parents have the right and responsibility to be fully informed of the provisions of the out-of-home placement plan. (Minnesota Statute 260C.212, Subdivision 1.) It is the recommendation of the Department that the foster parents keep their own records regarding their responsibilities in the placement of a child in their home. The departments do not support a change to this part.

Subpart 1. Foster care license records

Comment: Suzanne Douglas, on behalf of Hennepin County Children, Family and Adult Services, and others have commented **that school reports be obtained at the time of initial licensure for all school-age children of the foster care applicant.**

Response: The Departments are in agreement that it is good to know about the ability of foster parents to work with the school, but are not in agreement that getting grade reports and other non-public information about the foster parent's children is a reasonable way to find out about whether a foster parent can work with schools. The licensing agency could determine whether a prospective foster parent worked well with the local schools by asking local schools about their experiences with the prospective foster parent and asking the foster parent about the parent's experiences with the schools. The departments do not support a change to subpart 1.

ADDITIONAL REQUIREMENTS FOR FOSTER RESIDENCE SETTINGS

2960.3200 ADDITIONAL REQUIREMENTS

Comment: Suzanne Douglas, on behalf of Hennepin County Children, Family and Adult Services, and others have commented **that county licensing of residential foster care settings is not appropriate.**

Response: Foster Residences Settings are an example of changes in practice and service delivery system that are not addressed in the current licensing rule and demonstrate that the current rule is out of date. Currently these homes are licensed under the existing foster care rule with no clear standards. Parts 2960.3200 to 2960.3230 represent the Department's effort to address needed standards for licensing this type of facility.

Counties have been licensing Foster Residential Settings, informally known as corporate foster care, for about 15 years. In early rule discussions, it was the state's intent to license these facilities. The departments acknowledge that these settings are different in some ways from family foster homes. However, given the significant increase in the number of these homes, and budget constraints of the state licensing agency, it is not feasible for the Department to now license this type of home. It is reasonable to expect that local agency licensing of these foster homes is beneficial to the children and the license holders.

It is understandable that counties would prefer that the state take over the licensing of these homes. The Department acknowledges that these settings are different from family homes, however counties agencies are currently delegated the responsibly to license these facilities and have staff and procedures to license these homes. The departments do not support a change to this part of the rule.

2960.3210 STAFF TRAINING REQUIREMENTS

2960.3220 STAFFING PATTERNS AND PERSONNEL POLICIES

2960.3230 COMMUNICATIONS AND DOCUMENTATION.

ADDITIONAL REQUIREMENTS FOR FOSTER FAMILY SETTINGS THAT OFFER TREATMENT FOSTER CARE SERVICES.

2960.3300 ADDITIONAL REQUIREMENTS

Subpart 1. Foster family setting requirements.

Comment: Suzanne Douglas, on behalf of Hennepin County Children, Family and Adult Services, and others have commented that additional standards are needed regarding years of work with children that a treatment foster parent should have and that there should not be substitute care givers in a treatment foster care home.

Response: The departments do not support changing the rule to add the standards suggested by Ms. Douglas, because treatment foster parents may need to have someone take care of the child when they are not able to care for the child.

2960.3310 ADMISSION, TREATMENT AND DISCHARGE

Subpart 1. Generally

Comment: Two people expressed concern regarding the cost of admission, and treatment for treatment foster care standards which will be experienced by the licensing agencies.

Response: The Department provided a cost analysis as part of the Statement of Need and Reasonableness on pages 14 through 20. The analysis in the Statement of Need and Reasonableness did not include the cost of well water tests and fire marshal inspections. A well water test can be completed at the county offices that offer environmental health services. A well water test will cost between \$25 to \$35. A fire marshal inspection will cost \$50, however some local fire departments have offered this service for free to child foster homes.

Subpart 2. Admission

Comment: One person commented that admission requirements for treatment foster care did not belong in the licensing rule.

Response: Treatment foster care programs have been offered in Minnesota by private and public agencies for approximately 20 years. No enforceable uniform standards of practice exist for treatment foster care. The Statement of Need and Reasonableness, on page 191 supports the inclusion of admission standards in treatment foster care rules. The departments do not agree to change this subpart.

Subpart 3. Treatment

Comment: One person commented that period for developing a child's treatment plan should be extended from within 10 days to within 30 days of admission. The person felt that it takes a foster parent time to know the child and to develop a treatment plan.

Response: The treatment plan is one of the principal features of treatment foster care that sets it apart from the usual foster care program. A mental health or licensed professional designates the child's treatment needs at admission. Therefore, the plan is more than the foster parents perspective of the child. The treatment plan would serve as a guide for the foster family to incorporate the child's treatment needs into daily care. A child is in treatment foster care because the child has identified treatment needs. It is reasonable and necessary that the child does not wait an extended period of time for a plan to address the identified treatment needs. In addition the treatment plan is a document which changes over time and it is not considered final, because the child's condition and the treatment strategies can change during the child's stay in a treatment foster home. The departments do not support a change to this subpart.

2960.3320 TREATMENT FOSTER CARE PROVIDER QUALIFICATIONS

2960.3330 TREATMENT FOSTER CARE TRAINING

Subpart 1. Initial training required

Comment: A person expressed concern about the cost of training treatment foster care parents, specifically the cost of maintaining first aid and cardiopulmonary resuscitation certification.

Response: This part of the proposed rule does require first aid and cardiopulmonary resuscitation certification for all treatment foster parents. This represents a cost for the licensing agency or applicant. The Department agrees to change the proposed rule by deleting item C, because compliance with this requirement it is too costly at this time and the specific training plan for a foster parent can include this requirement if it is needed to appropriately care for a child.

2960.3340 TREATMENT FOSTER HOME CAPACITY

Subpart 1. Treatment foster home capacity

Comment: Path and others expressed concern about the cost to the licensing agency of meeting treatment foster home capacity standards.

Response: The departments found the Path estimates to be based on inaccurate assumptions that were hard to reconcile with the actual requirements of the rule. The assumptions stated in the letter from Path about agency staff ratios are not based upon rule requirements in Chapter 2960.

The Department provided a cost analysis as part of the Statement of Need and Reasonableness at pages 14 to 20 of the Statement of Need and Reasonableness. The analysis on page 20 of the Statement of Need and Reasonableness included August 2002 data available from the Minnesota Department of Human Service Licensing Division. "About 722 Minnesota families are licensed as foster parents by private child-placing agencies that offers a treatment foster care program. The licensed capacity of these 722 homes totals 1,925 beds. The present average license capacity of each home can

be estimated at 2.6 beds.” A capacity limit of 2 children per home will yield an average of more than 2 children per home, per year, because of the granting of variances to capacity limits, and because of turnover of children in a treatment foster home, tends to increase the average number of children, per home, per year.

The placement capacity of 2 children is consistent with the program standards for treatment foster care of the Foster Family-based Treatment Association. (See Page 18 of the 1995 Program Standards)

Subpart 3 of this part allows a variance granted if a foster child has been previously placed with the foster parents. Because of this variance, no child should have to be moved at the time of the adoption of chapter 2960. Rather, as children leave the home, the home would not accept new placements until the home reaches the 2 child per home capacity limit.

Subpart 3. Capacity limit

Comment: Several people requested that item B, “to keep the child in the child’s home community;” be removed from the reasons for a variance to be granted for the capacity of the treatment foster parent families.

Response: The departments supports deleting part 2960.3340, subpart 3, item B, because it is not sufficient reason to exceed the capacity limit of a treatment foster care home.

REPEALER AND EFFECTIVE DATE.

Comment: Several persons commented that the implementation of the rule should be delayed because of a likely lack of funding for program activities in programs licensed by this rule in the budget biennium beginning July 1, 2003. It was stated that implementing new licensing rules would cost programs money and would create a strain on license holders who will have to implement the rule at a time when the state budget will pose substantial challenges to the programs licensed by the proposed rule. In addition, Mary Regan and others commented about the need to not delay the January 1, 2004, implementation of the parts of the proposed rule governing foster care, because the implementation of foster care rules would likely result in more federal funds being made available to pay for the care of children in foster homes who could be identified as treatment foster homes.

Response: The departments agree with the comments that there will likely be budgetary restrictions during the coming biennium and that the license holders will experience some strain as the license holder’s programs cope with the effects of state and local budget problems and the effects of implementing a new rule. Staggering the effective dates of various parts of the proposed rules may allow license holders more time to cope with their internal administrative problems associated with state and local budget reductions and the implementation of new rule. The departments also agree that the implementation of proposed foster care rules may generate added federal funds to offset local and state costs of providing treatment foster care services and will be a general benefit to the children who will

receive these services. Therefore, the departments propose to modify the repealer and effective dates as follows;

- To repeal Minnesota Rules, Chapter 2925 and parts 9545.0010 to 9545.0260, regarding foster care effective January 1, 2004; and to repeal chapters 2930, 2935 and 2950, and parts 9530.4450 and 9545.0905 to 9545.1480, effective July 1, 2005.
- To make effective proposed rules parts 2960.3000 to 2960.3340, on January 1, 2004; and make effective proposed rule parts 2960.0010 to 2960.0710 on July 1, 2005.