

STATE OF MINNESOTA  
DEPARTMENT OF PUBLIC WELFARE

RECEIVED  
JAN 13 1984  
ADMINISTRATIVE  
HEARINGS

IN THE MATTER OF THE PROPOSED  
AMENDMENT 12 MCAR 2.200  
GOVERNING THE ADMINISTRATION  
OF THE ADOPTION SERVICES

STATEMENT OF NEED  
AND REASONABLENESS

The Commissioner of Public Welfare has the authority to promulgate rules relating to adoption services pursuant to Minnesota Statutes, sections 257.05; 259.40, subdivision 2 and 10; 259.45, subdivision 9, and 259.48.

The rule on adoption services, 12 MCAR § 2.200, was originally promulgated in December, 1977. Since 1977, there have been a number of changes in state and federal statutes which affect adoption services. In 1980, a change in the state subsidized statutes required that rules on that program be promulgated. As mandated by Minnesota Statutes § 259.40, subdivision 10, that portion of the rule governing the administration of subsidized adoptions was amended. The current proposed amendments to 12 MCAR § 2.200 are based on revisions in state and federal statutes since 1977 which occur in Minnesota Statutes, chapter 259 and in Title IV-E of the Social Security Act.

The Department of Public Welfare will not be calling upon expert witnesses to give testimony on the provisions in the proposed permanent rule on adoptions.

The Statement of Need and Reasonableness for this proposed rule are presented section by section.

**Section A. Purpose; definitions.**

**Part 1.** Part 1 states the goal of the adoption program. The changes in this part are grammatical only and do not change the meaning of the statement.

**Part 2.** Two definitions are added in Part 2 to define "Commissioner" and to clarify the meaning of "minority race or minority ethnic heritage." All subsequent definitions are relettered. Other revisions are grammatical only and do not alter the meaning of Section A.

**Subpart d.** This subpart defines "Commissioner" as the Commissioner of the Department of Public Welfare. This is consistent with the definition in Minnesota Statutes, section 259.21, subdivision 5.

**Subpart k. Minority race or minority ethnic heritage.** This phrase is used but is not defined in statute. A definition in rule is necessary for two reasons: it underscores the intent of the statute to ensure, when possible, a suitable adoptive home of similar racial or ethnic heritage as the child's; and it distinguishes between those racial or ethnic heritages which are recognized by society as predominant and those which are

regarded as minority. The definition is a reasonable and necessary guide for implementing adoption services for children whose special needs are related to racial or ethnic heritages.

Subparts e. through q. of the current rule are assigned new letters as a result of adding new definitions.

**Section B. Legally freeing a child for adoption.**

**Part 1.** The proposed amendments in Part 1. eliminate repetitious statements, add statutory references where these are pertinent to the content of the rule, and also update the terminology used. These changes are reasonable and are necessary for clarity.

**Subpart a.** This proposed revision is added to clarify that the preferred method of freeing a child for adoption is through court termination of parental rights pursuant to Minnesota Statutes, section 260.221. An alternative method of freeing a child for adoption, pursuant to Minnesota Statutes, section 259.25, allows a parent to enter into an agreement with the agency, thereby transferring the responsibility of placing the child for adoption to the agency. The agreement with the agency does not legally terminate parental rights until the court grants the adoption petition. At that time, the court assigns to the adoptive parents all the parental rights and responsibilities as though they were the child's natural parents as stated in Minnesota Statutes, section 259.29 regarding the effects of adoption.

In most situations, the local social service agency will determine that the court termination of parental rights provides the best protection of both the child's and the parents' rights. The local social services agency may determine that the agreement with the agency conferring authority to place the child is the preferable alternative to court termination of parental rights. Minnesota Statutes, section 259.25 provides that the Commissioner of Public Welfare may enter into the agreement. The local social service agency, as agent of the Commissioner, must obtain from the Commissioner a written statement indicating the Commissioner's willingness to enter into such an agreement. Subsequently, the local social service agency may assist the parent in executing that agreement.

The requirements in subpart a. are necessary to ensure that the local social service agency pursues freeing the child for adoption through court action but allows the agency to use the agreement in exceptional circumstances. This standard is reasonable for properly freeing the child for adoption.

Subpart b. Minnesota Statutes, section 259.48 requires the Commissioner of Public Welfare to make rules necessary to administer the release of identifying information pursuant to Minnesota Statutes, sections 259.47 and 259.49.

Effective August 1, 1982, all Minnesota public and licensed child-placing agencies are required to inform genetic parents, who place their children for adoption, about the conditions under which the agency may, in the future, release certain identifying information about them to the child as an adult. Identifying information, as defined in Minnesota Statutes, section 259.47, subdivision 3 (a), is limited to the genetic parent's name, last known address, birthdate, and birth place. The genetic parent may prohibit the release of any or all of this information by filing an affidavit of objection in the agency record any time prior to the child, as an adult, making the request with the agency.

As required by Minnesota Statutes, section 259.47, subdivision 3, the agency must obtain and file in its record an affidavit, signed by each genetic parent, which attests to the fact that the parent has been informed by the agency. The provisions in the affidavit are stated in Minnesota Statutes, section 259.47, subdivision 3 (a) - (f).

Identifying information about genetic parents whose children were placed for adoption prior to August 1, 1982 remains confidential and may only be disclosed by a court order.

Genetic parents also need to be informed about their rights to either consent to or refuse disclosure of identifying information on the original birth certificate. Minnesota Statutes, section 259.49 provides that an adopted person, age 21 years or older, may file a request with the Minnesota Department of Health, Section of Vital Statistics for the information on the original birth certificate. The responsibility for informing the genetic parent of these provisions is assumed by the agency as part of its counseling services. Otherwise, in a court termination of parental rights, the court may delegate that responsibility to the agency. Minnesota Statutes, section 260.241, subdivision 4, requires the court to ascertain that the genetic parent is informed of the provisions in statute concerning original birth certificate information.

The provisions in Subpart b. are necessary and reasonable to insure that child-placing agencies carry out their statutory responsibilities to genetic parents in

providing them with information concerning future release of identifying information in the agency record or on the original birth certificate.

**Part 3.** The grammatical revisions proposed in Part 3 do not change the meaning of the standard. The proposed change from the term "surrender" to "agreements with an agency to place a child" is consistent with the terminology used in Minnesota Statutes, section 259.25.

A new standard is added in Part 3 which requires that all consents to adoption by the child's parent must also contain a notice of the parent's right to withdraw that consent within 10 working days of its execution. This is a statutory requirement of Minnesota Statutes, section 259.24, subdivision 5. Minnesota public and licensed child-placing agencies are involved in assisting parents to execute written consents to adoption. Consequently, agencies have a responsibility to ensure that these consents to adoption meet the requirements of statutes.

All of the proposed revisions in Part 3 are reasonable and necessary to enable agencies to discharge their responsibilities in assisting the child's parent to execute an informed and properly executed consent to adoption.

**Part 4.** No substantial changes are made in this part except to eliminate unnecessary words. These revisions do not change the meaning in Part 4.

**Section C. Services to children free for adoption.**

**Part 1. State Adoption Exchange.** The state agency adoption unit has operated an exchange for many years through which local social services agencies locate and select suitable adoptive families for children under state guardianship. Minnesota Statutes, section 259.45, subdivision 1, effective August 1, 1979, mandates the operation of a state photographic adoption exchange to be used by all authorized child-placing agencies, whether public or licensed. It requires the registration of all children who are free to be adopted and who do not meet the criteria for deferral from registration on the state exchange. The purposes for operating the exchange are: 1) to ensure prompt registration of children; 2) to facilitate the adoptive placement of waiting children; 3) to increase the visibility of these children; 4) to prevent children from becoming lost in the system; and 5) to account to the public that efforts are being made to find homes for waiting children without undue delay.

**Subpart a.** This subpart requires the agency to register the child within 60 days of the child's coming under legal guardianship of the Commissioner of Public Welfare

or a licensed child-placing agency. Registration within the 60 days is required by Minnesota Statutes, section 259.45, subdivision 2.

**Subpart b.** This subpart states the conditions under which a local social services or licensed child-placing agency may request a deferral from registering the child on the state exchange. The state agency adoption unit recognizes two forms, the report of adoptive placement and the adoptive placement agreement, as written requests for deferral. All other requests must be submitted on the requesting agency's letterhead and may be accompanied by supporting documents.

The criteria listed in Subpart b. are based on conditions established in Minnesota Statutes, section 259.45, subdivision 8. The Department of Public Welfare is proposing time limits for each deferral condition. For condition (1) "child is in an adoptive home", the time limit of two years is proposed because the licensing statute, Minnesota Statutes, section 245.791(4), governs the length of time a child may be in placement in an approved adoptive home without licensure. The adoptive placement status may not continue beyond two years without either legal adoption occurring or the home being licensed for foster care. If adoption has not occurred within two years of placement, the permanent placement of the child in the adoptive home must be evaluated as part of the periodic administrative review for a child in foster care, (Social Security Act, Title IV-E, Section 473 and Minnesota Laws of 1983, Chapter 278, section 4.).

The time limits for deferrals in condition (2): the child's potential foster home; condition (3): other prospective homes; and condition (4): diagnostic evaluation, may not exceed 90 days. These time limits are established in Minnesota Statutes, section 259.45, subdivision 8.

The Department is also proposing that the deferral under condition (5): when the child is hospitalized, be limited to the time the child remains hospitalized. Upon discharge from the hospital, the condition for deferral will cease to exist and the agency must then register the child on the State Adoption Exchange.

Deferral under condition (6) is determined by the child who is over the age of 14 years and whose consent to adoption would be required in Minnesota Statutes, section 259.24, subdivision 3. Because the child may not be aware or knowledgeable about the permanent placement options, including adoption, that are available to him,

the proposed rule would require the agency to discuss the options with the child. The child has a right to make an informed decision on whether or not he would consent to being adopted. When the child chooses not to consent to adoption, the agency is to assist him in signing an affidavit attesting to his decision. The affidavit constitutes a deferral from state adoption exchanges registration and documents the child's decision.

All of the requirements proposed in Part 1 are necessary pursuant to Minnesota Statutes 259.45, subdivision 8. They are also reasonable to ensure that children in need of adoption are given the opportunity to find permanent homes without undue delay.

## **Part 2. Special needs.**

The standards in Part 2. pertain to the responsibilities of authorized child-placing agencies to make efforts to meet the special needs of children when placing them for adoption. The agency responsible for the child must determine the child's specific needs. Special needs include sibling ties, minority race or minority ethnic heritage, religious background, health, social or educational needs.

**Subparts a. and b.** When the child's special needs include minority race or minority ethnic heritage, the rule proposes that the agency must follow the guidelines on the order of placement preference pursuant to Minnesota Laws of 1983, chapter 278, section 7 or the Indian Child Welfare Act, Public Law Number 95-608, section 105. The Commissioner has authority under Minnesota Laws of 1983, chapter 278, section 17 to establish rules necessary to implement the order of adoptive placement preference guidelines when a child, who is free to be adopted, is of minority race or minority ethnic heritage.

The Indian Child Welfare Act, Public Law Number 95-608, requires that the child's Indian heritage must be protected in placement. That act arose out of the Indian community's concern about the disproportionate number of Indian children being reared outside of the Indian culture. For several years, the Black community has also been concerned about the racial and cultural preservation of Black children as the majority of these children have been placed in non-Black homes. The Minnesota Council on Black Minnesotans has published a report, Adoption and Foster Care Placement of Black Children in Minnesota, 1982. This report recommended the passage of enabling legislation to better ensure the placement of Black children into Black foster and adoptive homes. As a result of this concern the 1983 Legislative Session passed Chapter 278 which establishes state policy and

guidelines for preserving, not just Black, but the minority race or minority ethnic heritage of children, whether Indian, Black or other minority.

The proposed rule in standard c. requires the agency to document what recruitment efforts, requests, and decisions are made which may affect the order of placement preference. An agency's adoption planning decisions often involve input from others, including the child's parent, an Indian tribe, or the court having jurisdiction. The agency, utilizing a variety of information sources, is responsible for serving the child's best interest in making a long term permanent plan. It is necessary that the agency maintain pertinent information on its recruitment efforts and its decisions which effect the child's placement plan. When the child's adoptive placement is being legally finalized, the agency must include a statement in its report to the court concerning how it applied the order of placement preference as required by Minnesota Laws of 1983, chapter 278, sections 8 and 9.

The proposed revisions in Part 2, Subparts a., b. and c. address the requirements of federal and state statutes which have arisen out of community concerns that child-placing agencies must seriously consider as a special need the child's minority race or minority ethnic heritage when an agency places the child into a suitable adoptive home. These rule requirements are, therefore, reasonable and necessary within the parameters of state and federal statutes to provide the agency with basic standards in meeting the child's special needs.

### Part 3. Recruitment.

Minnesota Laws of 1983, chapter 278, section 11 requires agency recruitment of adoptive homes from among the child's relatives or among families of the same minority racial or minority ethnic heritage. In order for an agency to meaningfully carry out the order of placement preference guidelines, it needs a pool of approved adoptive applicants who are of minority heritage from which to select a suitable home or a child. Agency recruitment and preparation of these applicants are required to develop that pool.

The proposed standards in Part 3 include several of the community resources listed in Minnesota Laws of 1983, chapter 278, section 11; however, these do not exhaust the variety of resources an agency or agencies may use to recruit adoptive families.

The proposed requirement that the agency make special recruitment efforts to develop approved adoptive homes of minority heritage is reasonable to meet the needs of children of similar heritage. It is also necessary to enable the agency to fulfill the statutory guidelines in Minnesota Laws of 1983, chapter 278, section 7.

#### Part 4. The child's foster home.

Part 4 focuses on the criteria which the local social service agency uses to consider whether the child's foster home is able to meet the child's special needs and can therefore be an adoptive resource. In the current rule, an agency may reconsider the child's foster home using only one of the four criteria. As the current rule does not balance the child's needs with the foster home's resources, the proposed revisions are reorganized into three criteria to better achieve that balance.

Criteria (1) contains two optional parts: the child's special needs and length of time in the foster home. Criteria (2) and (3) relate to the foster home's ability to meet the child's needs and the comparability of the foster home to adoptive homes.

The proposed revisions are necessary and reasonable to ensure that the child's foster home, which is licensed for temporary foster care, will be an appropriate long-term adoptive resource for the child.

Other changes in Part 4 are grammatical only and do not change the meaning.

#### Part 5. Child Placement.

The proposed revisions in Part 5 consolidate Parts 3 and 5 in Section C of the existing rule: child placement (Part 3) and postplacement services (Part 5). As these two are related service areas, it is reasonable to consolidate them within the same part of the rule as a continuum of services. Proposed additions or revisions in Part 5 more clearly reflect state requirements and define agency responsibility. Part 5 consists of Subpart a. (1)-(5) and Subpart b. (1)-(2).

**Subpart a.** Agency preplacement activities are governed in standards (1)-(5).

Standard (1) emphasizes that the proposed adoptive family's agency has a responsibility to become acquainted with the child prior to his adoptive placement. Also, the family's agency needs to be aware of the child's background and health history in order to better assist the adoptive family in integrating the child into their home.

Standard (2) clarifies that the child's agency must prepare the child for placement. The child's agency must also share written nonidentifying information with the adopting parents to assist them in intergrating the child into their family and to use in helping the child understand his adoption.



Standard (3), which requires the adoptive family to become acquainted with the child prior to placement, remains the same and is not revised.

Proposed standard (4) is added to address the adoptive placement agreement document used by the family and the agency to confirm the date of the child's placement into the adoptive home. The written agreement also states the responsibilities of the parties and verifies that the child was placed by an agency. The proposed standard carries out the requirements in Minnesota Statutes, sections 257.01, 259.22, subdivision 2., and 259.27, subdivision 5.

Proposed standard (5) is added whereby the child, who is in an adoptive placement, is excused from having a court dispositional hearing unless the adoptive placement is either not finalized within the two years pursuant to proposed standard (4) or is terminated for some reason. This standard falls within the provision of Minnesota Statutes, section 245.791 (4); Minnesota Laws of 1983, chapter 312, article V, section 35; and Federal Regulations, 45 CFR 1356.21.

The revised standards (1)-(5) in Subpart a. are necessary criteria upon which the local social services agencies enables the child and adoptive family to begin establishing themselves as a new family. These standards are based on statutory requirements and sound agency child placement practices. The standards are therefore reasonable and necessary.

Subpart b. Standards (1) and (2) in Subpart b. apply to post-placement services. Standard (1) remains essentially unchanged from the existing rule in C. 5 in which the child's agency, responsible for the child until legal adoption, arranges to obtain ongoing written reports from the adoptive family's agency.

Proposed standard (2) is added to require the supervising agency to assist the adoptive family and child in achieving a degree of integration prior to legal adoption.

The proposed requirements in Subpart b. (1) and (2) are reasonable and necessary standards pursuant to Minnesota Statutes, section 259.27, subdivision 4 for both the placing and the supervising agencies to fulfill their responsibilities to the child and the adoptive family prior to legal adoption.

**Part 6. Subsidized Adoption.**

The Department is proposing rearrangement of the standards in Part 5, a.-h. of the existing rule without changing the content or the meaning of these standards. This rearrangement will provide a more logical sequence of activities. Some grammatical revisions are proposed for clarity. The rearrangement and grammatical changes are reasonable and necessary as they add more logical sequence of activity and more clearly state the standards without changing the substance of the rule.

Within this rearrangement, several revisions are proposed in Subpart c. (5), Subpart d. (1) and (2), Subpart e., and Subpart g.

**Subpart c. (5).** This subpart adds a reference to Title IV-E of the Social Security Act which determines the child's eligibility for federal assistance. The proposed reference to Title IV-E in standard (5) becomes one of the five criteria used to determine the child's eligibility for a subsidy. Agencies are expected to utilize the Federal Adoption Assistance Program for each child who qualifies for subsidy in order to maximize all needed resources and available funds for the child. Therefore, reference to the Title IV-E requirements in rule is necessary and reasonable to ensure full use of the federal program for the benefit of eligible children.

**Subpart d.** The revisions in subpart d. focus on determining the amount of subsidy actually required to meet the child's needs. The agency must consider the various financial and health resources available to meet the child's needs including those resources which the adoptive parents can provide. The Social Security Act, Title IV-E, section 473, requires the state to take into account the circumstances of the adopting parents and the needs of the child to determine the amount of the subsidy. In no case may the subsidy exceed amounts allowable for foster family care. The Commissioner has authority under Minnesota Statutes, section 259.40 and Public Law Number 96-272, section 473 (b)(2) to establish the amount of subsidy payments necessary to meet the child's needs. The proposed revisions, which establish subsidized adoption maintenance rates, present the subsidized adoption program as separate from the foster family care program.

**Subpart d. (1).** Proposed standard (1) addresses the maintenance needs of the child and establishes the maximum monthly amounts allowable for adoption maintenance subsidies within four age categories. Reference to 12

MCAR § 2.044 which no longer regulate foster care rates and difficulty of care standards, is deleted from the proposed rule.

The proposed basic maintenance subsidy rate cover the child's need for food, clothing and shelter. Maintenance rates in subsidized adoption may not be used to cover such costs as daily supervision of the child or reasonable travel expenses to the child's home for visitation. These are two expenses which are included in the foster care maintenance payments. Therefore, the amounts allowable for foster care maintenance cannot be applied to subsidy maintenance.

The age categories proposed in standards (1) identify four general age groups: the preschool years of 0-5; the grade school years of 6-11; the middle school years of 12-14; and 15-18 years of senior high school. The Department recognizes that while children's grade placements, growth and development may vary within these age groupings, the four categories provide a reasonable framework for determining basic maintenance needs for food, clothing and shelter.

To determine the maintenance rate for the 0-5 age category, the department reviewed the maintenance amounts currently being paid for subsidized adoption. The department took into consideration that it had frozen cost-of-living increases since Fiscal Year 1981. The department decided to maintain an equal increase between each age category by proposing an initial basic rate for the 0-5 age category and adding a \$30 increment for each subsequent age category.

The following method was used to determine the initial basic rate of \$200 a month for the 0 to 5 age category. The 1982-83 basic maintenance amounts allowed in foster care for the 0 to 3 age group (\$151) and 4 to 7 age group (\$192) was averaged giving the amount \$172. A seven percent (7%) cost-of-living increase was added twice to that average to compensate for the two years the cost-of-living increases had been frozen. These increases, plus the average for each subsequent year, totals \$197. The \$197 amount is rounded off to \$200. The Department estimates that a \$30 increase added to each subsequent age category is comparable to past increases allowed in the foster care rate schedule. In order to maintain an equal distance between each age category, an increment of \$30 is added to each category to allow for an increase in costs for the food, clothing and shelter needs of the child as he reaches each subsequent age category.

A proposed statement is added to standard (1) to require the state agency to review and adjust the maintenance rate biannually. This is consistent in timing with the state agency's biannual preparation of its proposed budget. The Commissioner is required by the state's constitution to operate within budget. It is, therefore, reasonable and necessary to consider subsidy maintenance rate adjustments as a part of the Department of Public Welfare's development of its proposed biannual budget.

In the existing rule, on d. (1), reference is made to difficulty of care standards used in foster care. The proposed rule deletes reference to difficulty of care standards because the child's special needs, which either exceed basic maintenance for food, clothing and shelter in d. (1) or are not covered under medical needs in d. (2), may more clearly be identified and met under d. (3) on special costs. The use of difficulty of care in the subsidized adoption program has been controversial among agencies since the state program was implemented in 1978. The controversies centered around whether difficulty of care is payment to the adoptive parent for caring for a child with special needs or payment to meet the child's actual special needs. Minnesota Laws of 1983, chapter 312, article V, section 5 requires county boards to establish difficulty of care rates for children in foster care. Therefore, the proposed revision in this rule, which deletes reference to difficulty of care and allows extraordinary costs to be identified and met under d. (2) and d. (3), is reasonable.

The revisions proposed in d. (1) are reasonable to meet the basic needs of the child for food, clothing and shelter within the subsidized adoption program and are within the Commissioner's authority under state and federal statutes. Therefore, these revisions are reasonable and necessary to cover the child's basic needs.

**Subpart d. (2).** Subpart d. (2) focuses on the child's medical needs. The proposed revision adds references to Medical Assistance for which children, who qualify under the federal Title IV-E adoption assistance program, are eligible. The references to Medical Assistance in this part are reasonable and necessary to meet the requirements of Title IV-E of the Social Security Act in ensuring that Medical Assistance is made available to those children who are eligible to use it.

**Subpart d. (3).** This subpart recognizes that a child may have other costs not met or covered under d. (1) for

food, clothing and shelter and d. (2) for medical needs. Revisions in Subpart d. (3) are grammatical only and add clarity to this section. They are, therefore, reasonable.

**Subpart d. (4).** The revisions in Subpart d. (4) are grammatical only and do not change the meaning of this section. These revisions are reasonable in order to add clarity to Subpart d. (4).

**Subpart e.** A proposed revision in Subpart e. changes "a written statement" to "an annual affidavit." Another proposed revision in this subpart adds that the Commissioner may verify the information in the affidavit. These revisions are reasonable and necessary as they are required by Minnesota Statutes, section 250.40, subdivision 3.

All other proposed revisions in Subpart e. are grammatical only and do not change the meaning of the standards. Because the grammatical revisions add to the clarity of the language consistent with state statute, they are reasonable and necessary.

**Subpart f.** The proposed revisions are grammatical only and are reasonable in that they add clarity to the standard without changing the meaning.

**Subpart g.** This section addresses agency reimbursement. A proposed clause is added in two places which states "to the extent appropriations are available " The first clause occurs in the opening paragraph and the second occurs in Subpart g. (6) (b). These revisions clarify the rule standards that the Commissioner will reimburse the agency to the extent that appropriations are available up to 100 percent of the agency's reasonable expenses. These revisions are necessary and reasonable as the Commissioner is required under the State's constitution and statutes to operate within the amounts appropriated.

Other proposed revisions in Subpart g. are grammatical only and do not change the meaning of the standards. These changes are reasonable and necessary changes to add clarity to the language.

**Subpart h.** The proposed revisions in subpart h. are grammatical only and are, therefore, reasonable to clarify the standard without changing its meaning.

**Part 7. Termination of adoptive placement.** The revisions proposed in Part 7 are grammatical only and do not change the meaning of the standards. They are reasonable changes necessary to add clarity to Part 7.

**Section D. Services to Children in Independent Placements.**

Section D contains standards for agencies to carry out services in situations where the proposed or actual placement of a child is not arranged through an authorized child-placing agency.

**Part 1.** Part 1. focuses on direct placement arrangements in which no unlicensed intermediary or agency is involved. Pursuant to Minnesota Statutes, section 393.07, the local social service agency is required to provide child protection services and to assist parents when the child is placed outside the parents' home. The proposed revisions in this part more specifically state what services the local social service agency must perform when a parent or relative plans to place the child with persons who are personally known to them but are not related to the child's parent. Prospective adoptive parents, who do not meet the statutory definition of relative in Minnesota Statutes, section 245.782, subdivision 10, are required to be licensed for foster care in order to receive a child into their home for placement. When the child's parent requests that the child be placed with a specific family, the local social service agency needs to determine the suitability of the proposed home for licensing as a foster home (Minnesota Statutes, section 245.783) or as an approved potential adoptive home (12 MCAR § 2.200E). There may be situations where the placement plan requested by the child's parent or relative is in the best interest of the child. The proposed rule requirements in Part 1 allow the agency to work with the parents or relatives to evaluate and to facilitate such a placement when the proposed adoptive placement would serve the interest of the child. These requirements are therefore reasonable and necessary.

**Part 2.** The revisions proposed in Part 2. address the agency's responsibility when the court has waived the requirement of agency placement pursuant to Minnesota Statutes, section 259.22, subdivision 2(e). Because the court notifies the Commissioner when it grants such a waiver, the state agency adoption unit must then inform the appropriate local social service agency what services it needs to provide. In the event the petitioners, subsequent to the court's waiver of agency placement, do not immediately file an adoption petition, the local social service agency must pursue licensing the home as required by Minnesota Statutes, section 245.781 et seq. Non-agency adoptive homes do not meet the exclusion for licensing in Minnesota Statutes, section 245.791 (4).

When the adoption petition is filed immediately upon the court granting the waiver of agency placement, the Commissioner is required by Minnesota Statutes, section 259.27, subdivision 1 to pursue an investigation of the petition and make a full report and recommendation to the court

within 90 days. Because the Commissioner, through the assigned agency, immediately begins the adoption petition investigation on the child in the home, effort to license the home would duplicate the child welfare services and, therefore, does not appear to be feasible. The proposed revisions in Part 2 are reasonable and necessary within state statutes to clarify the responsibilities of both the Commissioner and local social services agency when the court waives the requirement of agency placement.

**Part 3.** The proposed revision in Part 3 deletes the word "natural" as a description of parent and replaces it with the word "child's" to allow recognition that the role of parent may be achieved by birth or adoption. Another proposed revision adds the word "adoptive" to describe the purpose of the placement plan. This revision would distinguish the type of placement which this rule addresses from other types of child placements. All other proposed revisions in Part 3 are grammatical and do not change the meaning of the standards. The revisions that are proposed in Part 3 are reasonable and necessary changes which more clearly define the kind of placement properly addressed by this rule and which allow the term "parent" to be understood as defined in Minnesota Statutes, section 259.21, subdivision 3.

**Part 4.** The word "adoptive" is being added to the first paragraph to describe the type of interstate placement addressed in this rule which is within the provisions of Minnesota Statutes, sections 257.05, 257.06 and 257.40. Other proposed revisions within this paragraph are grammatical only and do not change the meaning of the standards. These proposed revisions are reasonable and necessary to clarify the type of interstate placement addressed in Part 4.

Part 4 also contains two subparts.

**Subpart a.** Two revisions are proposed in Subpart a. The first revision adds the past tense verb "was" to also include an interstate placement of a child which may have occurred without the prior knowledge and approval of the Commissioner. In order for a child to be placed into and remain in the state, the Commissioner must approve the placement. This rule revision is reasonable and necessary as a protection for the child whose placement must be addressed under the state's importation statutes: Minnesota Statutes, section 287.05 and Minnesota Statutes, section 257.40. The other proposed revision adds the words "requirement of" to the phrase "agency placement". This revision more clearly reflects one of the filing requirements on adoption petitions in Minnesota Statutes, section 259.22, subdivision 2 and subdivision 3. This proposed revision is reasonable and necessary as it clarifies the standard to reflect the provisions in statute regarding child placement.

**Subpart b.** The proposed revision in Subpart b. deletes the word "natural" and substitutes the word "child's" to describe parent. The proposed revision allows for a broader understanding of the term "parent" as defined in Minnesota Statutes, section 259.21, subdivision 3. Therefore, this proposed revision is reasonable and necessary.

**Part 5.** In the first paragraph of Part 5, the proposed phrase, "for the purpose of adoption", is added to define the purpose of the child's placement. This revision is necessary and reasonable as it provides a focus for agencies, necessary in adoptive placement situations, to carry out child protection services within Minnesota Statutes. References to pertinent statutes are added to the rule. Other revisions in this paragraph do not effect the meaning of the content.

Proposed revisions are also made to Subparts a. and b.

**Subpart a.** No changes have been made in the content of standards (1) through (4). However, these activities have been realigned into a different sequence according to the importance and seriousness of the activity which the agency must perform on behalf of the child. These changes are reasonable and consistent with the requirements of Minnesota Statutes, sections 257.40, 257.03, 257.04, 245.783, and 260.015, subdivision 10 (f) and (g).

**Subpart b.** The proposed revision, pertaining to the 30 days within which the local social service agency makes a report to the Commissioner, adds clarity to the time framework without causing a substantive change in meaning.

**Subpart b. (1).** In Subpart b., standard (1), the term "child's" is substituted for "natural" to broaden the meaning of "parents" to include parents by adoption or by birth as defined in Minnesota Statutes, section 259.21, subdivision 3. These changes are consistent with similar changes made in Parts 3 and 4 of Section D in the proposed rule. These revisions are a necessary clarification of meaning and are, therefore, reasonable.

**Subpart b. (2).** The revision adds clarity to the standard but does not change its meaning.

**Subpart b. (4).** Standard (4) is revised to better reflect the kinds of compensations prohibited in Minnesota Statutes, section 257.03. The agency is required to obtain any information affecting the child's placement. Therefore, this is a necessary and reasonable standard.



The proposed revisions in Part 5 and Subparts a. and b (1), (2), and (4) are intended to emphasize the child protection actions required in statute which the agency must perform to ensure the appropriateness of child's placement as well as any adoptive planning for the child with his parents and the proposed family. The revisions also clarify the terms used. Therefore, the proposed revisions in Part 5 are reasonable and necessary.

**Section E. Services to Families Applying for Adoption.**

**Part 1.** Part 1 proposes two revisions: a written intake policy and a reference to the charging of fees. The word "written" is added to intake policy on the basis that the public, as well as any person applying for adoption, is entitled to review the local social services agency's adoption intake policy.

A clause is also added regarding social service fees. In order for the agency to carry out its responsibilities within Section E, the agency may charge fees when applicable. Minnesota Statutes, section 256E.08, subdivision 6, of the Community Social Services Act provides that the county board, subject to the approval of the Commissioner, may establish a schedule of fees based upon the client's ability to pay.

The two proposed revisions in Part 1 are reasonable and necessary to allow the public to have access to information regarding the agency's policy for adoption applications and to allow the agency to charge fees in order to defray part of the cost for applicant adoption studies.

**Part 2.** The changes proposed in Part 2 and Subparts a. and b. are grammatical only and do not alter the meaning of these standards. Subpart c. is a proposed new standard.

**Subpart c.** This proposed standard is added to require the local social service agency to consider an adoptive applicant's ability to help a child of minority race or minority ethnic heritage gain an appreciation of his heritage. Minnesota Statutes, section 259.255, states that when the agency places a child with a family of a different racial or ethnic heritage, the family is to be knowledgeable and appreciative of the child's racial or ethnic heritage. In determining the applicant's ability to help the child with his heritage, the agency needs to consider the applicant's resources. The applicant may have personal relationships with persons of the same minority heritage as the prospective child's, may have membership in organizations which include persons of the child's minority heritage, may reside in an ethnically or racially integrated neighborhood, or may demonstrate the ability to meet the cultural needs of

the child in a multi-racial family. The agency may also offer or provide resources to the applicant in becoming prepared to help a child with his minority race or minority ethnic heritage.

Suppart c. is, therefore, a necessary standard based on Minnesota Statutes, section 259.255. The proposed standard requirement is reasonable as the agency is responsible for determining an applicant's suitability to adopt a child of minority race or minority ethnic heritage.

**Part 3.** All the changes made in Part 3 are in sentence structure and grammar only. These changes do not in any way alter the content or meaning of the standards. The revisions are therefore reasonable and necessary for the purpose of clarity.

**Section F. Interstate and International Adoptive Placements.**

All changes in this section, except in Part 3, Subpart b. are grammatical only and do not in any way change the content or meaning of the section.

**Part 3, Subpart b.** The proposed revision in Subpart b. more clearly defines the sending agency's authority to place the child for adoption by deleting the term "custody of" and replacing it with "adoptive planning rights to". The term "custody of" is too broad in meaning for this rule on adoption. "Custody" may be physical or legal, yet it may not give the agency the authority to place the child into an adoptive home. The revision as proposed, focuses on the fact that a sending agency, which is requesting to place a child across state lines for adoption, must have the authority under its state statutes, similar to the authority under Minnesota Statutes, sections 259.25, or 260.242, to make an adoption plan and to consent to the child's adoption. Therefore, the revisions in Subpart b. are reasonable and necessary for clarification.

**Section G. Legalization of the Adoption Placement.**

**Part 1.** The term "nonidentifying" is added to define what kind of information the agency may, pursuant to Minnesota Statutes, section 259.46, subdivision 1, send to the petitioner or his attorney to prepare the adoption petition. This clarification is also consistent with the provisions in Minnesota Statutes, section 259.23, subdivision 2, when a child is placed by an agency. This proposed revision is reasonable and necessary to provide the attorney with information essential to file an adoption petition.

**Part 3.** In this part the proposed revision adds "properly filed" to describe those petitions which meet the filing requirements of Minnesota Statutes, 259.22, subdivisions 2 and 3. The Commissioner or authorized child-placing agency is responsible, pursuant to Minnesota Statutes, section 259.27, for submitting a report and recommendation to the court on those petitions which meet the filing requirements of Minnesota Statutes, section 259.22. The proposed revision more clearly states which petitions the Commissioner or agency must investigate and submit reports and recommendations to the court. The proposed revision in this part is reasonable and necessary.

**Subpart a.** Subpart a. is added to Part 3 to define the four areas of information which the Commissioner or agency must, pursuant to Minnesota Statutes, section 259.27, include in its report and recommendation to the court. These four areas are: verifying the information on the petition; verifying that the child is free to be adopted; ascertaining the suitability of the proposed family and child to each other; and stating the application of the order of placement preference when the child is of minority race or minority ethnic heritage. The addition of Subpart a. to Part 3 is reasonable and necessary for the Commissioner or the agency to fulfill its responsibility to the court, according to Minnesota Statutes, section 259.27.

**Subparts b and c.** These two standards are relettered. Any proposed revisions in these two subparts are grammatical changes which do not alter the meaning of the standards. These revisions are reasonable and necessary for clarity.

**Section H. Post-Adoption Services.**

The Commissioner has the authority under Minnesota Statutes, section 259.48, to establish rules necessary to enable agencies to administer post-adoption services. Any paraphrase of statutory standards is necessary to provide continuity along with the standards proposed by the department.

The proposed rules in this section apply to both public and licensed child-placing agencies, which are required by Minnesota Statutes, sections 259.47 and 259.49, to provide post-adoption services. The proposed standards cover a broad range of agency services which may be requested by adoptive parents, genetic parents, adopted adults, or adult genetic siblings. Requests for services may occur any time after legal adoption and may range from requests for information or counseling to requests for the agency to contact another party to either obtain information or establish contact of some kind.

The standards proposed in this section enable agencies to implement the requirements of Minnesota Statutes, sections 259.47 and 259.49. The agency must deliver the services requested in a manner which protects the right to confidentiality and privacy of the other parties. Before the agency may arrange for any exchange of information or contact, the agency must determine whether it is mutually desired by the parties involved. However, when the agency receives significant medical information, the agency must make a diligent effort to transmit that information to other genetically related persons.

**Part 1.** Part 1 proposes standards under which the agency may share information or establish contact among the parties to the adoption upon receiving a request for post-adoption services.

**Subpart a.** The proposed revision in this standard bring the existing rule standard into compliance with Minnesota Statutes, section 259.47, subdivision 1. The standard would allow the agency to share nonidentifying information contained in its record with the adoptive adult or adoptive parents of a minor child. Nonidentifying information is an important aid to the adoptive person's gaining an understanding of himself and his adoption. Information which is identifying may not be disclosed from the agency record.

**Subparts b. and c.** These subparts propose standards, in accordance with Minnesota Statutes, section 259.47, subdivision 1, requiring the agency to provide services in a confidential and personal manner as well as to establish the extent to which there is a mutual desire to share information or to have contact between the parties.

**Subpart d.** The standard proposed in this subpart is based on the requirement in Minnesota Statutes, section 259.47, subdivision 1, to provide services requested by adult genetic siblings in a manner that respects the genetic parent's right to maintain confidentiality.

**Subpart e.** This requirement is proposed to enable agencies to provide services requested by a genetic relative other than the genetic parent. An increasing number of relatives, including alleged fathers, are requesting post-adoption services. The proposed standards in Subpart e. would allow the agency to provide services to other relatives under conditions similar as those established in Subpart d. which allows the genetic parents the right to maintain confidentiality. This standard is consistent with the intent of Minnesota Statutes, section 259.47, subdivision 1.

**Subpart f.** This proposed standard requires the agency to share with the person making the request what methods it may consider using when searching for the other party. The person making the request may recommend that the agency check only through public records even though a search could more successfully be conducted by the agency making discrete inquiries to relatives or acquaintances. Agency delivery of post-adoption services must be done sensitively, respecting the needs of the parties involved. Minnesota Statutes, section 259.47 requires the agency to pursue post-adoption services in a personal and confidential manner.

**Subpart g.** This standard proposes that the agency respect the wishes of the party whom it has contacted when determining the extent to which there is a mutual desire to share information or have contact. This standard is based on Minnesota Statutes, section 259.47, subdivision 1.

The proposed standards in Part 1. a.-g. establish the standards upon which the agency may provide post-adoption services within the requirements of Minnesota Statutes, section 259.47. These standards are necessary under the Commissioner's rule making authority in Minnesota Statutes, section 259.48. They are also reasonable as they provide the parameters within which the agency may deliver post-adoption services, while balancing the needs of the various parties.

**Part 2.** The standards proposed in Part 2 are based on the requirements of Minnesota Statutes, section 259.49. Proposed standards in Subparts a. and b. address services the agency is required to provide when the adoptive adult files a request with the State Registrar of Vital Statistics for the information on the original birth certificate. These proposed standards specify what actions the agency must take to inform the birth parent about the adopted adult's request and to notify the State Registrar of the services the agency completed. The Commissioner must ensure that the request is assigned to an agency and the search completed, within a six month time frame. At that time, the state adoption unit reports to the Section of Vital Statistics. The standards proposed in Part 2, a. and b. are necessary requirements pursuant to Minnesota Statutes, section 259.49. These standards are reasonable agency requirements in providing services to adopted persons and birth parents regarding the original birth certificate information.

**Part 3.** The proposed standard in Part 3 requires the agency to make a diligent effort to relay significant medical or genetic information to genetically related persons upon receipt of that information. The agency must exercise diligent effort to ensure that genetically related persons

receive health information which may affect them or their offspring. Included in the standard in Part 3 is the agency responsibility to relay the information to the adoptive parent, subsequent guardian or conservator of a minor child. When an adopted person dies, whether by illness or accident, the rule proposes that the agency, when notified, must inform the genetic parent. Diligent is fulfilled when the agency has exhausted all conceivable means of locating the other person.

The proposed standards in Part 3 recognize a common concern in society that health history is an important part of one's health needs. It is vital that there exist a mechanism through which adoptive parents, adoptive adults, genetic parents or other relatives may relay medical or genetic information. Therefore, the proposed rule in Part 3 is reasonable, as well as necessary, to fulfill to the requirements of Minnesota Statutes, section 259.47, subdivision 2.

**Part 4.** The proposed standards a. through d. in Part 4 affect agency adoptive placements made after August 1, 1982. These proposed standards state the conditions under which the agency may subsequently release certain identifying information from its record, pursuant to Minnesota Statutes, section 259.49, subdivision 3, to the adult adopted person. Identifying information consists of the genetic parent's name, last known address, birth date and birth place.

**Subpart a.** Under proposed standard a. the agency must determine that it has on file the genetic parent's affidavit attesting to receiving the information from the agency about the conditions for future release of identifying information.

**Subpart b.** This standard proposes that the agency determine that it either does not have on file an affidavit from the genetic parent prohibiting release of any or all the identifying information or that the genetic parent has withdrawn the affidavit of objection.

**Subpart c.** As proposed by this standard, the agency can disclose identifying information when the condition in Subpart a. is met and the agency has verified that either condition in Subpart b. exists or that the agency has verified that the genetic parent is deceased. Release of identifying information from the agency record does not constitute disclosure of the agency record. Disclosure of the agency record is governed by Minnesota Statutes, sections 259.46 and 259.31.

**Subpart d.** This proposed standard requires the agency to assist the court in notifying the genetic parent of the adoptive person's petition for disclosure of identifying information. The birth parent has the right,

pursuant to Minnesota Statutes, section 259.47, subdivision 3 (e) to inform the court on whether non-disclosure would be of greater benefit to the genetic parent than disclosure. In most cases, the agency, rather than the court, would have information in its record for locating and informing the genetic parent of the adoptive person's petition for disclosure.

These proposed standards are reasonable as they allow the agency to provide services within the parameters of statute. These standards are also necessary for agencies to carry out their responsibilities under the provisions of Minnesota Statutes, section 259.47, subdivision 3, as well as under the Commissioner's rulemaking authority of Minnesota Statutes, section 259.48.

**Part 5.** In Part 5, the proposed revision includes licensed child-placing, as well as local social service agencies, to provide post-adoption services. Other revisions specify the age when the adopted person may receive services upon request and adds the term "adult genetic" to describe the siblings who may request services. The proposed revisions are reasonable in defining agencies, adopted persons and siblings. These revisions are necessary pursuant to Minnesota Statutes, sections 259.47 and 259.49.

**Part 6.** The revisions proposed in Part 6 require the agency to maintain in its adoption records information on the post-adoption services given. This recordkeeping would ensure continuity of services in the event persons may contact the agency at various times over a span of years. This standard is reasonable to ensure that consistent post-adoption services are provided to clients. The proposed revision is necessary within the provisions of Minnesota Statutes, sections 259.47 and 259.49.

**Part 7.** This proposed standard allows agencies to charge a reasonable expense reimbursement for post-adoption services pursuant to Minnesota Statutes, section 259.47, subdivision 5 and Minnesota Statutes, section 259.49, subdivision 2. The standard proposes a reasonable method by which the agency may defray some of the costs of post-adoption services. When clients help support a part of the services they receive, the agency is in a better position to apply for other funding sources in order to maintain and develop the services needed. The proposed standard in Part 7 is a reasonable requirement in the delivery of agency services. It is also necessary to implement the services required by Minnesota Statutes, sections 259.47 and 259.49.

**Section I. Maintenance of Adoption Record.**

The proposed changes in Section I, Parts 1-3 are intended to implement Minnesota Statutes, section 259.46 requirements

that agencies maintain permanent and confidential adoption records. The Commissioner of Public Welfare has authority under Minnesota Statutes, section 259.48 to establish rules to implement and administer Section I.

**Part 1.** The proposed revisions in Part 1 apply to the confidential nature of the records maintained by all agencies authorized to place children for adoption. The agency may share nonidentifying information with the person it concerns. Release of identifying information requires a court order or must meet statutory requirements in Minnesota Statutes, sections 259.47 and 259.49. The proposed revisions include the requirement that the record contain documentation on the order of placement preference required in Section C. Part 2 of the proposed rule, as well as in any post-adoption services given.

These proposed revisions are reasonable and necessary pursuant to Minnesota Statutes, section 259.46 to ensure that agencies maintain pertinent information in agency records on the services given.

**Part 2.** The proposed revisions in this part are grammatical only and do not change the meaning of the content. These revisions are reasonable.

**Part 3.** The proposed standard in Part 3 requires the agency to establish a protected record system to maintain adoption records on a confidential and permanent basis. Adoption, as a lifetime process for the persons involved, may also affect others indirectly. Therefore, the agency has a responsibility to maintain adoption records upon which it may need to provide services requested by the adoptive adult, adoptive parents of a minor child, genetic parents, adult genetic siblings or others. This standard is a reasonable expectation for an agency to meet in preserving its records. It is necessary pursuant to Minnesota Statutes, section 259.46 on adoption records.

LJD/60.0

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