

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed
Adoption of Amendments to
clean up rules to conform to
the Human Services Licensing
Act of 1987

STATEMENT OF NEED
AND REASONABLENESS

Introduction

The "Human Services Licensing Act of 1987," Minnesota Statutes chapter 245A, replaced the former "Public Welfare Licensing Act," Minnesota Statutes, sections 245.781 to 245.812. Although the legislation directed the Revisor's Office to change certain statutory references in Minnesota Statutes, the legislation through an error of omission did not direct the Revisor to make similar changes in Minnesota Rules. The purpose of the proposed rule is to "clean up" Minnesota Rules by directing the Revisor's Office to replace obsolete terminology and statutory references adopted under the former "Public Welfare Licensing Act" with the terminology and statutory references of the "Human Services Licensing Act of 1987".

The proposed rule directs the Revisor's Office to replace obsolete terms and references under the "Public Welfare Licensing Act" with those terms and references that conform to the statutory language of the Human Services Licensing Act of 1987. The statutory authority for the establishment of this rule is Minnesota Statutes, section 14.07, subdivision 7 and section 245A.09.

Human Services Licensing Act

The "Human Services Licensing Act of 1987", Minnesota Statutes, chapter 245A superseded the "Public Welfare Licensing Act" adopted in 1976. Under the former public welfare licensing act the Department of Human Services adopted a number of rules that used terms and statutory references specific to the public welfare licensing act. Under the former act the Department of Human Services licensed a "facility" whereas, under the revised terminology of the Human Services Licensing Act of 1987, a "program" is now licensed by the Department. In addition, in a number of instances the rules cite the statutory authority under sections 245.781 to 245.812 which were repealed and replaced with chapter 245A. Therefore, minor editorial or clean up amendments are necessary in order to be consistent with the Human Services Licensing Act of 1987. Moreover, the Revisor's Office will be printing a new edition of Minnesota Rules and has requested that any technical amendments to Minnesota Rules be completed as soon as possible so that when the rules are republished they will be up-to-date.

STATEMENT OF NEED AND REASONABLENESS
HUMAN SERVICES LICENSING ACT
CLEAN UP AMENDMENTS

Terminology changes

The former public welfare licensing act defined the term "day care facility" as "any facility, public or private, which for gain or otherwise regularly provides one or more persons with care, training, supervision, habilitation, rehabilitation, or developmental guidance on a regular basis, for periods of less than 24 hours per day, in a place other than the person's own home. Day care facilities include, but are not limited to: family day care homes, group family day care homes, day care centers, day nurseries, nursery schools, developmental achievement centers, day treatment programs, adult day care centers, and day services".

The 1987 Human Services Licensing Act did not redefine "day care facility" rather, it used a comparable term "nonresidential program". Minnesota Statutes, section 245A.02, subdivision 10, defines "nonresidential program" to mean "care, supervision, rehabilitation, training, or habilitation of a person provided outside the person's own home and provided for fewer than 24 hours a day, including adult day care programs; a nursing home that receives public funds to provide services for five or more persons whose primary diagnosis is mental retardation or mental illness and who do not have a significant physical or medical problem that necessitates nursing home care; a nursing home or hospital that was licensed by the commissioner on July 1, 1987, to provide a program for persons with a physical handicap that is not the result of the normal aging process and considered to be a chronic condition; and chemical dependency or chemical abuse programs that are located in a nursing home or hospital and receive public funds for providing chemical abuse or chemical dependency treatment services under chapter 254B. Nonresidential programs include home and community-based services and semi-independent living services for persons with mental retardation that are provided in or outside of a person's own home".

Whenever the term "day care facility" is used in the department's rules as a generic term for a nonresidential program, the Revisor will replace "day care facility" with the term "nonresidential program".

The former public welfare licensing act defined the term "residential facility" as "any facility, public or private, which for gain or otherwise regularly provides one or more persons with a 24 hour per day substitute for care, food, lodging, training, education, supervision, habilitation, rehabilitation, and treatment they need, but which for any reason cannot be furnished in the person's own home. Residential facilities include, but are not limited to: state institutions under the control of the commissioner of human services, foster homes, residential treatment centers, maternity shelters, group homes, residential programs, supportive living residences for functionally impaired adults, or schools for handicapped children".

The 1987 Human Services Licensing Act did not redefine "residential facility" rather, it used a comparable term "residential program". Minnesota Statutes, section 245A.02, subdivision 14, defines "residential program" to mean "a program that provides 24-hour-a-day care, supervision, food, lodging, rehabilitation, training, education, habilitation, or treatment outside a person's own home, including a nursing home or hospital that receives public funds, administered by the commissioner, to provide services for five or more

STATEMENT OF NEED AND REASONABLENESS
HUMAN SERVICES LICENSING ACT
CLEAN UP AMENDMENTS

persons whose primary diagnosis is mental retardation or mental illness and who do not have a significant physical or medical problem that necessitates nursing home care; a nursing home or hospital that was licensed by the commissioner on July 1, 1987, to provide a program for persons with a physical handicap that is not the result of the normal aging process and considered to be a chronic condition; and chemical dependency or chemical abuse programs that are located in a hospital or nursing home and receive public funds for providing chemical abuse or chemical dependency treatment services under chapter 254B. Residential programs include home and community-based services and semi-independent living services for persons with mental retardation that are provided in or outside of a person's own home".

Whenever the term "residential facility" is used in the department's rules as a generic term for a residential program, the Revisor will replace "residential facility" with the term "residential program".

In many instances the term "facility" is used in Minnesota Rules which under the "Human Services Licensing Act" refers to a "residential program" or "nonresidential program". The Revisor will replace the term "facility" with the proper term "residential program" or "nonresidential program". The substitution of the proper phrase will depend on the particular rule being amended.

In many instances the term "facilities" is used in Minnesota Rules which under the "Human Services Licensing Act" should be referred to as "residential and nonresidential programs" or "residential or nonresidential programs". The Revisor will replace the term "facilities" with the proper term "residential and nonresidential programs" or "residential or nonresidential programs" depending on how the term is used in the rule.

Changes in Statutory Citations

The "Human Services Licensing Act of 1987" retained much of the former "Public Welfare Licensing Act" but was recodified under a new chapter of Minnesota Statutes, chapter 245A. The Revisor's Office is instructed to replace the obsolete reference to Minnesota Statutes, sections 245.781 to 245.812 with the proper statutory reference in Minnesota Statutes, sections 245A.01 to 245A.16. Examples of statutory citations which need to be changed and the corresponding change in chapter 245A are:

1. References to Minnesota Statutes, "sections 245.781 to 245.812" will be changed by the Revisor's Office to "sections 245A.01 to 245A.16";
2. References to Minnesota Statutes, "section 245.791" will be changed by the Revisor's Office to "section 245A.03, subdivision 2";
3. References to Minnesota Statutes, "section 245.801" will be changed by the Revisor's Office to "section 245A.05";
4. etc.

The clean up amendments are necessary to ensure that terms used in rules adopted prior to the passage of the "Human Service Licensing Act" are consistent with statutory terms and definitions. The amendments are reasonable because the terms are consistent with Minnesota Statutes.

STATEMENT OF NEED AND REASONABLENESS
HUMAN SERVICES LICENSING ACT
CLEAN UP AMENDMENTS

Expert Witnesses

If this rule should go to public hearing, the Department does not plan to have outside expert witnesses testify on its behalf.

DATE: 9/23/88


SANDRA S. GARDEBRING
Commissioner