

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Permanent Rules
of the Department of Human Services
Relating to Administrative Licensing
Requirements of Residential and
Nonresidential Programs under Minnesota Rules,
Parts 9543.1000 to 9543.1060; and
Amendments to Licensing Requirements
in Parts 9503.0003 to 9503.0175;
9520.0500 to 9520.0690; 9525.0215 to
9525.0355; 9525.0500 to 9525.0660;
9525.1500 to 9525.1690; 9525.2000 to
9525.2140; 9530.4100 to 9530.4450;
9530.5000 to 9530.6500; 9545.0750 to
9545.0855; 9545.0900 to 9545.1090;
9545.1200 to 9545.1330; 9545.1400 to
9545.1500; 9555.9600 to 9555.9730;
and 9570.2000 to 9570.3600

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

As part of the Department's initiatives for continuous quality improvement and mandates reduction, Department staff recommended a project to consolidate within a single rule the administrative licensing requirements in 14 Department of Human Services program rules. The proposed rule sets forth administrative licensing requirements for residential and nonresidential programs licensed by the Department except for child foster care, adult foster care, and family day care. The Commissioner has delegated the licensing functions for child foster care, adult foster care, and family day care programs to the counties under Minnesota Statutes, section 245A.16 and Minnesota Rules, Parts 9543.0010 to 9543.0150.

Because the administrative licensing requirements in the programs licensed by the Department were adopted at different times, there are some variations in the licensing requirements between rules. Some rules are more prescriptive than others. In addition, some of the older rules have not been updated to reflect recent changes in the Human Services Licensing Act. To ensure that administrative licensing requirements are consistent in the 14 programs licensed by the Department and to ensure that, when necessary, licensing rules are amended in a more timely manner, the following action is being taken:

1. The Department is proposing a single, administrative licensing rule;
2. The Department is repealing or amending the administrative licensing requirements in the 14 program rules; and
3. The Department is inserting in the existing rules a cross-reference to the administrative licensing rule.

Statement of Need and Reasonableness
Administrative Licensing Rule

Under the single administrative licensing rule, license holders will not notice a major change from current licensing requirements. The principal beneficiary of the change will be the Department of Human Services. Upon adoption of the administrative licensing rule, if a licensing requirement is changed in Minnesota Statutes, chapter 245A (Human Services Licensing Act), the Department will only need to change one rule rather than 14 rules.

The administrative licensing rule will promote greater consistency in licensing processes and procedures; will increase the ease and speed for implementing licensing changes when there are changes in Minnesota Statutes; and will enable the Department to redirect staff resources to more direct customer service.

Administrative licensing requirements in the 14 program rules listed below will be replaced with a cross reference to the new rule.

Minnesota Rule Number	(DHS Rule Number)
Part 9503.0003 to 9503.0175	(Rule 3)
Part 9520.0500 to 9520.0690	(Rule 36)
Part 9525.0215 to 9525.0355	(Rule 34)
Part 9525.0500 to 9525.0660	(Rule 18)
Part 9525.1500 to 9525.1690	(Rule 38)
Part 9525.2000 to 9525.2140	(Rule 42)
Part 9530.4100 to 9530.4450	(Rule 35)
Part 9530.5000 to 9530.6500	(Rule 43)
Part 9545.0750 to 9545.0855	(Rule 4)
Part 9545.0900 to 9545.1090	(Rule 5)
Part 9545.1200 to 9545.1330	(Rule 6)
Part 9545.1400 to 9545.1500	(Rule 8)
Part 9555.9600 to 9555.9730	(Rule 223)
Part 9570.2000 to 9570.3600	(Rule 80)

Also, pursuant to Governor Carlson's Executive Order 92-15, the Department reviewed administrative licensing requirements in the program rules listed above to determine whether there were unnecessary licensing or program requirements that could be deleted without affecting the health or safety of individuals served by the program. Under Executive Order 92-15, state agencies are directed to analyze and review their rules and regulations affecting Minnesota businesses and identify all rules and regulations which do not have an immediate, necessary, and substantial impact on achieving the interest intended to be protected by the rule or regulation. Agencies are further directed to eliminate or revise any rule or regulation which does not meet this standard.

Under the Executive Order, rules that "directly affect Minnesota businesses" are rules which determine a business' eligibility for benefits or programs administered by the agency; rules which pertain to granting or revocation of occupational or operating licenses or permits; rules which impose fines or penalties on businesses; rules which establish reporting requirements for businesses; rules which govern a business' access to the agency, and any other rules which directly affect the rights and duties of a business. [A copy of the Executive Order is attached to the Statement of Need and Reasonableness.]

Statement of Need and Reasonableness
Administrative Licensing Rule

As directed by the Governor, an effort has been made to eliminate licensing and program requirements that regulate business practices when there is not a compelling state interest to regulate the activity, i.e., the requirement is not necessary to protect the health and safety of clients served by the program.

Some of the program rules also contain references to other agency requirements. The Department has found that internal references to other agency requirements in Department of Human Services rules is confusing to the public. It is unclear to the public who is responsible for enforcing rule provisions cited in the Department's rules. A frequent criticism from license holders is different state agencies enforce the same rule requirement differently. Where possible, a clearer separation will be made between the enforcement responsibilities of the Department and the enforcement responsibilities of other state agencies. This will be done by eliminating a number of other agency requirements or rule references in Department of Human Services rules. The Department will continue to work cooperatively with other state agencies to ensure the health and safety of individuals served by the programs licensed by the Department.

Also, since the Department's rules generally do not contain a complete reference to all other agency requirements affecting a license holder, the public assumes that only those requirements which are referenced apply to a particular program. That assumption is false and contributes to further program confusion. To eliminate confusion regarding other agency requirements, the Department is deleting other agency requirements in its rules. Deletion of the reference doesn't mean that programs will not be required to comply with the rule requirements. It only means that statutory requirements will not be repeated in rule or other agency requirements will not be repeated in the Department's rules. Health standards will continue to be found in the Department of Health rules and will be enforced by Department of Health personnel.

Finally, there are a number of recordkeeping or reporting requirements that are costly or burdensome to small businesses that are not directly related to the purpose of licensure. Sometimes information sought by the Department is available but not necessarily in the format mandated by the rule. Where possible, the Department is eliminating recordkeeping and reporting requirements that have not been proven necessary.

In addition to the changes identified above, the Department is reviewing program requirements in a number of the rules listed above. Program rules currently being worked on include: Rule 3, Rule 4, Rule 5, Rule 18, Rule 34, Rule 35, Rule 38, Rule 42, and Rule 43. Amendments to those rules will be adopted following completion of the administrative licensing rule.

STATUTORY AUTHORITY FOR THE RULE

The Department's statutory authority to promulgate the rule is Minnesota Statutes, chapter 245A, the Human Services Licensing Act. Minnesota Statutes, section 245A.09, subdivision 1, directs the Commissioner to

Statement of Need and Reasonableness
Administrative Licensing Rule

adopt rules under Minnesota Statutes, chapter 14 to govern the operation, maintenance, and licensure of programs subject to licensure under Minnesota Statutes, sections 245A.01 to 245A.16.

SMALL BUSINESS CONSIDERATION IN RULEMAKING

In addition to the small business consideration requirements under Minnesota Statutes, section 14.115, the Department has considered the requirements of Executive Order 92-15 which directs state departments and agencies to eliminate unnecessary rules and regulations affecting Minnesota businesses.

Individuals, corporations, partnerships, voluntary association, controlling individuals, and other corporations licensed under Minnesota Statutes, chapter 245A generally meet the definition of "small business" under Minnesota Statutes, section 14.115, subdivision 1. Pursuant to Minnesota Statutes, section 14.115, subdivision 2, the agency is directed to consider each of the following methods for reducing the impact of the rule on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small business;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

The Department has considered the establishment of less stringent compliance or reporting requirements for small business as required in item A. One of the objectives of the proposed rule is to eliminate unnecessary licensing requirements including reporting requirements. As noted in the introduction, the Department is proposing to eliminate licensing requirements that impact business practices when there is not a state interest to regulate that practice, i.e., the requirement does not relate to the health and safety of clients served by the program. Elimination of unnecessary requirements will permit license holders to devote more of their resources to direct client services. The proposed rule deletes a number of unnecessary compliance and reporting requirements. The rule is not adding new requirements. It should also be noted that more detailed reviews of the various program requirements are underway in other rulemaking efforts.

The Department considered less stringent schedules or deadlines for compliance or reporting requirements for small businesses. Part 9543.1020, subpart 12, requires a license holder to submit an application for licensure at least 30 days prior to the expiration date of an existing license. The 30 day standard is necessary to ensure that the license does not lapse while the subsequent license application is being processed. The rule also permits, consistent with Minnesota Statutes, section 245A.09, subdivision 7, paragraph (d), the issuance of a license for a period up to two years. The Department believes the

Statement of Need and Reasonableness
Administrative Licensing Rule

two year license period will reduce the inconvenience of inspections for high quality programs while ensuring appropriate oversight of programs with less satisfactory program compliance. Due to limited resources and reduced staffing levels, services need to be prioritized. The two highest priorities of the Licensing Division are foster care and family day care license actions and investigations of abuse / neglect / maltreatment in programs DHS staff inspect and license. Due to staff cutbacks, less time will be spent on inspections of high quality programs where there are few, if any, complaints so that more time can be spent on average and below average programs where there are complaints of serious and/or repeated violations.

The Department considered consolidating and simplifying compliance or reporting requirements for small businesses. There are a number of recordkeeping or reporting requirements that are costly to small businesses without a direct relationship to program quality. Sometimes the information sought is available but not necessarily in the format mandated by the rule. Where possible, the Department is eliminating unnecessary recordkeeping and reporting requirements. As indicated in the introduction, rulemaking has also begun on a number of program rules. Therefore, further consolidation and simplification of compliance and reporting requirements will be pursued in other rulemaking efforts.

The Department is establishing performance standards for small businesses to replace design or operational standards required in the rule. In the past, all programs were subject to licensure once a year. The proposed rule extends the license period for quality programs from one year to two years.

Although the Department has considered the requirements under Minnesota Statutes, section 14.115, small businesses have not been exempted from the requirements of the rule since the legislature has already identified persons and programs that are exempt from licensure under Minnesota Statutes, section 245A.03, subdivision 2. The Department can not exempt programs from the licensing requirements and also comply with the statutory objectives that are the basis for the rulemaking.

IMPACT ON AGRICULTURAL LANDS

Minnesota Statutes, section 14.11, subdivision 2 requires agencies proposing rules that have a direct and substantial adverse impact on agricultural land to comply with additional statutory requirements. The proposed rule does not impact agricultural land and, therefore, the additional statutory provisions do not apply.

RULE THAT SETS FEES

Minnesota Statutes, section 16A.128, subdivision 1a, requires that if a fee or fee adjustment is required to be fixed by rule, the Commissioner of Finance's approval must be in the statement of need and reasonableness.

Statement of Need and Reasonableness
Administrative Licensing Rule

The proposed rule does not establish licensing fees. It references the current licensing fee in Minnesota Rules, parts 9545.2000 to 9545.2040. Under the administrative licensing rule, a license may be issued for a period up to two years. If the license period is greater than one year, the license application fee must be paid for the first 12 months with the remainder due before the beginning of the 13th month of licensure. The Department does not believe the requirements under Minnesota Statutes, section 16A.128, subdivision 1a, apply to this rule because the rule simply cross references the licensing fees in Minnesota Rules, parts 9545.2000 to 9545.2040.

FISCAL NOTE DISCUSSION

The proposed rule does not have a fiscal impact on local governments. The licensing functions identified in the rule are performed by the Department of Human Services.

The rule will reduce state costs by eliminating the number of rules that will need to be amended to comply with changes in Minnesota Statutes, chapter 245A. Upon adoption of the rule, the Department can comply with statutory changes by modifying one rule rather than 14. The Department estimates an annual savings of \$11,000.

In addition to the rulemaking savings, by reducing the frequency of licensing inspections for programs that are in full compliance with the rule, the Department can better manage its human resources. This is necessary because of funding constraints on the Department. Licensing staff will continue to perform licensing functions but the nature of the duties will change to permit more resources to be devoted to problem programs rather than annual reinspection of all programs. No savings are attributed to the redirection of staff duties.

RULE DEVELOPMENT PROCEDURES

In the development of the proposed rule, the Department followed the procedures mandated by the Administrative Procedure Act and internal department policies that insure maximum public input. Public input was sought by publishing a Notice of Solicitation of Outside Information or Opinions in the May 26, 1992, State Register (16 S.R. 2568) and establishment of a rule advisory committee. The rule advisory committee consisted of 22 individuals representing programs affected by the administrative licensing rule. A list of members of the rule advisory committee is attached to the statement of need and reasonableness. The rule advisory committee met on November 4, 1992 and February 5, 1993. The Department also met with day care center representative on November 23, 1992, to discuss concerns specific to Rule 3.

AMENDMENTS TO EXISTING RULES

Chapter 9503 -- Child Care Centers A separate rulemaking effort has begun on Rule 3, Child Care Centers. The administrative licensing rule changes to chapter 9503 are believed to be noncontroversial. A more detailed and controversial review of Rule 3 program requirements will be conducted as part of that rulemaking effort.

Statement of Need and Reasonableness
Administrative Licensing Rule

9503.0025 APPLICANT BACKGROUND STUDY.

Subpart 1. Applicant background study. [See repealer.] Prior to the adoption of a single applicant background study rule for programs licensed by the Department (parts 9543.3000 to 9543.3090), a number of programs established their own standards and requirements governing applicant background studies. The standards in those program rules have been superseded by the applicant background study rule which became effective on March 29, 1991. The applicant background study rule, parts 9543.3000 to 9543.3090, establish procedures and standards for background studies of individuals affiliated with programs subject to licensure under Minnesota Statutes, chapter 245A. Parts 9543.3000 to 9543.3090 apply to all residential and nonresidential programs subject to licensure under Minnesota Statutes, chapter 245A, except child foster care, adult foster care, and family day care programs. The licensing functions for child foster care, adult foster care, and family day care programs have been delegated to the counties under parts 9543.0010 to 9543.0150.

Since the applicant background study rule applies to the 14 program rules addressed in the proposed rule, any reference in the program rule to a previous background study will be repealed because those requirements are obsolete. It is reasonable to delete the reference to applicant background studies to eliminate confusion regarding which rule requirements prevail.

Subp. 2. Information on organizations. [See repealer.] The program rules include a number of administrative licensing requirements. One of the reasons for the single administrative licensing rule is to eliminate the duplication that occurs in the various program rules with respect to administrative licensing requirements. When a common licensing requirement is contained in the program rule and the administrative licensing rule, the licensing requirement in the program rule will be deleted. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

This subpart is being repealed because it is addressed in the administrative licensing rule. The requirement governing information on organizations is set forth in part 9543.1020, subpart 2, item B. It is reasonable to repeal this subpart because it is unnecessary since the information previously required in this subpart is required in the proposed administrative licensing rule.

9503.0030 QUALIFICATIONS OF APPLICANT AND STAFF.

Subp. 2. General staff qualifications. [See repealer.] This subpart is being repealed because it is unnecessary. Specific staff qualifications are set forth in parts 9503.0032, 9503.0033, and 9503.0034. Therefore, it is unnecessary to reference general staff qualifications. The requirement governing supervision of volunteers is moved to the rule part governing volunteers (part 9503.0034, subpart 2). Moving the requirement governing supervision of volunteers from the

Statement of Need and Reasonableness
Administrative Licensing Rule

general staff qualifications to the rule part that deals with volunteers is reasonable because that is the rule part most individuals would search to discover limitations on the use of volunteers. The requirement to document staff qualifications is being repealed because it is addressed in part 9503.0120, item E (relettered as item B). The requirements governing transmission of communicable diseases is being repealed because those requirements are set out in Department of Health rules and are enforced by the Department of Health.

Subp. 3. **Disqualification factors.** [See repealer.] This subpart is being repealed because it is duplicated in the administrative licensing rule. The disqualification in item B is included in the administrative licensing rule in part 9543.1020, subpart 14. Since the standard in subpart 3, item B is addressed in the administrative licensing rule, item B is unnecessary.

Subp. 4. **Reevaluation of disqualification.** [See repealer.] This subpart is being repealed because reevaluation of a disqualification is address in the applicant background study rule and Minnesota Statutes, chapter 245A. Prior to adoption of the applicant background study rule, standards governing disqualifications and reevaluations of disqualifications were addressed in the various program rules. Since subpart 3, item A has been superseded by the applicant background study rule and item B is addressed in the administrative licensing rule, subpart 4 is unnecessary.

Subp. 5. **Evaluation for cause.** [See repealer.] Subpart 5 was a component of the earlier disqualification standards found in subparts 3 and 4. Since subparts 3 and 4 are being repealed, this subpart is unnecessary and is being repealed.

9503.0032 TEACHERS.

Items A and B are being deleted because the three year grandfather period granted in part 9503.0032, items A and B has passed. The rule was published in the State Register on July 25, 1988, and became effective six months later. The relettering of the subsequent items is a necessary editorial change. The paragraphs have also been converted into two subparts for purposes of clarification.

9503.0033 ASSISTANT TEACHERS.

Items A and B are being deleted because the three year grandfather period granted in part 9503.0033, items A and B has passed. The rule was published in the State Register on July 25, 1988, and became effective six months later. The relettering of the subsequent items is a necessary editorial change. The paragraphs have also been converted into two subparts for purposes of clarification.

9503.0034 AIDES, VOLUNTEERS, SUBSTITUTES.

Subpart 1. **Aide qualifications.** The amendment to subpart 1 is necessary because the one year grandfather period granted under this

Statement of Need and Reasonableness
Administrative Licensing Rule

subpart has passed. The rule was published in the State Register on July 25, 1988, and became effective six months later.

Subp. 2. **Volunteers used as staff.** The amendment to this subpart is a format change. Previously, the requirement governing supervision of volunteers was found in part 9503.0030, subpart 2, item A. It is reasonable to move the supervision requirement to this subpart since most readers would look to this rule part for information governing aides, volunteers, and substitutes.

Subp. 3. **Substitute staff.** The amendment to this subpart is a necessary editorial change. Items A and B in parts 9503.0032 and 9503.0033 have been deleted and the remaining items have been renumbered. The change in this subpart identifies the numbered subparts in parts 9503.0032 and 9503.0033.

9503.0040 STAFF RATIOS AND GROUP SIZE.

Subp. 4. **Age designation.** The amendment to this subpart is necessary to eliminate unnecessary documentation and paperwork. Item A permits a child to be designated as an infant, toddler, or preschooler for purposes of staff ratios, group size, and child care programming and requires a notation in the child's record of the child's age category. Since a standard exists in the rule on staff ratios and group size, documentation is unnecessary and is being deleted to eliminate unnecessary paperwork.

Item B is amended to simply state that a child attending kindergarten must be designated as a school age child. There is no need to require the license holder to document this information in the child's record. The documentation requirement is being deleted to eliminate unnecessary paperwork.

9503.0050 NAPS AND REST.

Subpart 1. **Naps and rest policy.** The amendment to this subpart eliminates an unnecessary reference to the license holder's responsibility. Although a license holder is responsible for ensuring compliance with program requirements, many of the program requirements are delegated and performed by program staff. The language in this subpart implies that the license holder must personally observe that the nap and rest policy is carried out. The license holder, as a condition of licensure, must comply with program requirements. However, the license holder is not personally required to perform all tasks. The last sentence is being repealed to eliminate confusion regarding the license holders' direct responsibilities.

Subp. 2. **Parent consultation.** This subpart requires that parents be informed at the time of the child's enrollment of the center's policy on naps and rest. The second sentence in this subpart is being deleted to eliminate unnecessary paperwork for the license holder.

Statement of Need and Reasonableness
Administrative Licensing Rule

9503.0085 SICK CARE PROGRAM.

Subpart 1. **Licensure of sick care programs.** The amendment to this subpart deletes references to locations where sick care programs may be operated. Since there is no statutory or rule prohibition governing the location of sick care programs, it is unnecessary to describe locations where sick care programs may be operated.

Subp. 2. **Review of admission and health policies and practices.** The amendment to this subpart deletes a requirement that the quarterly health consultant findings be sent to the Commissioner after each review. This requirement is unnecessary since the licensor can review those findings on site at the time of relicensing or during unannounced inspections. It is reasonable to eliminate this requirement because it reduces license holder costs. Since the information can be reviewed on site, the amendment does not affect the health and safety of persons served by the program.

Subp. 10. **Additional staff to child ratios and staff distribution requirements.** The amendment to this subpart is necessary to delete the reference to part 9503.0030, subpart 2 since that subpart is being repealed. Even if part 9503.0030, subpart 2 was not being repealed, it would not be necessary to apply the general qualifications standards in that subpart since this subpart requires a nurse to be registered by the Board of Nursing to practice professional nursing. In addition, this subpart requires at least two staff persons to be present with the second staff person meeting the qualifications for a teacher.

Subp. 12. **Food preparation.** The amendment to this subpart is necessary to correct a citation error identified by the Revisor of Statutes. The correct cite is parts 4625.2401 to 4625.4701 not parts 4625.2400 to 4625.5000.

Subp. 15. **Outdoor activity area, activities and equipment exception.** The amendment to this subpart is necessary to correct a citation error identified by the Revisor of Statutes. The reference to part 9503.0115, subpart 7 should read part 9503.0155, subpart 7. There is no part 9503.0115, subpart 7.

9503.0090 INFORMATION FOR PARENTS.

Subpart 1, item E. Item E requires license holders to provide parents with written notification of the type and level of liability insurance coverage held by the license holder for the center and for all vehicles owned and operated by the license holder for transportation of children. This item is being deleted because it is unnecessary. Since the rule does not establish minimum insurance requirements, there is no need to mandate that license holders routinely provide parents with a list of the types and amounts of liability insurance. Deletion of this requirement does not prohibit a parent from requesting information on insurance held by the center or selecting another provider if the parent believes that the insurance a center carries is insufficient. As a standard practice, day care centers should carry sufficient liability insurance to protect families served by the center and parents should

Statement of Need and Reasonableness
Administrative Licensing Rule

inquire about the insurance coverage a day care center carries when selecting a provider. However, until such time as the Department mandates a minimum level of insurance, item E is unnecessary.

Subp. 2, item A. Item A requires a preenrollment conference. This item is being deleted because it is unnecessary. Mandating a preenrollment conference between the parents and the program exceeds the state's regulatory purpose for program licensure. There is no health or safety issue which mandates a preenrollment conference. A decision on the necessity for a preenrollment conference should be left to the parents and programs. Deleting the requirement in rule does not prevent a preenrollment conference from being requested or conducted.

9503.0110 EMERGENCY AND ACCIDENT POLICIES AND RECORDS.

Subp. 3. Policy content. The amendment to item I is necessary to delete a requirement that programs record accidents, injuries, or incidents involving program staff or visitors. The Department's interest in licensure is to protect the health and safety of persons served by the program, not program staff and visitors who have other remedies for relief due to any accident or injury suffered on the premise.

The amendment to item J changes the minimum review period for analysis of the record in item I from a semiannual to an annual basis. The amendment to item J is reasonable because an annual review of incidents is sufficient to ensure reconsideration of policies to reduce or eliminate accidents and incidents. Programs at their discretion may institute more frequent reviews.

9503.0115 CENTER ADMINISTRATIVE RECORDS.

Item G is being deleted because it is unnecessary. Regulations governing the reporting of communicable diseases are contained in Department of Health rules.

Item J is being deleted because it is unnecessary. The rules establish standards governing staff qualifications. If consultants are fulfilling staff functions, those consultants must meet the staff qualifications. A program will keep records of its consultant contracts as a general business practice. Therefore, it is not necessary for the rule to mandate a record for each consultant and a copy of each signed contract be included in the center's administrative records.

9503.0120 PERSONNEL RECORDS.

The amendments to this part delete unnecessary rule requirements. Although the deleted rule language may be good business practice, it does not impact the quality of care provided. If the license holder wishes to require the information that has been deleted, the rule does not prohibit the license holder from doing so. With respect to item D, this item is not necessary because applicant background study requirements are set forth in the applicant background rule, parts 9543.3000 to 9543.3090.

Statement of Need and Reasonableness
Administrative Licensing Rule

Finally, the last paragraph is not necessary because data practices requirements are covered under the data practices laws.

9503.0130 REPORTING.

Subp. 3. **Animal bites.** [See repealer.] This subpart is being repealed because the requirement to inform the Commissioner of Health of animal bites is addressed in the Department of Health rules. The requirement that the parent's be notified is already addressed in the rule in part 9503.0110. Therefore, this subpart is unnecessary.

Subp. 4. **Reportable disease.** [See repealer.] This subpart is being repealed because it is a requirement of the Department of Health and is addressed in the Department of Health rules.

9503.0140 HEALTH.

Subp. 8. **Nonsmoking.** [See repealer.] This subpart is being deleted because it is unnecessary. Subpart 8 simply informs the license holder that the license holder must comply with Minnesota Statutes and rules governing the Minnesota Clean Air Act. The Department is eliminating cross-references to other agency requirements since those cross references are incomplete and including the requirement in the Department's rule creates uncertainty over enforcement of the requirement. The legislature has delegated enforcement of the Clean Air Act to the Department of Health, not the Department of Human Services. In addition, Laws of Minnesota 1993, chapter 14, section 1 prohibits smoking in a day care center licensed under Minnesota Rules, parts 9503.0005 to 9503.0175. It is reasonable to delete this subpart since the requirements are addressed in Minnesota Statutes, section 144.414, subdivision 2.

Subp. 11. **Diaper changing area.** The amendment to this subpart eliminates an unnecessarily prescriptive requirement. There is no safety reason to require all containers for soiled and wet diapers to be operated by a foot pedal when other acceptable sanitary alternatives exist.

Subp. 22. **Pets.** This subpart is amended to eliminate the requirement that pets be cared for in accordance with local ordinances and codes. It is unnecessary for the rule to inform centers that they must comply with local ordinances and codes. Since the Department has not established its own pet regulations and does not enforce local regulations, it is not necessary to provide a reference to the requirement in the rule.

9503.0145 FOOD AND WATER.

Subp. 2. **Menus.** This subpart is being amended to delete the requirement that monthly menus be posted and that a sample menu be provided. If a parent has a question on the menu, the parent can ask. The requirement that a sample menu must be provided to parents at the time of admission is being deleted because there are no "admissions." The rule requires that the menu comply with the nutritional requirements

Statement of Need and Reasonableness
Administrative Licensing Rule

of the U.S.D.A., it is not necessary to establish any additional requirements in this regard.

Subp. 3. **Sanitation.** The amendment to this subpart is necessary to correct a citation error identified by the Revisor of Statutes.

Subp. 8. **Water.** This subpart is being amended to delete reference to Department of Health requirements. Standards governing water supply are set and enforced by the Department of Health, not the Department of Human Services.

9503.0150 TRANSPORTATION.

Item A is being deleted because it is unnecessary. Requirements governing vehicle licensing and equipment standards are addressed in Minnesota Statutes, chapters 168 and 169. The Department of Human Services does not enforce transportation laws.

The amendment to item E (relettered D) permits a two-way communication system in lieu of a second adult. Two-way communications have been routinely approved under the Commissioner's authority to grant variances to rules. It is reasonable to state that a two-way communication system can be used in lieu of a second adult when ten or fewer children are being transported to eliminate the need to request a variance. Since a variance is routinely granted when the program provides for two-way communication, it is reasonable to establish that standard in rule to eliminate the need for ongoing variance requests.

9503.0155 FACILITY.

Subp. 3. **Reinspection for cause.** This subpart is being amended to delete the sentence that states hazardous conditions must be corrected before a license is issued or renewed. It may be possible to grant variances for alternatives that will protect persons served by the program without directly correcting the hazards cited. For example, a fence or barrier may prevent access to a dangerous area. Under Minnesota Statutes, section 245A.04, subdivision 6, the Commissioner is required to evaluate information gathered under section 245A.04 before granting a license. The sentence in subpart 3 is being deleted because it is unnecessary.

Subp. 8. **Telephone; posted numbers.** The amendment to this subpart deletes an unnecessary requirement. It is unnecessary to require the posting of the 911 number since that number is universally known as an emergency number.

Subp. 12. **Water hazards.** The amendment to this subpart deletes requirements governing swimming pools that are regulated by Department of Health rules. It is unnecessary to restate Department of Health requirements in this subpart.

Subp. 14. **Sewage disposal.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirement governing sewage disposal is covered by other laws (Department of Health and local

Statement of Need and Reasonableness
Administrative Licensing Rule

ordinances). The Department of Human Service does not have the expertise or authority to enforce sewage disposal laws. Repealing this requirement will not change the requirement that programs comply with sewage disposal laws.

Subp. 18. Toilets and hand sinks. The deletion of item C is necessary because many facilities are unable to comply with this requirement due to physical structures. As a result, numerous variances are routinely granted to this regulation. When a variance is routinely granted to a regulation, it is necessary to reassess the regulation. The focus should be on reasonable accessibility to toilets and hand sinks. Limiting the location to the same floor or to within 8 steps up or down is unnecessarily prescriptive. Therefore, it is being deleted.

9503.0170 LICENSING PROCESS.

Subpart 1. License required. As noted in the introduction to the statement of need and reasonableness, as part of the Department's initiatives for continuous quality improvement and mandates reduction, Department staff recommended consolidating the administrative licensing requirements in 14 of the Department's rules within a single rule. To accomplish that objective, each of the program rules will contain a cross-reference to the administrative licensing rule (parts 9543.1000 to 9543.1060).

Subpart 1 informs individuals that they may not operate a child care center unless licensed by the Commissioner under parts 9503.0005 to 9503.0170. This subpart is amended by inserting a cross-reference to the administrative licensing requirements in parts 9543.1000 to 9543.1060. It is necessary to inform individuals consulting the child care center rule of the licensing requirements in parts 9543.1000 to 9543.1060 because once the proposed permanent rules are adopted the administrative licensing rule will apply to all residential and nonresidential programs subject to licensure under Minnesota Statutes, chapter 245A except for child foster care, adult foster care, and family day care programs.

Since the administrative licensing requirements in parts 9543.1000 to 9543.1060 will apply to child care centers, it is reasonable to inform persons consulting the rule of the applicability of the administrative licensing rule to child care center rule. Informing the reader of the applicability of the administrative licensing rule to the child care center rule is done by cross-referencing the appropriate rule parts.

Subp. 2. Separate licenses. [See repealer.] This subpart is being repealed because it is unnecessary. Minnesota Statutes, section 245A.04, subdivision 7, and part 9543.1020, subpart 8, item B, require the license to state the address of the program. It is unnecessary for the rule to state that a program must have a separate license since the license will state the address of the program.

Subp. 4. Change in license terms. [See repealer.] This subpart is being repealed because it is unnecessary. The requirement under this

Statement of Need and Reasonableness
Administrative Licensing Rule

subpart is addressed in the administrative licensing rule in part 9543.1020, subpart 9.

Subp. 5. **Commissioner's right of access.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirement under this subpart is addressed in the administrative licensing rule in part 9543.1020, subpart 13 and Minnesota Statutes, section 245A.04, subdivision 5.

Subp. 6. **Variances.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirement under this subpart is addressed in the administrative licensing rule in part 9543.1020, subpart 5.

Subp. 7. **Correction orders and fines.** The amendment to this subpart is necessary to cross-reference the standards governing correction orders and fines in part 9543.1050. It is reasonable to cross-reference part 9543.1050 because that rule part establishes the administrative standard governing the issuance of correction orders and fines. Since subpart 7 includes a fine schedule for specific rule violations, subpart 7 is being retained. It is reasonable to retain subpart 7 instead of simply cross-referencing part 9543.1050, because subpart 7 is more specific regarding fines governing child care centers than the administrative licensing rule.

The amendments to item B are necessary to delete cross-references to rule parts that have been repealed.

9503.0175 EFFECTIVE DATES AND REPEALER.

Subpart 1. **Effective date.** [See repealer.] This subpart is being repealed because the reference to the effective date of the rule is no longer necessary. The delayed effective date and the grandfather provisions in the rule have come and gone. References to grandfather provisions in parts 9503.0032, items A and B; 9503.0033, items A and B; and 9503.0034, subpart 1 have been deleted from the rule. Therefore, it is unnecessary to identify the effective date of the rule (January 25, 1989).

Subp. 2. **Repealer.** [See repealer.] This subpart is being repealed because the implementation date for the repealer has passed and the rule parts were subsequently repealed. Therefore, subpart 2 is no longer necessary.

RULE 36 Amendments - Licensing of Residential Facilities
For Adult Mentally Ill Persons.

9520.0510. DEFINITIONS.

Subpart 1. **Scope.** The amendment to this subpart is necessary to delete references to rule parts that have been repealed. Parts 9520.0680 and 9520.0690 are being repealed. Therefore, the scope of the rules ends with part 9520.0670.

Statement of Need and Reasonableness
Administrative Licensing Rule

Subp. 2. **Applicant.** The amendment to this subpart is necessary to replace the rule definition of "applicant" with a cross-reference to the definition in Minnesota Statutes, section 245A.02, subdivision 3. It is reasonable to use the statutory definition to ensure the rule is consistent with statute and to eliminate the need to revise the definition should the statutory definition change.

Subp. 13. **License.** The amendment to this subpart is necessary to correct a citation error identified by the Revisor. The definition of "license" is found in Minnesota Statutes, section 245A.02, subdivision 8 and not subdivision 9.

Subp. 15. **Mental health counselor.** The amendment to this subpart is necessary to delete references to rule parts that have been repealed. Parts 9520.0680 and 9520.0690 are being repealed. Therefore, the scope of the rules ends with part 9520.0670.

Subp. 17. **Mental health therapist.** The amendment to this subpart is necessary to delete references to rule parts that have been repealed. Parts 9520.0680 and 9520.0690 are being repealed. Therefore, the scope of the rules ends with part 9520.0670.

Subp. 19. **Mental health worker.** The amendment to this subpart is necessary to delete references to rule parts that have been repealed. Parts 9520.0680 and 9520.0690 are being repealed. Therefore, the scope of the rules ends with part 9520.0670.

9520.0520 LICENSING PROCESS.

Subpart 1. **License required.** As noted in the introduction to the statement of need and reasonableness, as part of the Department's initiatives for continuous quality improvement and mandates reduction, the Department is consolidating the administrative licensing requirements in 14 program rules within a single administrative licensing rule. To accomplish this objective, the administrative licensing rule states that parts 9543.1000 to 9543.1060 apply to residential and nonresidential programs subject to licensure under Minnesota Statutes, chapter 245A, except child foster care, adult foster care, and family day care programs. The individual program rules are also being amended to include a cross-reference to the administrative licensing rule, parts 9543.1000 to 9543.1060. Finally, administrative licensing requirements in the 14 program rules are being deleted because those requirements are addressed in the administrative licensing rule.

The amendment to this subpart is necessary to inform individuals consulting the rule of the administrative licensing requirements in parts 9543.1000 to 9543.1060.

Subp. 2. **Information furnished.** [See repealer.] Requirements governing mental health residential programs are set forth in Minnesota Statutes, sections 245.461 to 245.486; Minnesota Statutes, chapter 245A; and Minnesota Rules, parts 9543.1000 to 9543.1060 and 9520.0500 to 9520.0690. Minnesota Statutes and Rules are available in the reference section of all public libraries. Copies of Minnesota Statutes and Rules

Statement of Need and Reasonableness
Administrative Licensing Rule

may also be purchased through the Minnesota Bookstore. This subpart is being repealed because it is unnecessary.

Subp. 3. **Application.** [See repealer.] This subpart is being repealed because it is unnecessary. The license application process and requirements are addressed in the administrative licensing rule in part 9543.1020, subpart 2.

Subp. 4. **Decision.** [See repealer.] This subpart is being repealed because it is unnecessary. Decisions regarding licensure are addressed in the administrative licensing rule in parts 9543.1020 and 9543.1030.

Subp. 5. **Fee.** [See repealer.] This subpart is being repealed because it is unnecessary. Licensing fees are addressed in the administrative licensing rule in part 9543.1020, subpart 2, item G.

Subp. 6. **Renewals.** [See repealer.] This subpart is being repealed because it is unnecessary. The issuance of a subsequent license is addressed in the administrative licensing rule in part 9543.1020, subpart 12.

9520.0530 LICENSE CHANGES; REPORT. [See repealer.]

This part is being repealed because it is unnecessary. Licensing changes are addressed in the administrative licensing rule in part 9543.1020, subpart 9.

9520.0560 PROGRAM ORGANIZATION AND ADMINISTRATION.

Subpart 1. **Advisory committee.** This subpart requires each program to have an advisory committee which provides for community representation and public participation in its operation. Subpart 1 is being amended to delete the requirement that a list of advisory committee members be provided to the Department at the time of license application and upon renewal of a license application. The information submitted by the programs is seldom used. The requirements governing advisory committees can be monitored and enforced without requiring programs to submit the names of advisory committee members. Therefore, the Department believes the submission of the names of advisory committee members is unnecessary. Where possible, it is reasonable to eliminate unnecessary requirements so program resources can be devoted to providing direct services rather than processing paper.

Subp. 2. **Governing body.** [See repealer.] This subpart is being repealed because it is unnecessary. By definition, a license holder is legally responsible for the operation of the program. The Department issues a license to a license holder who is responsible for ensuring compliance with program requirements set forth in Minnesota Statutes and rules.

9520.0570 REQUIRED DOCUMENTATION AND REPORTS.

Subpart 1. **Insurance coverage.** This subpart is being amended to delete the requirement that programs have insurance coverage to protect the

Statement of Need and Reasonableness
Administrative Licensing Rule

interests of staff. It is reasonable to delete the requirement that programs have insurance coverage to protect the interests of staff because that requirement regulates an area of business that is unrelated to the purpose of program licensure which is to provide direct care services and to protect the health and safety of individuals served by the program. The requirement to document the specific types and amounts of coverage and the carrier or carriers is being deleted because the first sentence in this subpart already requires written documentation of insurance coverage.

Subp. 3. **Financial information.** This subpart is being amended to delete the requirement that each program make available to the commissioner an annual fee schedule. The requirement governing the fee schedule is unnecessary since per diem payments for services are handled in the contracts with the local agencies and those contracts establish payment rates. In addition, the Department provides Rule 12 funds for these programs and obtains financial information as part of the grant application. Since the financial information is available through other means, it is not necessary to require programs to submit an annual fee schedule. Since the information is not necessary, it is reasonable to delete this informational requirement.

Subp. 4. **Maintenance.** [See repealer.] This subpart is being deleted because it is unnecessary. As part of the licensing process, the Department and, depending on the type of health license required, the Minnesota Department of Health or local health departments, and local building and fire officials inspect the residential program's physical plant. If the Department or any of the other regulatory bodies determine that the physical plant is unsafe, a license will not be issued. Documentation of maintenance and upkeep of a facility is unnecessary paperwork. It is reasonable to delete unnecessary paperwork to permit program resources to be devoted to more direct client service.

Subp. 6. **Vulnerable adults.** This subpart is being amended to simply state that a program must comply with provisions of the Vulnerable Adults Act, Minnesota Statutes, section 626.557. The amendment to this subpart places the focus on compliance rather than documentation of compliance. The same rule result is achieved without the burden of unnecessary paper documentation.

9520.0590 PERSONNEL POLICIES AND PROCEDURES.

Subpart 1. **General requirements.** The amendment to this subpart deletes the requirement that programs provide a copy of its personnel policy to each employee. That requirement is unrelated to the purpose of licensure which is to provide direct care services and to protect the health and safety of persons served by the program. Therefore, it is being deleted as unnecessary. If an employer wants to provide a copy of the personnel policy to each employee, the employer may do so but, as amended, the rule will not mandate that an employer do so. It is reasonable to delete the requirement that a copy of the personnel policy be provided to each employee since that requirement does not serve a licensing purpose.

Statement of Need and Reasonableness
Administrative Licensing Rule

Subp. 3. **Job evaluation.** The amendment to this subpart deletes two requirements: the first is a requirement that each program include as parts of its annual performance review a growth and development plan for each staff member; the second is a requirement that each program develop a policy and establish procedures for resident input into staff evaluation. While the Department believes a growth and development plan is appropriate for employees, it should be an employer's prerogative and should not be mandated by rule. In some programs employee advancement may be limited by either the employee's education or experience or the education and experience of others in the program. There may only be limited opportunity for advancement. For some employees, employment may only be a temporary goal. They may not intend any long term employment with the program. In addition, if a growth and development plan is developed, the Department is not in a position to evaluate the adequacy of the plan. As a result, the requirement governing the development plan results in unnecessary paperwork. If a program wants to develop a growth and development plan for its employees, it may do so, but, as amended, the rule does not mandate the program to do so.

The second amendment in this subpart deletes the requirement for resident input into staff evaluation. While the rule requires policies and procedures, it does not dictate standards on how the information is to be used, if at all. Since the current rule simply requires a process without standards, the process requirement is being deleted. Staff evaluations and employment decisions are the responsibility of the license holder. How the license holder obtains information on program staff for the staff evaluation is up to the license holder. The amendments to this subpart are reasonable because they eliminate requirements that do not serve a direct regulatory purpose.

Subp. 4. **Conditions of employment.** The amendment to this subpart deletes prescriptive requirements that are unnecessary to protect the health and safety of clients. Requiring a personnel policy to include information on staff benefits, hours of work, and method of promotion does not serve a licensing purpose. It is necessary, however, to retain requirements governing general conditions which constitute grounds for dismissal and suspension because those actions directly affect the health and safety of persons served by the program. The amendment to this subpart is reasonable because it deletes requirements unrelated to the regulatory purpose of licensure.

Subp. 6. **Grievance procedure.** [See repealer.] This subpart is being repealed because it is unnecessary. The program requirement that the personnel policy include a grievance procedure for staff does not serve a licensing purpose. Staff grievance issues are generally related to employment and those grievances can be handled under the employment laws.

Subp. 10. **Training for nondirect care staff.** [See repealer.] This subpart states that staff not otherwise referenced in the rule must receive education as appropriate to their role and function in the program. This statement is not an enforceable standard. It is being repealed because it is both unenforceable and unnecessary. Employers will hire employees with the necessary education or skills to perform the job for which they were hired. Any additional training of nondirect

Statement of Need and Reasonableness
Administrative Licensing Rule

care staff should be left to the discretion of the license holder. The amendment to this subpart is reasonable because it deletes a requirement that is unrelated to the regulatory purpose of licensure.

9520.0680 VARIANCES. [See repealer.]

This part is being repealed because it is unnecessary. Variance standards are addressed in the administrative licensing rule in part 9543.1020, subpart 5.

9520.0690 APPEALS. [See repealer.]

This part is being repealed because it is unnecessary. Appeals are addressed in the administrative licensing rule in parts 9543.1030 and 9543.1060.

RULE 34 -- Residential Programs for Persons with MR/RC

A separate rulemaking effort is underway to review rules that govern programs which serve persons with development disabilities. The intent of that rulemaking effort is to consolidate the program requirements in Rules 18, 34, 38, and 42 into a single rule. The changes proposed to Rules 18, 34, 38, and 42 in the administrative licensing rule are considered noncontroversial. A more detailed review of program requirements governing persons with developmental disabilities will be completed as part of that rulemaking effort.

9525.0235 LICENSURE.

Subpart 1. **License required.** The amendment to this subpart is necessary to inform individuals consulting the rule of the requirement that the program must be licensed. As noted earlier, the Department is consolidating administrative licensing requirements in 14 program rules within a single administrative licensing rule. The administrative licensing requirements in each of the program rules are being deleted and replaced with a cross-reference to the administrative licensing rule, parts 9543.1000 to 9543.1060.

Subp. 4. **Background study.** [See repealer.] This subpart is being repealed because it has been superseded by the applicant background study requirement in Minnesota Rules, parts 9543.3000 to 9543.3090. The administrative licensing rule cross-references the background study requirement in part 9543.1020, subpart 4, item A. Therefore, the reference to a background study in this rule part is unnecessary and is being repealed.

Subp. 5. **Information on organization.** [See repealer.] This subpart is being repealed because it is unnecessary. Organization information is addressed in the administrative licensing rule in part 9543.1020, subpart 2, item B.

Subp. 6. **Disqualification standards.** [See repealer.] This subpart is being repealed because it is unnecessary. The disqualification in item B is included in the administrative licensing rule in part 9543.1020,

**Statement of Need and Reasonableness
Administrative Licensing Rule**

subpart 14. Since the standard in subpart 6, item B is addressed in the administrative licensing rule and the administrative licensing rule governs all programs licensed by the Commissioner, retaining item B is unnecessary.

Subp. 7. **Reevaluation of disqualification.** [See repealer.] This subpart is being repealed because reevaluation of a disqualification is addressed in the applicant background study rule, part 9543.3080, and Minnesota Statutes, chapter 245A. Prior to adoption of the applicant background study rule, standards governing disqualifications and reevaluations of disqualifications were addressed in the various program rules. Since subpart 6, item A has been superseded by the applicant background study rule and item B is addressed in the administrative licensing rule, subpart 7 is unnecessary.

Subp. 8. **Evaluation for cause.** [See repealer.] Subpart 8 was a component of the earlier disqualification standards found in subparts 6 and 7. Since subparts 6 and 7 are being repealed, this subpart is unnecessary.

Subp. 9. **Separate licenses.** [See repealer.] This subpart is being repealed because it is unnecessary. Minnesota Statutes, section 245A.04, subdivision 7, and part 9543.1020, subpart 8, item B, require the license to state the address of the program. It is unnecessary for the rule to state that a program have a separate license since the address of the program is stated on the license.

Subp. 10. **Documentation of regulatory compliance.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirement to document regulatory compliance is addressed in the administrative licensing rule in part 9543.1020, subpart 2, item E.

Subp. 11. **Change in license terms.** [See repealer.] This subpart is being repealed because it imposes an unnecessary burden on license holders. Subpart 11 requires a license holder to apply for a new license before certain changes are made. It is not necessary to require a new license for all of the changes identified in subpart 11. If there is a change in program ownership or a change in location, a new license is required because a background study and inspection of the physical plant is necessary. However, a change in the license capacity or ages of residents does not automatically require a new license. For example, if a program is serving 22 residents and downsizes to 14 residents, a new license application may not be required. The administrative licensing rule permits changes in a license without requiring a license holder to apply to the commissioner for a new license. However, before the change may be made, license holders are required to notify the Commissioner of the proposed change and obtain the Commissioner's approval before making that change.

Subp. 12. **Commissioner's rights of access.** [See repealer.] This subpart is being repealed because it is addressed in the administrative licensing rule in part 9543.1020, subpart 13 and Minnesota Statutes, section 245A.04, subdivision 5.

Statement of Need and Reasonableness
Administrative Licensing Rule

Subp. 13. **Variances.** [See repealer.] This subpart is being repealed because it is addressed in the administrative licensing rule in part 9543.1020, subpart 5.

Subp. 14. **Evaluation of a variance request.** [See repealer.] This subpart is being repealed because it is addressed in the administrative licensing rule in part 9543.1020, subpart 5.

9525.0243 **NEGATIVE LICENSING ACTIONS.** [See repealer.]

This part is being repealed because it is addressed in the administrative licensing rule in parts 9543.1050 and 9543.1060.

9525.0315 **ADMINISTRATION.**

Subpart 1. **Governing body.** Unless a governing body is specifically required by federal regulations, the requirement for a governing body is being repealed in the various program rules. For purposes of federal compliance under 42 C.F.R. § 483.410(a), the requirement for a governing body is retained in this subpart. Other requirements related to the governing body are unnecessary since those responsibilities are carried out by the license holder.

Subp. 2. **Chief executive officer.** [See repealer.] This subpart is being repealed because it is unnecessary. The license holder is responsible for ensuring compliance with Minnesota Statutes and rules. For purposes of client safety and protection, there is not a regulatory need to direct each program to have a chief executive officer because the license holder is accountable for managing the program which includes the daily operation of the program and staff management.

Subp. 3. **Compliance with applicable laws and rules.** [See repealer.] This subpart is being deleted because it is unnecessary. As noted earlier, internal references to other agency requirements in Department of Human Services rules are confusing to the public. It is not clear to the public who is responsible for enforcing those requirements and, since the Department's rules do not contain a complete reference to all other agency requirements, the public often assumes that requirements which are not referenced do not apply. To eliminate confusion regarding other agency requirements, the Department is deleting references to those requirements. Deleting the reference does not eliminate the program's responsibility to comply with federal, state, and local laws, regulations, codes or ordinances that are enforced by other governmental entities.

RULE 18 -- Semi-Independent Living Services (SILS)

9525.0520 **PURPOSE.**

The amendment to this part is necessary to correct a citation error identified by the Revisor of Statutes. Parts 9525.0210 to 9525.0430 have been renumbered parts 9525.0215 to 9525.0355.

9525.0530 **SCOPE.**

Statement of Need and Reasonableness
Administrative Licensing Rule

The amendment to this subpart is necessary to correct two citation errors identified by the Revisor of Statutes. The correct cite for the definitions of "mental retardation" and "related conditions" is part 9525.0185, subparts 8 and 9. However, after the amendments proposed in Rule 185 are adopted (18 S.R. 431), part 9525.0185, subparts 8 and 9 will need to be changed to 9525.0004, subparts 20 and 21. Also, the correct cite for the rule parts identified as parts 9525.0210 to 9525.0430 is parts 9525.0215 to 9525.0355.

9525.0540 PROCEDURES FOR LICENSING.

Subpart 1. **Application to determine need.** [See repealer.] This subpart is being repealed because the requirement to determine need for semi-independent living services under Minnesota Statutes, section 252.28, subdivision 1 has been repealed.

Subp. 2. **Application for license.** The amendment to this subpart is necessary to inform individuals consulting the rule of the requirement that the program must be licensed. As noted earlier, the Department is consolidating administrative licensing requirements in 14 program rules within a single administrative licensing rule. The administrative licensing requirements in each of the program rules are being deleted and replaced with a cross-reference to the administrative licensing rule, parts 9543.1000 to 9543.1060.

Subp. 3. **Required information.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

Subp. 4. **License renewal.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

Subp. 5. **Issuance of license or letter of denial.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in parts 9543.1020 and 9543.1030. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

Subp. 6. **Provisional license.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

Statement of Need and Reasonableness
Administrative Licensing Rule

Subp. 7. **Variance.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

9525.0550 TECHNICAL PROVISIONS.

Subpart 1. **Grounds for denial, revocation, or suspension of license.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1060. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

Subp. 2. **Appeals.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1060. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

Subp. 4. **Legal inconsistency.** [See repealer.] This subpart is being repealed because it is unnecessary. Minnesota Statutes, section 645.20 makes the provisions of all laws severable, and section 645.001 extends this provision to rules. These laws make severability clauses unnecessary.

9525.0560 PROGRAM AND SERVICE STANDARDS.

Subpart 1. **Admission.** This subpart is being amended to delete unnecessary requirements. Former item E is being deleted because a description of the services is required in the administrative licensing rule in part 9543.1020, subpart 2, item D. Former item G is being deleted because it is unnecessary. County agencies have contracts with the providers which state the service rates and the payment arrangements. Other consumers will inquire on costs and payments before admissions are made. It is not necessary to mandate in rule that written policies and procedures be developed and made available to the local social service agency and the general public. Former item I is being deleted because it is unnecessary to mandate in rule that programs maintain written policies and procedures governing waiting lists and selection priorities.

9525.0570 ADMINISTRATIVE STANDARDS; PROVIDER RESPONSIBILITIES.

Subpart 1. **Written statement of philosophy.** This subpart is being amended to delete item D which requires an annual review by the provider of the program's written statement governing the program's philosophy, purpose, and goals. The provider is directed to review the statement of philosophy, purpose, and goals and revise them as needed. Item D is

Statement of Need and Reasonableness
Administrative Licensing Rule

unnecessary because no clear standard is attached to the requirement.

9525.0610 WRITTEN DESCRIPTION OF ORGANIZATION. [See repealer.]

This part is being repealed because it is unnecessary. The requirements under this part are addressed in the administrative licensing rule in part 9543.1020, subpart 2, items A and B. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

9525.0620 PERSONNEL POLICIES.

The amendment to this part is necessary to eliminate unnecessary requirements governing personnel policies. The original items A to F are not necessary for the protection and safety of persons served by the program. Therefore, they are being deleted.

9525.0640 FINANCIAL RECORDS. [See repealer.]

This part is unnecessary because the requirements governing financial records are set forth in the contracts between the counties and the providers.

9525.0650 ESTABLISHMENT OF SERVICE RATES. [See repealer.]

This part is unnecessary because the requirements governing service rates are set forth in the contracts between the counties and the providers. The contracts also set forth requirements governing notice and changes in rates.

RULE 38 -- Training and Habilitation Services Licensing

9525.1510 PURPOSE AND APPLICABILITY.

Subp. 3. **Exclusions.** The amendment to this subpart (items A and B) is necessary to correct citation errors identified by the Revisor of Statutes. The rule parts previously cited have been superseded by the underscored rule parts.

Subp. 4. **Exemptions for regional centers.** The amendment to this subpart is necessary to correct a citation error identified by the Revisor of Statutes. The rule parts previously cited have been superseded by the underscored rule parts.

9525.1520 LICENSING PROCESS.

Subpart 1. **License application.** The amendment to this subpart is necessary to inform individuals consulting the rule of the requirement that the program must be licensed. As noted earlier, the Department is consolidating administrative licensing requirements in 14 program rules within a single administrative licensing rule. The administrative licensing requirements in each of the program rules are being deleted and replaced with a cross-reference to the administrative licensing

Statement of Need and Reasonableness
Administrative Licensing Rule

rule, parts 9543.1000 to 9543.1060. The requirements in items A to C are being deleted because they are unnecessary.

Item A is addressed in part 9543.1020.

Item B is unnecessary because Minnesota Statutes and Rules are available in the reference section of all public libraries. Copies of Minnesota Statutes and Rules may also be purchased through the Minnesota Bookstore.

The forms referenced in item C are no longer required to document compliance. Alternative monitoring methods have been adopted. Therefore, item C is no longer necessary and is being deleted.

Subp. 2. Completed application. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020.

Subp. 4. Access to service sites owned or leased by the provider or applicant. [See repealer.] This subpart is being repealed because it is unnecessary. The requirement in this subpart is addressed in the administrative licensing rule in part 9543.1020, subpart 13. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

Subp. 6. License denial or suspension. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in parts 9543.1020; 9543.1030; and 9543.1060.

Subp. 7. License terms. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 8.

Subp. 8. Change in license terms. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 9.

Subp. 9. Posting the license. [See repealer.] This subpart is being repealed because it is unnecessary and does not serve a direct licensing purpose.

Subp. 10. Return of license to commissioner. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1060, subpart 8.

Subp. 11. Variance request. This subpart is being amended to cross-reference the variance requirements in part 9543.1020, subpart 5. Subpart 11 is not being repealed because there is a special notice requirement in subparts 13 and 14. Subparts 11, 13, and 14 will be

Statement of Need and Reasonableness
Administrative Licensing Rule

reviewed as part of an effort to consolidate the program rules governing persons with developmental disabilities.

Subp. 12. **Granting a variance.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 5.

9525.1530 **NEGATIVE LICENSING ACTIONS.** [See repealer.]

This part is being repealed because it is unnecessary. The requirements under this part are addressed in the administrative licensing rule in part 9543.1060.

9525.1540 **ADMINISTRATION.**

Subpart 1. **Governing body.** [See repealer.] This subpart is being repealed because it is unnecessary. By definition, a license holder is legally responsible for the operation of the program. The Department issues a license to a license holder who is responsible for ensuring compliance with program requirements set forth in Minnesota Statutes and Rules. It is not necessary to mandate by rule that every program have a governing body.

Subp. 2. **Advisory committee.** [See repealer.] This subpart is being repealed because it is unnecessary. Under Executive Order 92-15, state agencies are directed to analyze and review their rules and regulations affecting Minnesota businesses and identify all rules and regulations which do not have an immediate, necessary, and substantial impact on achieving the interest intended to be protected by the rule or regulation. Agencies are further directed to eliminate or revise any rule or regulation which does not meet this standard. The Department believes that the advisory committee requirement should be deleted because it does not have an immediate, necessary, or substantial impact on achieving the interest of program licensure.

Subp. 3. **Administrative responsibility for compliance with other applicable laws and rules.** [See repealer.] This subpart is being deleted because it is unnecessary. As noted earlier, the Department has found that incomplete references to other requirements imposed on providers is very confusing to the public. It is unclear to the public who is responsible for enforcing those requirements. Also, since the Department's rules do not contain a complete reference to all other requirements, the public assumes that only those requirements which are referenced apply to a particular program. That assumption is false. To eliminate confusion regarding compliance with other statutory requirements, the Department is deleting the incomplete listings found in the program rules.

9525.1550 **ADMINISTRATIVE POLICIES AND RECORDS.**

Subpart 1. **Maintenance and availability of policies and records.** The last sentence in this subpart is being deleted because it is unnecessary. Under Executive Order 92-15, state agencies are directed

Statement of Need and Reasonableness
Administrative Licensing Rule

to analyze and review their rules and regulations affecting Minnesota businesses and identify all rules and regulations which do not have an immediate, necessary, and substantial impact on achieving the interest intended to be protected by the rule or regulation. Agencies are further directed to eliminate or revise any rule or regulation which does not meet this standard. The Department believes that mandating license holders to provide copies of its policies and records to whomever requests a copy should be deleted because it does not have an immediate, necessary, or substantial impact on achieving the interest of program licensure.

Subp. 2. **Provider's organization and policy manual.** The requirement that the provider annually review the policy manual and indicate the date when it was most recently revised is being deleted because it is unnecessary. The rule sets forth what must be included in the policy manual. Revisions to the policy manual should be made as appropriate. It is not necessary to mandate an annual review of policies in the rule since programs routinely operate according to their policy manual and will make adjustments as necessary.

Subp. 3. **Personnel policies.** [See repealer.] This subpart is being repealed because it is unnecessary. Under Executive Order 92-15, state agencies are directed to analyze and review their rules and regulations affecting Minnesota businesses and identify all rules and regulations which do not have an immediate, necessary, and substantial impact on achieving the interest intended to be protected by the rule or regulation. Agencies are further directed to eliminate or revise any rule or regulation which does not meet this standard. No regulatory interest is served by requiring providers to establish written personnel policies in the limited areas identified in items A to E.

Subp. 4. **Personnel file.** The amendment to this subpart is necessary to delete unnecessary documentation in personnel files. Under Executive Order 92-15, state agencies are directed to analyze and review rules and regulations affecting Minnesota businesses and identify all rules and regulations which do not have an immediate, necessary, and substantial impact on achieving the interest intended to be protected by the rule or regulation. Agencies are further directed to eliminate or revise any rule or regulation which does not meet this standard. No regulatory interest is served by requiring providers to maintain all the information currently required in the personnel file. A license holder may retain additional information in an employees personnel file but, for licensing purposes, only the information in items A and former item E need to be maintained. The amendment to this subpart is reasonable because it reduces paperwork and recordkeeping requirements.

Subp. 5. **Records of persons receiving services.** [See repealer.] This subpart is being repealed because it is redundant with records requirements set forth in other parts of the rule.

Subp. 6. **Contracts.** [See repealer.] This subpart is being repealed because the requirement does not have an immediate, necessary, or substantial impact on the individuals and interests protected by the rule. As a general business practice, license holders will maintain

Statement of Need and Reasonableness
Administrative Licensing Rule

copies of all contracts and subcontracts. It is unnecessary to mandate in rule that providers have copies of contracts.

Subp. 7. **Certificate required for work activity or subminimum wage.** The amendment to this subpart is necessary to update the internal reference to the Code of Federal Regulations. Title 29 of the Code of Federal Regulations is revised each year by the calendar quarter that begins July 1. The amendment to this subpart is necessary to ensure that the certificate governing the payment of wages which are less than minimum wage comply with current regulations of the Department of Labor.

Subp. 9. **Evidence of insurance.** [See repealer.] This subpart is being repealed because workers' compensation insurance requirements are not enforced by the Department. In addition, the reference cited in this subpart is incorrect. Minnesota Statutes, section 176.81 was repealed in 1953.

Subp. 10. **Financial records.** [See repealer.] This subpart is being repealed because it is unnecessary. The contracts signed between the provider and local agencies establish financial recordkeeping requirements. Other financial recordkeeping requirements are set forth in the Medical Assistance regulations. This subpart is not necessary because financial records identified in this subpart are set forth in other regulations.

Subp. 11. **Record of applications for services.** [See repealer.] This subpart is being repealed because a record of application for services is unnecessary and does not have an immediate, necessary, or substantial impact on the individuals and interests protected by the rule.

Subp. 13. **Daily schedules and attendance.** [See repealer.] This subpart is being repealed because it is unnecessary. The contract between the license holder and county sets forth service documentation requirements for reimbursement and record retention schedules. Therefore, this subpart is unnecessary.

9525.1560 **ADMISSION, EXCLUSION, SUSPENSION, AND DISCHARGE.**

Subpart 1. **Approval of policy, procedures, and criteria governing admission, exclusion, suspension, and discharge.** The amendment to this subpart is necessary to correct a citation error identified by the Revisor of Statutes. The reference to parts 9500.0010 to 9500.0092 is a typographical error. The correct cite is parts 9550.0010 to 9550.0092.

Subp. 4. **Suspension procedures.** The amendment to this subpart is necessary to correct a citation error identified by the Revisor of Statutes. The reference to parts 9500.0010 to 9500.0092 is a typographical error. The correct cite is parts 9550.0010 to 9550.0092.

Subp. 5. **Discharge procedures.** The amendment to this subpart is necessary to correct a citation error identified by the Revisor of Statutes. The reference to parts 9500.0010 to 9500.0092 is a typographical error. The correct cite is parts 9550.0010 to 9550.0092.

Statement of Need and Reasonableness
Administrative Licensing Rule

9525.1590 DOCUMENTING OUTCOMES OF SERVICES REQUIRED FOR LICENSURE.

Subp. 2. **Outcomes of training and habilitation services.** The amendment to this subpart deletes two unnecessary reporting requirements. The reporting requirement on the number of hours the person worked per week and the hourly wage and eligibility for fringe benefits are unnecessary since this information can be obtained from other sources.

9525.1600 MINIMUM STAFFING REQUIREMENTS.

Subp. 9. **Timeline to achieve compliance.** [See repealer.] This subpart is being repealed because the timeline to achieve compliance has passed.

9525.1610 STAFF QUALIFICATIONS.

Subp. 2. **Timeline to achieve compliance.** [See repealer.] This subpart is being repealed because the timeline to achieve compliance has passed.

9525.1640 BEHAVIOR MANAGEMENT.

Subpart 1. **Behavior management policy.** This subpart is being amended to delete items A and F. Separate rules govern policies on aversive and deprivation procedures (parts 9525.2700 to 9525.2810). Therefore, items A and F are unnecessary.

Subp. 2. **Aversive or deprivation procedures.** [See repealer.] This subpart is being repealed because it is unnecessary. Standards governing aversive or deprivation procedures are set forth in detail in Rule 40 (parts 9525.2700 to 9525.2810).

9525.1650 SERVICE SITES OWNED OR LEASED BY PROVIDER.

Subpart 1. **Compliance with other regulations.** [See repealer.] This subpart is being repealed because it is unnecessary. As noted previously, the Department has found that incomplete references to other requirements imposed on providers is very confusing to the public. It is unclear who is responsible for enforcing those requirements. Also, since the Department's rules do not contain a complete reference to all other requirements, the public assumes that only those requirements which are referenced apply to a particular program. That assumption is false. To eliminate confusion regarding compliance with other statutory requirements, the Department is deleting the incomplete listings found in the program rules.

9525.1660 HEALTH AND SAFETY RELATED PROCEDURES.

Subp. 8. **Reporting maltreatment of vulnerable adults.** [See repealer.] This subpart is being deleted because it is unnecessary. The rule states that the provider and provider's employees are responsible for complying with reporting requirements governing the maltreatment of vulnerable adults. Those reporting requirements are already set forth in Minnesota Statutes, section 626.557 and parts 9555.8000 to 9555.8500. It is unnecessary to include those references in this rule part.

Statement of Need and Reasonableness
Administrative Licensing Rule

Subp. 12. **Physical examinations.** [See repealer.] This subpart is being repealed because the requirement does not have an immediate, necessary, or substantial impact on the individual and interests protected by the rule.

9525.1670 FOOD SERVICE.

Subpart 1. **General requirements.** [See repealer.] This subpart is being repealed because the requirement does not have an immediate, necessary, or substantial impact on the individual and interests protected by the rule.

Subp. 2. **Sanitation.** [See repealer.] This subpart is being repealed because the sanitation requirements are regulated and enforced by the Department of Health.

Subp. 3. **Special diets.** [See repealer.] This subpart is being repealed because the requirement does not have an immediate, necessary, or substantial impact on the individual and interests protected by the rule.

Subp. 5. **Time for meals.** [See repealer.] This subpart is being repealed because it is unnecessary to establish prescriptive requirements governing meal times. The rule focus should be on serving meals, not limiting the period when meals can be served or consumed.

9525.1690 TRANSPORTATION.

Subpart 1. **Provision of transportation.** The amendment to this subpart deletes unnecessary references to other agency requirements. Transportation vehicle will need to comply with transportation law. Since the Department of Human Services does not enforce transportation regulations, there is no need to include references to those regulations in the rule.

RULE 42 - Licensure of Home and Community-Based
Services for Persons with MR/RC

9525.2000 PURPOSE AND APPLICABILITY.

Subp. 3. **Exclusions.** The amendment to this subpart is necessary to correct a citation error identified by the Revisor of Statutes. The citation error is due to a subsequent renumbering of parts 9525.0210 to 9525.0430.

9525.2020 LICENSURE.

Subpart 1. **License required.** The amendment to this subpart is necessary to inform individuals consulting the rule of the requirement that the program must be licensed. As noted earlier, the Department is consolidating administrative licensing requirements in 14 program rules within a single administrative licensing rule. The administrative licensing requirements in each of the program rules are being deleted

Statement of Need and Reasonableness
Administrative Licensing Rule

and replaced with a cross-reference to the administrative licensing rule, parts 9543.1000 to 9543.1060.

Subp. 2. **Study of the applicant.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the applicant background study rule parts 9543.3000 to 9543.3090. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

Subp. 3. **Disqualification standards.** [See repealer.] This subpart is being repealed because it is unnecessary. The disqualification in item B is included in the administrative licensing rule in part 9543.1020, subpart 14. Since the standard in item B is addressed in the administrative licensing rule and the administrative licensing rule governs all programs licensed by the Commissioner, retaining item B is unnecessary.

Subp. 4. **Reevaluation of disqualification.** [See repealer.] This subpart is being repealed because reevaluation of a disqualification is address in the applicant background study rule, part 9543.3080, and Minnesota Statutes, chapter 245A. Prior to adoption of the applicant background study rule, standards governing disqualifications and reevaluations of disqualifications were addressed in the various program rules. Since subpart 4 has been superseded by the applicant background study rule, this subpart is obsolete.

Subp. 5. **Evaluation for cause.** [See repealer.] Subpart 5 was a component of the earlier disqualification standards found in subparts 3 and 4. Since subparts 3 and 4 are being repealed, this subpart is unnecessary.

Subp. 6. **Variances.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 5.

Subp. 7. **Evaluation of a variance request.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 5.

9525.2025 **NEGATIVE LICENSING ACTIONS.** [See repealer.]

This part is being repealed because it is unnecessary. The requirements under this part are addressed in the administrative licensing rule in part 9543.1060. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

Statement of Need and Reasonableness
Administrative Licensing Rule

9525.2080 SERVICE RECOMMENDATIONS.

The amendments to this part are necessary to eliminate unnecessary reporting requirements.

9525.2100 INDIVIDUAL HABILITATION PLAN DEVELOPMENT AND IMPLEMENTATION.

Subp. 2. Implementation of the IHP. The amendment to this part is necessary to eliminate unnecessary requirements. The deleted requirements do not have an immediate, necessary, or substantial impact on the individual and interests protected by the rule.

Subp. 4. Plan file. The amendments to this subpart delete unnecessary rule requirements. Item K is being deleted because requirements on the handling of resident funds and property are addressed in the administrative licensing rule in part 9543.1020, subpart 15. Item L is being deleted because the requirement is addressed in other parts of the rule.

RULE 35 - Licensure of CD Rehabilitation Programs

A separate rulemaking effort is underway to amend requirements governing programs that serve chemically dependent persons. The intent of that rulemaking effort is to consolidate program requirements in Rule 35 (parts 9530.4100 to 9530.4450) and Rule 43 (parts 9530.5000 to 9530.6500) into a single rule. Once that consolidation is completed, Rule 43 (parts 9530.5000 to 9530.6500) will be repealed. Noncontroversial changes to Rules 35 and 43 are being addressed in this rulemaking effort. Other changes will be made under the chemical dependency rulemaking effort.

9530.4120 LICENSING OF PROGRAMS.

Subpart 1. License required. The amendment to this subpart is necessary to inform individuals consulting the rule of the requirement that the program must be licensed according to parts 9543.1000 to 9543.1060 as well as those requirements specific to chemical dependency treatment. As noted earlier, the Department is consolidating administrative licensing requirements in 14 program rules within a single administrative licensing rule. The administrative licensing requirements in each of the program rules are being deleted and replaced with a cross-reference to the administrative licensing rule, parts 9543.1000 to 9543.1060.

Subp. 2. Licensing information available. [See repealer.] This subpart is being repealed because it is unnecessary. Minnesota Statutes and rules are available in the reference section of all public libraries. Copies of Minnesota Statutes and rules may also be purchased through the Minnesota Bookstore. Application forms are available from the Department as set forth in part 9543.1020, subpart 2, item A.

Subp. 3. Contents of application. This subpart is being amended to delete application requirements that are set forth in the administrative licensing rule. In addition, many of the items required in the

Statement of Need and Reasonableness
Administrative Licensing Rule

application can be viewed by the licensor on-site. It is reasonable to eliminate the requirement that certain documents be duplicated and sent to the commissioner to reduce duplication and administrative costs for a program submitting a license application.

Item A is unnecessary because those requirements are set forth in part 9543.1020, subpart 2, item A.

Item B is unnecessary because it is addressed in part 9543.1000, subpart 2.

Former Item C is retained and relettered item A.

Item D is unnecessary because copies of the admission and discharge policies can be reviewed on-site. It is not necessary for the applicant to send copies of those policies to the Commissioner.

Former Item E is retained and relettered B.

Item F is unnecessary because the requirement relating to the governing body is addressed in part 9543.1020, subpart 2, item B. Requiring applicants to submit documentation of staff qualifications is an unnecessary expense since the standards governing staff qualifications are set forth in part 9530.4270 and can be reviewed on-site.

Item G is unnecessary because the applicant background study required by Minnesota Statutes, section 245A.04, subdivision 3 is set forth in parts 9543.3000 to 9543.3090 which is cross-referenced in the administrative licensing rule in part 9543.1020, subpart 4, item A.

Item H is unnecessary because documentation is required in part 9530.4320 and can be reviewed on-site.

Item I is retained and relettered item C due to deletions in the preceding items.

Item J is unnecessary because the requirement does not have an immediate, necessary, or substantial impact on the individual or interests intended to be protected by the rule.

Item K is unnecessary because the requirement does not have an immediate, necessary, or substantial impact on the individual or interests intended to be protected by the rule.

Item L is unnecessary because part 9530.4230, subpart 1 requires the license holder of a Category II, III, or IV program to submit a program evaluation plan with its application for license. The requirement under this item is unnecessary because required documentation can be reviewed on-site.

Item M is unnecessary because requirements governing abuse prevention plans are set forth in part 9555.8200. Requiring a copy of the plan to be sent to the Commissioner upon license application is unnecessary since the Commissioner can review the plan on-site during the license

Statement of Need and Reasonableness
Administrative Licensing Rule

inspection. To require applicants to send copies of the plan with the each license application is an unnecessary expense since the abuse prevention plans can be reviewed on-site.

Item N is unnecessary because the licensing fee requirement is set forth in the administrative licensing rule in part 9543.1020, subpart 2, item G.

Subp. 4. **Reapplication.** [See repealer.] This subpart is being repealed because it is addressed in the administrative licensing rule in part 9543.1020, subparts 9 and 12. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

Subp. 6. **Change in license terms.** Items A to D in this subpart are being repealed because they are addressed in part 9543.1020, subpart 9. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

Subp. 7. **Access by commissioner.** [See repealer.] This subpart is being repealed because it is addressed in part 9543.1020, subpart 13. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

9530.4130 **NEGATIVE LICENSING ACTIONS.** [See repealer.]

This part is being repealed because it is unnecessary. The requirements under this part are addressed in the administrative licensing rule in part 9543.1060. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

9530.4220 **GOVERNING BODY OF PROGRAM LICENSE HOLDER.** [See repealer.]

This part is being repealed because it is unnecessary. By definition, a license holder is legally responsible for the operation of the program. The Department issues a license to a license holder who is responsible for ensuring compliance with program requirements set forth in Minnesota Statutes and Rules. The license holder serves the function of the governing body. It is not necessary to repeat in rule that programs have a governing body.

9530.4250 **PERSONNEL POLICIES AND PROCEDURES.**

Subpart 1. **Policy requirements.** Certain items in this subpart are being repealed because they are unnecessary. Under Executive Order 92-15, state agencies are directed to analyze and review their rules and regulations affecting Minnesota businesses and identify all rules and regulations which do not have an immediate, necessary, and substantial impact on achieving the interest intended to be protected by the rule

Statement of Need and Reasonableness
Administrative Licensing Rule

or regulation. Agencies are further directed to eliminate or revise any rule or regulation which does not meet this standard. No regulatory interest is served by requiring providers to establish written personnel policies in the limited areas identified in former items A, E, G, and H.

The statement in item A is unnecessary since programs must comply with federal, state, and local regulations that have the force and effect of law. It is unnecessary to state that programs must comply with employment laws.

Item E is unnecessary since general employment standards are set forth in federal and state laws. The purpose of the rule is to protect persons served by the program not employees. Employees are capable of protecting their interests and should inquire about any policies the employer may have governing conditions of employment, benefits, promotion, etc. when they accept employment.

Item G is unnecessary because the requirements governing the organizational structure is addressed in the administrative licensing rule in part 9543.1020, subpart 2, item B.

Item H is unnecessary because general employment standards are set forth in federal and state laws. The purpose of the rule is to protect persons served by the program not employees. Employees are capable of protecting their interests through employment laws.

Subp. 2. Staff development plan. The amendment to this subpart is necessary to correct a citation error in item D. The reference to parts 9560.0250 to 9560.0300 needs to be corrected due to a subsequent renumbering of those rule parts.

9530.4300 ADMISSION, INFORMATION AND REFERRAL, AND DISCHARGE
POLICIES.

Subpart 1. Admission policy. This subpart is amended to eliminate the requirement that license holders submit a copy of the admission policy with the license application. The requirement that the admission policy be submitted to the commissioner with the application for a license is being eliminated because it is an unnecessary expense for the license holder. The admission policy can be reviewed during the on-site inspection. Finally, the requirement that the program maintain a written policy against certain types of discrimination is necessary because these programs receive federal funding.

RULE 43 - Outpatient Alcohol and Drug Treatment Programs

9530.5300 LICENSURE.

Subpart 1. Requirement. The amendment to this subpart is necessary to inform persons consulting the rule that a program must be licensed under parts 9543.1000 to 9543.1060. As indicated in the introduction to Rule 35, a separate rulemaking effort is underway to consolidate Rules 35 and 43 into a single program rule. When that consolidation is completed,

Statement of Need and Reasonableness
Administrative Licensing Rule

Rule 43 will be repealed. During the interim period outpatient programs will continued to be licensed under Rule 43 and will be governed by the administrative licensing requirements in parts 9543.1000 to 9543.1060 as well as those specific program requirements in Rule 35.

Subp. 2. **Exception.** [See repealer.] This subpart is being repealed because it is unnecessary. The exception from licensure is set forth in Minnesota Statutes, section 245A.03, subdivision 2.

Subp. 3. **Time of application; forms.** [See repealer.] This subpart is being repealed because it is unnecessary. Application requirements are set forth in part 9543.1020, subpart 2. It is reasonable to repeal similar requirements to reduce the length of Minnesota Rules and to prevent potential confusion should the requirements in one rule be amended or repealed but similar requirements in the other rule are left unchanged.

Subp. 4. **Validity of licenses.** [See repealer.] This subpart is being repealed because it is unnecessary. Requirements governing the period of licensure are set forth in part 9543.1020, subpart 11.

Subp. 5. **Copy of rules.** [See repealer.] Minnesota Statutes and Rules are available in the reference section of all public libraries. Copies of Minnesota Statutes and Rules may also be purchased through the Minnesota Bookstore. This subpart is being repealed because it is unnecessary.

Subp. 6. **Denial, revocation, suspension, probation, and nonrenewal of license.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in parts 9543.1030; 9543.1050; and 9543.1060. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

Subp. 7. **Licensure procedures.** [See repealer.] This subpart is being repealed because it is unnecessary. Application and license requirements are set forth in part 9543.1020. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

Subp. 8. **Public notice of policies and procedures.** [See repealer.] This subpart is being repealed because it is unnecessary since the policy and procedures governing licensure are set forth in Minnesota Statutes and rules. Minnesota Statutes and rules are available in the reference section of all public libraries. Copies of Minnesota Statutes and Rules may also be purchased through the Minnesota Bookstore.

Subp. 9. **Provisional license.** [See repealer.] This subpart is being repealed because the requirements under subpart 9 are addressed in the administrative licensing rule in part 9543.1020, subparts 4 and 10. It is reasonable to repeal redundant requirements to reduce the length of

Statement of Need and Reasonableness
Administrative Licensing Rule

Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

Subp. 11. **Compliance with codes.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirement that programs comply with local codes before a license will be issued is stated in part 9543.1020, subpart 2, item E. It is reasonable to repeal redundant requirements to reduce the length of Minnesota Rules and to prevent potential confusion should similar requirements be amended or repealed in one rule part but not the other.

9530.5400 RIGHT OF ENTRY. [See repealer.]

This part is being repealed because it is unnecessary. The requirement that programs grant the Commissioner access is set forth in Minnesota Statutes, section 245A.04, subdivision 5 and part 9543.1020, subpart 13.

9530.5600 GOVERNING AND ADVISORY BOARDS.

Subpart 1. **Governing body.** [See repealer.] This subpart is being repealed because it is unnecessary. By definition, a license holder is legally responsible for the operation of the program. The Department issues a license to a license holder who is responsible for ensuring compliance with program requirements set forth in Minnesota Statutes and Rules. The license holder serves the function of the governing body.

Subp. 2. **Advisory board.** [See repealer.] This subpart is being repealed because it is unnecessary. Under Executive Order 92-15, state agencies are directed to analyze and review their rules and regulations affecting Minnesota businesses and identify all rules and regulations which do not have an immediate, necessary, and substantial impact on achieving the interest intended to be protected by the rule or regulation. Agencies are further directed to eliminate or revise any rule or regulation which does not meet this standard. The mandated requirement that programs have an advisory board does not have an immediate, necessary, or substantial impact on achieving the interest intended to be protected by the rule.

Subp. 3. **Quarterly reports.** [See repealer.] Since subparts 1 and 2 are being repealed, this subpart is unnecessary. With the elimination of the requirements for a governing body and an advisory board, there is no one to whom the quarterly report needs to be sent. Therefore, this subpart is being repealed.

Subp. 4. **Governing body without advisory board.** [See repealer.] Since subparts 1 and 2 are being repealed, this subpart is unnecessary. With the elimination of the requirements for a governing body and an advisory board, there is no need to dictate a requirement that a governing body perform the functions of an advisory board.

9530.5900 PERSONNEL POLICIES. [See repealer.]

This part is being repealed because it is unnecessary since general employment standards are set forth in federal and state laws. The

Statement of Need and Reasonableness
Administrative Licensing Rule

purpose of the rule is to protect persons served by the program, not employees. Employees are capable of protecting their own interests and should inquire about any policies the employer may have governing conditions of employment, benefits, promotions, etc., when they accept employment.

9530.6300 ADMINISTRATION AND MANAGEMENT.

The amendments to this part are necessary to eliminate unnecessary rule requirements. Item A is being deleted because it is addressed in the administrative licensing rule in part 9543.1020, subpart 2, item B. Item B is being deleted because it is unnecessary. The requirement governing service goals and objectives is a duplicated standard since the requirement is in part 9530.6200. Item G is being deleted because it is unnecessary. The requirement for provision of services not offered by the program is addressed in this part in item H, subitem (2). It is reasonable to delete items A, B, and G because the requirements under those items are addressed in other rule parts.

9530.6500 SEVERABILITY. [See repealer.]

This part is being repealed because it is unnecessary. Minnesota Statutes, section 645.20 makes the provisions of all laws severable, and section 645.001 extends this provision to rules. These laws make severability clauses unnecessary.

NEW RULE - RULE 17 ADMINISTRATIVE LICENSING RULE

9543.1000 APPLICABILITY.

Subpart 1. **Applicability.** This subpart is necessary to inform applicants and license holders that parts 9543.1000 to 9543.1060 apply to residential and nonresidential programs subject to licensure under Minnesota Statutes, chapter 245A except for child foster care, adult foster care, and family day care programs. Minnesota Statutes, section 245A.09, subdivision 1, directs the Commissioner to adopt rules under chapter 14 to govern the operation, maintenance, and licensure of programs subject to licensure under sections 245A.01 to 245A.16. The rule creates a single standard governing administrative licensing requirements for programs licensed by the Department. The rule does not include child foster care, adult foster care, and family day care because those licensing functions have been delegated to the counties pursuant to Minnesota Statutes, section 245A.16 and Minnesota Rules, parts 9543.0010 to 9543.0150. This subpart is reasonable because it identifies programs subject to the requirements in parts 9543.1000 to 9543.1060.

Subp. 2. **Compliance with other laws and rules.** This subpart is necessary to inform applicants and license holders that they must comply with other federal, state, and local requirements governing the program. Currently a number of the Department's licensing rules cross-reference laws and requirements of other governmental entities. Examples of laws or regulations that are cross-referenced include: state health codes

Statement of Need and Reasonableness
Administrative Licensing Rule

(building codes, uniform fire codes, water quality standards, clean air act requirements, etc.); transportation requirements (requirement that drivers have a valid Minnesota driver's license or passengers must use seat belts); USDA requirements (food handling or nutrition standards); Department of Health requirements on patient rights, facility licensure, etc.

The Department has not consistently used cross-references in its licensing rules and, where it has cross-referenced requirements, those cross-references have not been complete. Some rules may reference minimum wage requirements, others may not. Due to the inconsistent manner in which other agency requirements have been cross-referenced, licensing requirements are often confusing to applicants and license holders. Applicants and license holders may not know that the cross-references are incomplete. Also, when another agency's requirement is cross-referenced in a Department rule, it creates confusion regarding which agency is responsible for enforcement of the requirement. For example, if a program rule specifically requires that staff be paid at least the minimum wage, who enforces that wage requirements? Is the requirement enforced by the Department of Human Services or the Department of Labor? What statutory authority does the Department of Human Services have to enforce another agency's requirements and what sanctions can the Department apply when there is a violation of another agency's requirement?

License holders often complain that different governmental agencies enforce the same requirements differently. License holder have indicated that they have been placed in a position of doing something one way to satisfy the Department of Human Services and another way to satisfy a different governmental agency. To eliminate confusion and duplication of effort, the rule will only identify Department of Human Services requirements. To the extent that resources permit, the Department will provide applicants and license holders information about other agency requirements that affect their programs. However, a list of all federal, state, and local requirements will not be stated in the rule.

This subpart is reasonable because it informs applicants and license holders that they must comply with those federal, state, and local laws and regulations that govern a program.

9543.1010 DEFINITIONS.

Subpart 1. Scope. This subpart is necessary to inform the reader that the definitions in this rule part apply throughout the rule.

Subp. 2. Abuse. This subpart is necessary to clarify a term used in the rule. Abuse in a licensed program is a license violation which must be investigated and, if substantiated, will result in a negative licensing action. Abuse of a child is included within the statutory definition of maltreatment found in Minnesota Statutes, section 626.556, subdivision 10e, paragraph (a). Abuse, as it relates to a vulnerable adult, is defined in Minnesota Statutes, section 626.557, subdivision 2, paragraph (d). This subpart is reasonable because it cross-

Statement of Need and Reasonableness
Administrative Licensing Rule

references the definition of abuse in Minnesota Statutes, section 626.557, subdivision 2, paragraph (d).

Subp. 3. **Administrative licensing action.** This subpart is necessary to clarify a term used in the rule. The term "administrative licensing action" is necessary to distinguish licensing actions taken to respond to minor licensing violations from those licensing actions taken to respond to more serious licensing violations. Administrative licensing actions include licensing actions such as correction orders, fines, or probation. It is reasonable to use a generic term to describe administrative licensing actions because the considerations imposed on the Department before taking such actions are similar.

Subp. 4. **Applicant.** This subpart is necessary to clarify a term used in the rule. Minnesota Statutes, section 245A.02, subdivision 3 defines applicant to mean an individual, corporation, partnership, voluntary association, controlling individual or other organization that has applied for licensure under Minnesota Statutes, sections 245A.01 to 245A.16 and the rules of the Commissioner. It is reasonable to cross-reference the definition of applicant in Minnesota Statutes to reduce the length of the rule and to eliminate the need to revise the rule should the legislature amend the definition of applicant in the Human Services Licensing Act.

Subp. 5. **Commissioner.** This subpart is necessary to clarify a term used in the rule. The Commissioner is the official responsible for issuing a license under Minnesota Statutes, chapter 245A. The rule defines Commissioner to mean the Commissioner of Human Services or the Commissioner's designated representative. It is necessary to include in the definition of Commissioner the Commissioner's designated representative since it is impossible for the Commissioner herself to perform all the tasks assigned to her in Minnesota Statutes. Including this delegation of responsibility in the definition serves to notify interested parties of the delegation. It is reasonable to shorten the term "Commissioner of the Department of Human Services or the Commissioner's designated representative" to "Commissioner" to shorten the length of the rule.

Subp. 6. **Consumer.** This subpart is necessary to clarify a term used in the rule. Minnesota Statutes, section 245A.04, subdivision 4, paragraph (a), clause (3) requires an evaluation of the program by consumers of the program. Since the term consumer may be subject to different interpretations, it is necessary to define the term in the rule. The definition is reasonable because it cross-references the statutory definition of consumer in Minnesota Statutes, section 245A.04, subdivision 4.

Subp. 7. **Controlling individual.** This subpart is necessary to clarify a term used in the rule. Part 9543.1020, subpart 2, item B requires the applicant to provide the names and addresses of owners, board members, or controlling individuals, and an organizational chart depicting organizational authority over the program. Since the meaning of term controlling individual may not be clear to an applicant, it is necessary to define the term. The definition of controlling individual is

Statement of Need and Reasonableness
Administrative Licensing Rule

reasonable because it cross-references the statutory definition of controlling individual in Minnesota Statutes, section 245A.02, subdivision 5a.

Subp. 8. **Imminent danger.** This subpart is necessary to clarify a term used in the rule. The term "imminent danger" is used in Minnesota Statutes, section 245A.07, subdivision 2 but is not defined. Minnesota Statutes, section 245A.07, subdivision 2 states that if the license holder's failure to comply with applicable law or rule has placed the health, safety, or rights of persons served by the program in imminent danger, the commissioner shall act immediately to suspend the license.

The administrative licensing rule uses the same definition of "imminent danger" used in Minnesota Rules, parts 9543.0010 to 9543.0150 which govern the delegation of child foster care, adult foster care, and family day care licensing functions to counties (See part 9543.0020, subpart 11). In the statement of need and reasonableness to part 9543.0020, subpart 11, the Department noted that the definition in subpart 11 modifies the definition used in child protection services under Minnesota Rules, part 9560.0214, subpart 12, by including the term "vulnerable adult." It is necessary for the licensing definition of imminent danger be consistent with the definition used in child protection services to protect children served by licensed programs and to ensure consistency in actions taken to protect children at risk. It is also necessary to have a clear definition of imminent danger for vulnerable adults. It is reasonable to use the same definition of imminent danger for vulnerable adults and children since both populations are vulnerable and unable to protect themselves from the dangers of abuse, neglect, and maltreatment. It is also reasonable to use the same definition of imminent danger for licensing functions performed by the state and counties to ensure uniform application of the statutory requirements.

Subp. 9. **License.** This subpart is necessary to clarify a term used in the rule. A license is a certificate issued by the Commissioner, authorizing a person to provide a particular program for a specified period of time. This definition is reasonable because it cross-references the statutory definition of license in Minnesota Statutes, section 245A.02, subdivision 8.

Subp. 10. **License holder.** This subpart is necessary to clarify a term used in the rule. A license holder is the individual, corporation, partnership, voluntary association, or other organization that is legally responsible for the operation of a program. The definition is reasonable because it cross-references the statutory definition of license holder in Minnesota Statutes, section 245A.02, subdivision 9.

Subp. 11. **Maltreatment.** This subpart is necessary to clarify a term used in the rule. Maltreatment in a licensed program is a license violation which must be investigated and, if substantiated, will result in a negative licensing action. Maltreatment is a term that encompasses physical abuse, neglect, sexual abuse, or mental injury to a child. The definition is reasonable because it cross-references the statutory

Statement of Need and Reasonableness
Administrative Licensing Rule

definition of maltreatment in Minnesota Statutes, section 626.556, subdivision 10e, paragraph (a).

Subp. 12. **Negative licensing action.** This subpart is necessary to clarify a term used in the rule. For the purpose of this rule, a negative licensing action is a generic term for those licensing actions that include denial of a license or suspension, revocation, or immediate suspension of a license. It is reasonable to use a generic term to describe denial of a license or suspension, revocation, or immediate suspension of a license because the administrative requirements imposed on the Department before taking such actions are similar.

Subp. 13. **Neglect.** This subpart is necessary to clarify a term used in the rule. Neglect in a licensed program is a license violation that must be investigated and, if substantiated, will result in a negative licensing action. Since neglect of children or vulnerable adults in a licensed program is a license violation, it is necessary to define the term. Neglect of a child is included within the definition of "maltreatment." Therefore, it is necessary to define neglect as it relates to a vulnerable adult. The definition is reasonable because it cross-references the statutory definition of neglect in Minnesota Statutes, section 626.557, subdivision 2, paragraph (e).

Subp. 14. **Nonresidential program.** This subpart is necessary to clarify a term used in the rule. A nonresidential program is defined in Minnesota Statutes, section 245A.02, subdivision 10. The distinguishing characteristic of a nonresidential program is that services are provided for fewer than 24 hours per day. The definition is reasonable because it cross-references the statutory definition of nonresidential program in Minnesota Statutes, section 245A.02, subdivision 10.

Subp. 15. **Program.** This subpart is necessary to clarify a term used in the rule. Two general types of programs are licensed by the Department. They are nonresidential programs and residential programs. The term program is a generic term that applies to either a residential program or nonresidential program. This definition is reasonable because it shortens the length of the rule.

Subp. 16. **Residential program.** This subpart is necessary to clarify a term used in the rule. A residential program is defined in Minnesota Statutes, section 245A.02, subdivision 14. The distinguishing characteristic of a residential program is that services are provided 24 hours per day. The definition is reasonable because it cross-references the statutory definition of residential program in Minnesota Statutes, section 245A.02, subdivision 14.

Subp. 17. **Volunteer.** This subpart is necessary to clarify a term used in the rule. During committee discussions and in subsequent discussions with providers, providers requested that the term "volunteer" be defined so that friends are distinguishable from volunteers since the rule does not allow volunteers to consume alcohol while providing services. A hypothetical situations given by a provider was a friend or volunteer taking a resident to a ball game and during the game consuming a beer. Although friends and volunteers often perform similar functions in

Statement of Need and Reasonableness
Administrative Licensing Rule

residential programs, programs exercise different control over friends and volunteers. It is appropriate to have a zero tolerance level for drugs and alcohol for volunteers as it is for other persons providing services. If a friend poses a danger to a resident, limitations based on medical necessity may need to be stated in the resident's individual treatment plan. Standards governing the actions of friends are beyond the scope of this rule.

9543.1020 APPLICATION AND LICENSE REQUIREMENTS.

Subpart 1. License required. This subpart is necessary to inform individuals consulting the rule that unless they are exempt from licensure under Minnesota Statutes, section 245A.03, subdivision 2, they must be licensed by the Commissioner. This subpart is a reasonable implementation of Minnesota Statutes, section 245A.03, subdivision 1.

Subp. 2. Information required before an application is processed. This subpart is necessary to identify information that must be submitted by an applicant before a license application will be processed by the Department. It is reasonable to inform the applicant of the information that is required before an application is processed to expedite the license application process.

Item A is necessary to identify basic information about the applicant and the type of program license that is being requested. Minnesota Statutes, section 245A.04, subdivision 7, paragraph (a), requires that the license state: the name of the license holder; the address of the program; the effective date and expiration date of the license; the type of license; the maximum number and ages of persons that may receive services from the program; and any special conditions of licensure. The information required in item A is necessary to process the license application since it includes information that must be stated on the license. This item is reasonable because it is consistent with Minnesota Statutes, section 245A.04, subdivision 7, paragraph (a).

Item B is necessary to implement Minnesota Statutes, section 245A.04, subdivision 1, paragraph (b) which requires an application for licensure to specify one or more controlling individuals as an agent who is responsible for dealing with the Commissioner of Human Services on all matters provided for in Minnesota Statutes, chapter 245A. It is reasonable to require an organizational chart depicting organizational authority over a program since position descriptions may not clearly depict organizational authority. This item is a reasonable implementation of Minnesota Statutes, section 245A.04, subdivision 1, paragraph (b).

Item C is necessary to establish a requirement governing programs with headquarters outside the state of Minnesota. Item C requires a program with headquarters outside Minnesota to have a license holder in the state. Item C is necessary to permit state inspection of the program and records pursuant to Minnesota Statutes, section 245A.04, subdivisions 4 and 5 and to assure authority to investigate possible licensing violations.

Statement of Need and Reasonableness
Administrative Licensing Rule

Item D is necessary to require applicants to provide a brief description of the proposed program. The rule requires the applicant to provide a description of the services to be offered, the program's service philosophy, and target populations, if any. This information is necessary to guarantee that the appropriate license is issued based on who the program serves and the type of services that are provided.

Item E is necessary to inform applicants that they must document compliance with applicable health, safety, building, or zoning codes or document that a waiver has been granted before a license application will be processed. Depending on the type of program and clients served by the program, programs may be required to comply with building codes, fire and safety codes, health rules, zoning ordinances. Minnesota Statutes, section 245A.04, subdivision 1, paragraph (a) requires the Commissioner to act on the license application within 90 working days after a complete application and any required reports have been received from other state agencies or departments, counties, municipalities, or other political subdivisions. Since the deadline for the Commissioner to act on a license application does not begin until after the required reports have been received from other agencies, it is reasonable to inform applicants of the general requirement that they must document compliance with applicable codes. This notice is reasonable because it informs applicants of a licensing requirement and expedites the completion of the application process.

Item F is necessary to require applicants to provide a copy of the program's grievance procedure and time lines for addressing grievances. The Department is not imposing a specific grievance mechanism on programs but the program's grievance procedure must permit persons served by the program and their authorized representatives to bring grievances to the highest level of authority in the program. The rule advisory committee supported item F and recommended that the grievance procedure include time lines for addressing grievances. The Department incorporated the advisory committee's recommendation in item F. Again, while the Department is not imposing specific time lines for addressing grievances, programs are alerted to the time line requirement. If problems are detected regarding grievance procedures the Department can address those problems on a case-by-case basis. If it is determined later that a prescriptive grievance process is necessary, the Department will initiate rulemaking to amend item F. However, at this time, additional rulemaking is not contemplated.

Item G is necessary to cross-reference the licensing fees that have been established under Minnesota Rules, parts 9545.2000 to 9545.2040. Part 9545.2030, subpart 1 requires that the license fee payment must accompany an operator's application for issuance or renewal of a license. The licensing fee shall be payable to the Treasurer of the State of Minnesota and is nonrefundable. Part 9545.2030, subpart 2 requires the annual licensing fees established in part 9545.2020 shall be prorated for residential or nonresidential programs or agencies licensed for a period of time other than one year according to the number of months for which the license is issued or renewed. Pursuant to Minnesota Statutes, section 245A.09, subdivision 7, paragraph (d), the Department will begin to issue licenses for a period up to two

Statement of Need and Reasonableness
Administrative Licensing Rule

years. The Department is not proposing to reduce the annual license fees for programs that are issued a license for two years, i.e., the annual license fee will not cover the two year period of licensure. However, in order to reduce financial hardship on programs that are licensed for two years, item G states that when the license period exceeds 12 months, the licensing fees for the first 12 months shall be submitted with the license application with the remaining licensing fees due before the beginning of the 13 month of licensure. This item is reasonable because it maintains the current annual licensing fee payment schedule while moving to an expanded license period. There is not a change in the license holder's license fees or the payment due dates.

Subp. 3. **Completed application.** This subpart is necessary to identify when a license application is complete. It is necessary to identify when a license application is complete because under Minnesota Statutes, section 245A.04, subdivision 1 the Commissioner must act on an application within 90 working days after a complete application and any required reports from other state agencies or departments, counties, municipalities, or other political subdivisions have been received. In order for individuals to know when the 90 working day requirement begins, it is necessary to indicate when an application is complete. An application is complete when the individual completes and signs the application and provides the information required under subpart 2. This subpart is reasonable because it informs applicants when a license application is considered complete.

Subp. 4. **Licensing study.** This subpart is necessary to inform applicants that the Commissioner will complete a licensing study before a license will be issued. Items A to E identify components of the licensing study.

Item A is necessary to comply with Minnesota Statutes, section 245A.04, subdivision 3. Since a rule has been adopted which sets forth standards governing applicant background studies, item A cross-references that rule (Minnesota Rules, parts 9543.3000 to 9543.3090).

Items B to E are necessary to comply with Minnesota Statutes, section 245A.04, subdivision 4, paragraph (a) and subdivision 6. If items C to E cannot be completed because a program is not operational, a provisional license may be issued as authorized under Minnesota Statutes, section 245A.04, subdivision 4, paragraph (b).

The last paragraph under subpart 4 is necessary to clarify licensing requirements for programs that deliver services in locations that are not under the control of the program. For example, home and community based services provided to persons with mental retardation and related conditions delivered in a person's home or on a job site which is not under the control of the program such as a fast food restaurant. The rule specifically states that licensing study requirements under item B, inspection of the physical plant, and item E, observation of the program in operation, do not apply to locations that are not under the control of the program. It is reasonable to exclude the licensing components under items B and E because they would be intrusive and these locations are not controlled by the program.

Statement of Need and Reasonableness
Administrative Licensing Rule

Subp. 5. Variance standards. This subpart is necessary to establish a standard governing a variance to licensing requirements. Requirements governing a variance is set forth under Minnesota Statutes, section 245A.04, subdivision 9. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.04, subdivision 9.

Subp. 6. Additional requirements before granting a residential license. This subpart is necessary to inform applicants for a residential license that before the Commissioner grants a residential license the Commissioner will consider the requirements under Minnesota Statutes, section 245A.11. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.11.

Subp. 7. Additional requirements before granting a nonresidential license. This subpart is necessary to inform applicants for a nonresidential license that before the Commissioner grants a nonresidential license the Commissioner will consider the requirements under Minnesota Statutes, section 245A.14. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.14.

Subp. 8. Issuance of a license, license terms. This subpart is necessary to inform applicants that if the Commissioner determines the program complies with all applicable rules and laws, the Commissioner will issue the applicants a license. This subpart also identifies the information that will be included on the license. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.04, subdivision 7, paragraph (a) which sets forth minimum information that must be on a license.

Subp. 9. Proposed changes, commissioner approval required. This subpart is necessary to ensure compliance with Minnesota Statutes, section 245A.04, subdivision 7. A license holder is required to notify the Commissioner and obtain the Commissioner's approval before making any changes in the program that would alter the license information listed under subpart 8, items A to F. This subpart is necessary to ensure that the program continues to meet the terms of licensure. It is reasonable to require license holders to inform the Commissioner of proposed changes before they occur because the change may not be allowed under Minnesota Statutes, chapter 245A or the program rules governing the program. Requiring the license holder to inform the Commissioner of proposed changes will facilitate communications regarding proposed licensing changes and may prevent the license holder from incurring unnecessary expenses in the event the change is not permitted.

Subp. 10. Initial license. This subpart is necessary to establish standards governing the issuance of an initial license. The term initial license and provisional license are synonymous. The initial license is a provisional license since the Commissioner is unable to conduct the evaluation or observation required by Minnesota Statutes, section 245A.04, subdivision 4, paragraph (a), clauses (3) and (4) because the program is not yet operational and certain records and documents are not available because persons are not yet receiving services from the program. Minnesota Statutes, section 245A.04, subdivision 7, paragraph (b) states that a provisional license must not

Statement of Need and Reasonableness
Administrative Licensing Rule

be issued except at the time that a license is first issued to an applicant. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.04, subdivision 7.

Subp. 11. Period of licensure. This subpart is necessary to establish a standard governing the period of licensure. Pursuant to the authority granted in Minnesota Statutes, section 245A.09, subdivision 7, paragraph (d), the Department is moving to a two year license period. This subpart is reasonable because it permits the Department to focus more of its resources on programs that fail to fully comply with licensing requirements. Since staff resources are limited, when the frequency of licensing inspections is reduced on programs that fully comply with licensing requirements, the Department is able to direct more assistance and oversight to programs that have failed to comply with the licensing requirements governing the program.

Item A provides that the subsequent license that immediately follows the initial license period shall be issued for up to one year. This standard is reasonable because it ensures two full licensing cycles before a license is issued for more than one year.

Item B authorizes a two year license period except as provided in item C. Due to staff reductions mandated by the legislature, it is necessary for the Licensing Division to prioritize its licensing activities. The Division does not have the resources to continue to conduct annual licensing inspections along with its other tasks. Item B permits the Department to devote greater attention to the protection of clients rather than on administrative paperwork.

Item C is necessary to establish a modified licensing standard for programs that are placed on probation, fined, or whose licenses are suspended. After a program is placed on probation or fined, the following licensing period is limited to one year. The program will not be issued a two year license until the program completes a licensing cycle without being placed on probation or fined. Programs whose licenses are suspended are restricted to a one year license and must complete two licensing cycles without a license suspension before the program can receive a two year license.

This subpart is a reasonable implementation of Minnesota Statutes, section 245A.09, subdivision 7, paragraph (d).

Subp. 12. Subsequent license. This subpart is necessary to inform license holders that an application for a subsequent license must be on forms provided by the Department and must be submitted at least 30 days prior to the expiration date of the existing license. In order for the Department to process a subsequent license application and to complete the inspection requirements it needs a minimum of 30 days. Therefore, it is reasonable to inform the license holder of the minimum time necessary for the Department to process the subsequent license application so the license holder can take the necessary action to prevent a license from lapsing. This subpart is a reasonable implementation of Minnesota Statutes, section 245A.04, subdivision 1.

Statement of Need and Reasonableness
Administrative Licensing Rule

Subp. 13. **Access to program.** This subpart is necessary to inform license holders that they must permit the Commissioner access to the program as required by Minnesota Statutes, section 245A.04, subdivision 5.

Subp. 14. **Drug or alcohol use, prohibited.** This subpart is necessary to prohibit drug and alcohol use by persons providing services in a program. Prior to adoption of the applicant background study rule (parts 9543.3000 to 9543.3090) a number of programs identified factors that constituted a license violation. These factors included criminal offenses and abuse of drugs or alcohol. The applicant background study rule replaced the criminal offenses in the program rules with a list of crimes that constituted a disqualification under the applicant background study rule. The applicant background study rule did not change the prohibition against the use of drugs or alcohol. Therefore, the prohibition remains in many but not all of the program rules. The Department is deleting the drug and alcohol use prohibition in the program rules where a prohibition exists and is inserting that prohibition in the administrative licensing rule. It is necessary to prohibit the use of drugs and alcohol by program staff providing services to clients to ensure the health and safety of clients served by the program.

During the second rule advisory committee meeting the concept of total abstinence of alcohol versus limited alcohol consumption was discussed. An advisory committee member asked, how does the agency prohibit use of alcohol by a volunteer or friend when those individuals takes a client out with them and are not on-site? The Department recognizes that a beer at a ball game or a drink during the holidays may not be a situation that endangers a client. However, what standard should be used to permit limited consumption? The legal definition of under the influence? It was the consensus of the advisory committee members present at the second meeting that the Department should continue its present practice of total abstinence. The Department does not believe that there is a reason to change the existing standards which prohibits the consumption of alcohol. The standard articulated in this subpart is consistent with the standards in parts 9503.0030, subpart 3; 9525.0235, subpart 6; and 9525.2020, subpart 3 which are being deleted. This is also a standard that should be articulated for other program licensed by the Department which do not currently prohibit drug and alcohol use by persons providing services to clients.

Subp. 15. **Residential programs, handling resident funds and property.** This subpart is necessary to establish standards governing the handling of resident funds and property of individuals who reside in residential programs. Unless restrictions are justified in resident's treatment plan, the license holder must ensure that residents retain the use and availability of personal funds and property.

Item A is necessary to ensure that resident funds are separated from funds of the license holder, residential program, or program staff. It is reasonable to require a separation of funds to limit access to resident funds by other persons in order to reduce the possibility of

Statement of Need and Reasonableness
Administrative Licensing Rule

theft or misappropriation. The requirement protects both the resident and the license holder.

Item B is necessary to document receipt and disbursement of funds or other property. Documentation provides a trail of financial transactions and reduces the likelihood of theft since a record exists of receipt or disbursement of funds or property. It is reasonable to establish documentation requirements to protect the funds and property of persons served by the residential program.

Item C is necessary to prohibit financial transactions between residents and persons employed by or otherwise associated with the program. By the nature of the placement in a residential program, the resident is vulnerable. To prevent program owners and/or staff from taking advantage of residents, item C prohibits license holders and program staff from borrowing money from residents, purchasing property from residents, selling merchandise or personal services to residents, or to require residents to purchase items which are the responsibility of the program. Item C is reasonable because it prevents the possibility of inappropriate financial transactions due to the influence the care provider has on the resident.

9543.1030 DENIAL OF APPLICATION.

Subpart 1. **Denial of application.** This subpart is necessary to establish a standard governing the denial of a license application. Under Minnesota Statutes the Commissioner is directed to deny a license application if the applicant fails to fully comply with laws or rules governing the program or variance requirements. Failure to fully comply is indicated by a deficiency under items A to D. It is reasonable to identify the basis for denial to prohibit arbitrary actions by the Department and to permit an applicant an opportunity to appeal the denial. This subpart is a reasonable implementation of Minnesota Statutes, section 245A.05.

Subp. 2. **Notice of denial.** This subpart is necessary to establish a standard governing notice when a license application is denied. The requirements governing notice when an application is denied are set forth in Minnesota Statutes, section 245A.05. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.05.

Subp. 3. **Hearings on license denials.** This subpart is necessary to inform applicants that hearings on a denial of a license application will be conducted according to Minnesota Statutes, sections 14.57 to 14.69 and 245A.08. Minnesota Statutes, section 245A.05 states that the hearing standards under Minnesota Statutes, section 245A.08 apply to hearings held to appeal the Commissioner's denial of an application. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.05.

Statement of Need and Reasonableness
Administrative Licensing Rule

9543.1040 LICENSING ACTIONS FOR FAILURE TO COMPLY WITH RULE.

This part is necessary to identify types of licensing actions. One type of licensing action is an administrative licensing action. The second type of licensing action is a negative licensing action. Failure to comply with applicable licensing requirements or rules governing the program may be cause for an administrative licensing action under part 9543.1050 or a negative licensing under part 9543.1060. This part is reasonable because it informs license holders that failure to comply with the licensing or program rule may result in one of two types of licensing actions. This part is reasonable because it identifies licensing actions authorized under Minnesota Statutes, sections 245A.06 and 245A.07.

9543.1050 ADMINISTRATIVE LICENSING ACTIONS.

Subpart 1. Issuance of correction orders. This subpart is necessary to establish a standard governing the issuance of correction orders. A correction order is an administrative licensing action taken to correct a license violation that is not considered serious enough to warrant probation, suspension or revocation of a license. The rule authorizes the Commissioner to issue a correction order if the following conditions are met: the violation does not imminently endanger the health, safety, or rights of persons served by the program; the violation is not serious or chronic; and the violation will be corrected within a reasonable time. The standards for issuing correction orders in this subpart are the same as the standards established for county issuance of correction orders in part 9543.0090, subpart 2. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.06, subdivision 1.

Subp. 2. Contents of correction order. This subpart is necessary to establish a standard governing the contents of a correction order. The required contents of a correction order are set forth under Minnesota Statutes, section 245A.06, subdivision 1, paragraph (a). This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.06, subdivision 1.

Subp. 3. Reconsideration of correction orders. This subpart is necessary to inform license holders of the right to reconsideration of a correction order. The requirements for reconsideration are set forth in Minnesota Statutes, section 245A.06, subdivision 2. This subpart is reasonable because it cross-references the statutory requirements under Minnesota Statutes, section 245A.06, subdivision 2.

Subp. 4. Failure to comply with correction order. This subpart is necessary to inform license holders of the possible consequences for failure to comply with a correction order. Under Minnesota Statutes, section 245A.06, subdivision 3, if the Commissioner finds that the applicant or license holder has not corrected the violation specified in the correction order, the Commissioner may order a fine. The Commissioner may also seek a court order, deny an application, or suspend, revoke, or make probationary a license in addition to ordering a fine. This subpart is reasonable because it informs license holders

Statement of Need and Reasonableness
Administrative Licensing Rule

of the possible consequences of the failure to comply with a correction order. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.06, subdivision 3.

Subp. 5. Fines. This subpart is necessary to inform license holders that the Commissioner may impose a fine for failure to comply with licensing requirements. The amount of the fine is set forth under Minnesota Statutes, section 245A.06, subdivision 6. This subpart is a reasonable implementation of Minnesota Statutes, section 245A.06, subdivisions 3, 4, 5, 5a, and 6.

Subp. 6. Notice of fine; appeal. This subpart is necessary to inform license holders of the notice requirement imposed upon the Commissioner and the license holder's right to appeal. This subpart is reasonable because it cross-references the requirements under Minnesota Statutes, section 245A.06, subdivision 4.

Subp. 7. Probation. This subpart is necessary to establish a standard governing the use of probation. Probation is a licensing action authorized under Minnesota Statutes, section 245A.07, subdivisions 1 and 3. The Department is identifying probation as an administrative licensing action rather than a negative licensing action because violations that warrant probation are not deemed as serious as those that would result in immediate suspension, revocation, or suspension of a license. The Commissioner is authorized to place a license holder on probation if the conditions in items A to C are met.

After consideration of the following factors, the commissioner determines that revocation, immediate suspension, or suspension of the license is not warranted:

- (1) the laws or rules that have been violated;
- (2) the nature and severity of each violation;
- (3) whether the violation is recurring or nonrecurring;
- (4) the effect of the violation on persons served by the program;
- (5) an evaluation of the risk of harm to persons served by the program;
- (6) any evaluations of the program by persons served or their families;
- (7) relevant facts, conditions, and circumstances concerning the operation of the program; and
- (8) any aggravating or mitigating factors related to the violation.

Subitem (1) requires the citation to laws or rules that have been violated. This information is necessary to ensure government actions are not arbitrary or capricious and are based on law and rule.

Subitem (2) requires consideration of the nature and severity of each violation. The nature and severity of each violation is necessary to determine the appropriate type of licensing action. For example, under Minnesota Statutes, section 245A.07, subdivision 2, if the license holder's failure to comply with applicable law or rule places the health, safety, or rights of a person served by the program in imminent danger, immediate suspension is warranted. When the license violation

Statement of Need and Reasonableness
Administrative Licensing Rule

is less severe other factors are also considered to determine the appropriate course of action.

Subitem (3) requires consideration of whether the violation is recurring or nonrecurring. This information is important in considering conditions and circumstances concerning the program's operation to determine the appropriate sanction. A violation that is recurring may indicate probation is not a sufficient sanction and more severe actions are necessary to ensure correction of the violation.

Subitem (4) requires consideration of the effect of the violation on persons served by the program. This information is necessary since under Minnesota Statutes, section 245A.04, subdivision 6, the Commissioner is required to consider the well-being of persons served by the program in determining the appropriate sanction.

Subitem (5) requires an evaluation of the risk of harm to persons served by the program. This information is necessary since under Minnesota Statutes, section 245A.04, subdivision 6, the Commissioner is required to consider the well-being of persons served by the program in determining the appropriate sanction.

Subitem (6) requires consideration of any evaluation of the program by persons served or their families. This information is necessary since under Minnesota Statutes, section 245A.04, subdivision 6, the Commissioner is required to consider consumer evaluations of the program.

Subitem (7) requires consideration of relevant facts, conditions, and circumstances concerning the operation of the program. Minnesota Statutes, section 245A.04, subdivision 6 requires the Commissioner to consider facts, conditions, or circumstances concerning the program's operation before suspending, revoking, or making probationary a license.

Subitem (8) requires consideration of any aggravating or mitigating factors related to the violation. This information is necessary to ensure the Commissioner is fully informed of all relevant factors when taking a licensing action. This subitem is consistent with Minnesota Statutes, section 245A.07, subdivision 1, which requires the Commissioner to consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

In total, item A provides a mechanism to evaluate license violations. Item A is reasonable because it is consistent with the requirements in Minnesota Statutes, sections 245A.04, subdivision 6 and 245A.07, subdivision 1.

Item B is necessary to establish a standard for determining the appropriateness of probation. After the factors in item A are considered, a determination must be made whether probation is appropriate. The standard used to determine the appropriateness of probation is the Commissioner's belief that continued operation of the program is in the best interest of persons served by the program, and

Statement of Need and Reasonableness
Administrative Licensing Rule

continued operation of the program does not pose an unacceptable risk of harm to persons served by the program. This item is a reasonable implementation of Minnesota Statutes, section 245A.04, subdivision 6.

Item C is necessary to ensure that the license holder agrees to comply with the terms of probation. If the license holder does not agree to comply with the terms of probation, the Commissioner is not assured that continued operation of the program would not pose an unacceptable risk of harm to persons served by the program. If the license holder does not agree with the terms of probation, other licensing actions may be more appropriate.

The administrative requirements governing probation are reasonable because they are similar to the requirements used by the counties in the rule governing delegated licensing functions, Minnesota Rules, part 9543.0100, subparts 1 and 5.

Subp. 8. Notice of probation. This subpart is necessary to comply with the notice requirement under Minnesota Statutes, section 245A.07, subdivision 3. Under Minnesota Statutes, section 245A.07, subdivision 3, a license holder who has had a license suspended, revoked, or made probationary must be given notice of the action by certified mail. The notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the license was suspended, revoked, or made probationary. This subpart is reasonable because it cross-references the requirements in Minnesota Statutes, section 245A.07, subdivision 3

Subp. 9. Reconsideration of probation. This subpart is necessary to inform license holders of the right to request reconsideration of probation. This subpart is reasonable because it cross-references the requirements in Minnesota Statutes, section 245A.07, subdivision 3, paragraph (b).

9543.1060 NEGATIVE LICENSING ACTIONS.

Subpart 1. Negative licensing action. This subpart is necessary to inform license holders that failure to comply with program requirements or the terms of licensure may be cause for a negative licensing action. Before a negative licensing action is initiated, the commissioner must consider the information in subpart 2. This subpart is reasonable because it alerts license holders to the sanctions available to the Commissioner under Minnesota Statutes, section 245A.07.

Subp. 2. Information to be considered before imposing a negative licensing action. This subpart is necessary to establish a standard governing the information that will be considered before imposing a negative licensing action. Immediate suspension, suspension, and revocation of a license are authorized under Minnesota Statutes, section 245A.07. Negative licensing actions are taken to address serious license violations. The information the Commissioner must consider before initiating a negative licensing action is the same as the information considered before placing a program on probation. For an explanation of the need and reasonableness of subitems (1) to (8) see

Statement of Need and Reasonableness
Administrative Licensing Rule

part 9543.1050, subpart 7. This subpart is a reasonable implementation of Minnesota Statutes, section 245A.07, subdivision 1.

Subp. 3. **Immediate suspension of license.** This subpart is necessary to establish a procedure governing the immediate suspension of a license. An immediate suspension of a license is the most drastic negative licensing action because the program is closed immediately and may not operate pending appeal. This subpart is necessary to ensure the health and safety of persons in the program as well as due process rights of the license holder.

Based on the information considered in subpart 2, if the Commissioner believes the health, safety, or rights of persons served by a program are in imminent danger, the Commissioner will immediately order the suspension of the license. This subpart is reasonable because it is consistent with the requirements in Minnesota Statutes, section 245A.07, subdivision 2.

Subp. 4. **Revocation a license.** Minnesota Statutes, section 245A.07, subdivision 3 authorizes the Commissioner to suspend, revoke, or make probationary a license if a license holder fails to comply fully with applicable laws or rules. This subpart is necessary to establish a standard governing revocation and to identify license violations that are grounds for license revocation. Under Minnesota Statutes, section 245A.08, subdivision 5, a license holder and each controlling individual of a license holder whose license has been revoked because of noncompliance with applicable law or rule must not be granted a license for five years following the revocation.

The Commissioner shall revoke a license when, after considering the information in subpart 2, continued operation of the program is not in the best interest of persons served by the program and would pose an unacceptable risk of harm to persons served by the program.

This subpart also identifies specific licensing violations that are grounds for license revocation. It is reasonable to identify license violations that are grounds for license revocation to ensure consistent application of licensing sanctions by the Commissioner. Violations listed in items A to G identify those rule violations that constitute the most serious threat to persons in care and have been grounds for revocation in the past.

Item A includes violations that involve imminent danger to persons served by the program. This commissioner is required to immediately suspend a license if the license holder's failure to comply with applicable law or rule has placed the health, safety, or rights of persons served by the program in imminent danger. If imminent danger exists, it is reasonable to follow the immediate suspension with an order revoking the license as well.

Item B includes disqualifications under the applicant background study rule, parts 9543.3000 to 9543.3090. It is reasonable to reference the applicant background study rule since it sets forth factors or characteristics that disqualify an individual from direct contact with

Statement of Need and Reasonableness
Administrative Licensing Rule

children or vulnerable adults. Because the characteristics identified in parts 9543.3000 to 9543.3090 demonstrate a risk to persons served by a program, it is reasonable to revoke a license when an individual affiliated with the program has a disqualification.

Item C includes substantiated abuse, neglect, or maltreatment since such substantiation clearly indicates that continued operation of the program is not in the best interest of persons served by the program and has already resulted in harm to persons served by the program.

Item D includes documented deficiencies that endanger the health or safety of persons served by the program. Since documented deficiencies demonstrate a risk to persons served by the program, it is reasonable to revoke the license since continued operation of the program is not in the best interest of persons served by the program.

Item E includes a false statement knowingly made by the license holder on the license application. It is necessary that information provided by an applicant on an application form be true and accurate to ensure proper evaluation of an applicant. Since the applicant attests to the truthfulness and accuracy of the information provided in the application, it is reasonable to revoke a license if the Department discovers the information provided is false.

Item F includes failure or refusal to provide the Commissioner access to the physical plant, grounds, documents, or persons served by the program and staff. This item is reasonable because it is consistent with Minnesota Statutes, section 245A.04, subdivision 5.

Item G includes licensing violations that occur while the license is probationary or suspended. It is necessary to establish a standard to ensure full compliance with law and rules while a program is under suspension or probation. Revocation is reasonable when a license holder continues to violate applicable law or rules. Further violations demonstrate a license holder's disregard for the well-being of persons served and a risk of harm to persons served by the program.

This subpart is a reasonable implementation of Minnesota Statutes, sections 245A.04, subdivision 6 and 245A.07, subdivision 1.

Subp. 5. Suspension of license. This subpart is necessary to establish a standard governing suspension of a license. Suspension is a less severe sanction than revocation which carries a five year prohibition against relicensure under Minnesota Statutes, section 245A.08, subdivision 5. Sometimes the type of rule violation is a serious infraction, yet the effect of revocation on persons served by the program indicate that suspension is a more reasonable sanction. Subpart 5 permits the Commissioner to suspend rather than revoke a license when, based on the information required under subpart 2, suspension rather than revocation is in the best interest of persons served by the program and would not pose a risk of harm to persons served by the program. Requiring consideration of information concerning the best interest of persons served by the program to support suspension rather than revocation ensures the well-being of and potential risk to those persons

Statement of Need and Reasonableness
Administrative Licensing Rule

served by the program is carefully considered as part of the sanction decision. This subpart is a reasonable implementation of Minnesota Statutes, sections 245A.04, subdivision 6 and 245A.07, subdivision 1.

This subpart also directs the Commissioner to suspend a license when the license holder fails to pay the license fee required in part 9543.1020, subpart 2, item B. Under Minnesota Statutes, section 245A.09, subdivision 7, paragraph (d), the Commissioner is authorized to specify in rule periods of licensure up to two years. This rule authorizes licenses to be issued for a period up to two years. In order to minimize the financial burden on license holders that would result if the licensing fees for a two year period would be required to be paid at the time the subsequent license is processed, the rule authorizes two payments twelve months apart. If a license holder does not pay the remainder of the license fee required the second year of the license period, this subpart directs the Commissioner to suspend the license. This subpart is reasonable because it provides the Commissioner with an enforcement mechanism to ensure collection of the licensing fees due during the second year of the license period.

Subp. 6. Notice of revocation or suspension. This subpart is necessary to inform license holders of a notice requirement imposed upon the Commissioner. This subpart is reasonable because it is consistent with Minnesota Statutes, section 245A.07, subdivision 3.

Subp. 7. Hearings on license revocation or suspension. This subpart is necessary to inform license holders that a hearing on a license revocation or suspension will be conducted according to Minnesota Statutes, sections 14.57 to 14.69 and 245A.08. Minnesota Statutes, section 14.57 to 14.69 govern contested case hearings conducted by the Office of Administrative Hearings. Minnesota Statutes, section 245A.08 governs hearings under the Human Services Licensing Act. This subpart is reasonable because it informs license holders of the hearing process under appropriate Minnesota Statutes.

Subp. 8. Return of license to commissioner. This subpart is necessary to inform license holders of the requirement to return a license to the Commissioner when the license holder stops providing services, or if a license is revoked, suspended, or immediately suspended. This subpart is reasonable because it ensure that a program no longer operating or allowed to operate holds itself out as a licensed program. This subpart also clarifies that a license holder cannot avoid a negative licensing action merely by surrendering the license.

RULE 4 - Licensure of Private Child Placing Agencies

9545.0770 APPLICATION FOR LICENSE.

Subpart 1. In general. As noted in the introduction to the statement of need and reasonableness, as part of the Department's initiatives for continuous quality improvement and mandates reduction, the Department is consolidating the administrative licensing requirements in 14 program rules within a single administrative licensing rule. To accomplish this objective, the administrative licensing rule states that parts 9543.1000

Statement of Need and Reasonableness
Administrative Licensing Rule

to 9543.1060 apply to residential and nonresidential programs subject to licensure under Minnesota Statutes, chapter 245A, except child foster care, adult foster care, and family day care programs. The individual program rules are also being amended to include a cross-reference to the administrative licensing rule, parts 9543.1000 to 9543.1060. Finally, administrative licensing requirements in the 14 program rules are being deleted because those requirements are addressed in the administrative licensing rule.

Subp. 2. **Timing of application.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirement in this subpart are addressed in the administrative licensing rule in part 9543.1020. Part 9543.1020 addresses application and license requirements.

Subp. 3. **Additional information.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirement in this subpart are addressed in the administrative licensing rule in part 9543.1020. Part 9543.1020 addresses application and license requirements.

Subp. 4. **Relicensing.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 12.

Subp. 5. **Records and reports.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 13.

RULE 5 - Child Care Institutions

9545.0920 PROCEDURES FOR LICENSING.

Subpart 1. **Apply to commissioner.** As noted in the introduction to the statement of need and reasonableness, as part of the Department's initiatives for continuous quality improvement and mandates reduction, the Department is consolidating the administrative licensing requirements in 14 program rules within a single administrative licensing rule. To accomplish this objective, the administrative licensing rule states that parts 9543.1000 to 9543.1060 apply to residential and nonresidential programs subject to licensure under Minnesota Statutes, chapter 245A, except child foster care, adult foster care, and family day care programs. The individual program rules are also being amended to include a cross-reference to the administrative licensing rule, parts 9543.1000 to 9543.1060. Finally, administrative licensing requirements in the 14 program rules are being deleted because those requirements are addressed in the administrative licensing rule.

Subp. 2. **Materials to be submitted.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirement in this subpart are addressed in the administrative licensing rule in part 9543.1020. Part 9543.1020 addresses application and license requirements.

Statement of Need and Reasonableness
Administrative Licensing Rule

Subp. 3. Relicensure. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 12.

Subp. 4. Monitoring. [See repealer.] This subpart is being repealed because it is unnecessary. Monitoring is an integral component of the licensing function and is included in responsibilities of the Commissioner under Minnesota Statutes, chapter 245A.

9545.1090 RIGHTS AND OBLIGATIONS OF THE APPLICANT.

Subp. 2. Right to appeal. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1030.

Subp. 5. Duty to provide services. The last sentence in this subpart is being deleted because it is unnecessary. The administrative licensing rule in parts 9543.1040, 9543.1050, and 9543.1060 set forth licensing actions for failure to comply with applicable laws or rules.

RULE 6 - Maternity Shelters

9545.1320 RESIDENTIAL PROGRAM.

Subpart 1. License procedure. This part is being amended to include a cross-reference to the administrative licensing rule. In order to insert a cross-reference to the licensing requirements in parts 9543.1000 to 9543.1060, this part is being separated into two subparts. Subpart 1 is necessary to provide a cross-reference to the administrative licensing rule. It is reasonable to add a cross-reference to the administrative licensing rule to inform persons consulting the rule that maternity shelters must be licensed under parts 9543.1000 to 9543.1060.

Subp. 2. Program objectives. Subpart 2 is the rule language previously found in this rule part. The change is an editorial change necessary to permit the separation of this rule part into subparts.

9545.1330 REVOCATION OF LICENSE. [See repealer.]

This part is being repealed because it is unnecessary. The requirements under this part are addressed in the administrative licensing rule in part 9543.1060.

RULE 8 - Group Homes

9545.1430 ORGANIZATION AND ADMINISTRATION.

Subp. 5. Business management. [See repealer.] Under Executive Order 92-15, state agencies are directed to analyze and review their rules and regulations affecting Minnesota businesses and identify all rules and regulations which do not have an immediate, necessary, and substantial impact on achieving the interest intended to be protected

Statement of Need and Reasonableness
Administrative Licensing Rule

by rule or regulation. Agencies are further directed to eliminate or revise any rule or regulation which does not meet this standard. No regulatory interest is served by requiring providers to have a system for business management. Therefore, this subpart is being repealed.

Subp. 9. **Public relations.** [See repealer.] This subpart is being repealed because it is unnecessary. Subpart 9 is not an enforceable licensing standard; it is merely a recommendation. Recommended licensing practices can be addressed through other mechanisms and should not be included within the regulatory requirements.

9545.1440 PERSONNEL.

Subp. 9. **Office personnel.** [See repealer.] Under Executive Order 92-15, state agencies are directed to analyze and review their rules and regulations affecting Minnesota businesses and identify all rules and regulations which do not have an immediate, necessary, and substantial impact on achieving the interest intended to be protected by rule or regulation. Agencies are further directed to eliminate or revise any rule or regulation which does not meet this standard. No regulatory interest is served by requiring providers to have a system of office management. Therefore, this subpart is being repealed.

Subp. 10. **Auxiliary staff.** [See repealer.] Under Executive Order 92-15, state agencies are directed to analyze and review their rules and regulations affecting Minnesota businesses and identify all rules and regulations which do not have an immediate, necessary, and substantial impact on achieving the interest intended to be protected by rule or regulation. Agencies are further directed to eliminate or revise any rule or regulation which does not meet this standard. No regulatory interest is served by requiring providers to have appropriate staff without providing further clarification of what is appropriate. Therefore, this subpart is being repealed.

9545.1460 RECORDS.

Subp. 6. **Organizational records.** [See repealer.] This subpart is being repealed because it is unnecessary. By definition, a license holder is legally responsible for the operation of the program. The Department issues a license to a license holder who is responsible for ensuring compliance with program requirements set forth in Minnesota statutes and rules. It is not necessary to mandate every program transaction be a matter of record.

9545.1470 PHYSICAL FACILITY.

Subp. 4. **Building.** Item K is being repealed because it is unnecessary. Item K is not an enforceable licensing standard; it is merely a recommendation. Recommended licensing practices can be addressed through other mechanisms and should not be included within the regulatory requirements.

Statement of Need and Reasonableness
Administrative Licensing Rule

9545.1480 PROCEDURE FOR LICENSING.

Subpart 1. Applications by a family for a study and a license. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020.

Subp. 2. Applications by an independent contractor. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020.

Subp. 3. Applications by licensed institutions or agencies. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020.

Subp. 4. Exemption. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020.

Subp. 5. Prohibited placement. [See repealer.] This subpart is being repealed because it is unnecessary. Minnesota Statutes, section 245A.03 prohibits children from being placed in an unlicensed group home.

Subp. 6. Expiration of license; license terms. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subparts 10 and 11.

Subp. 7. Relicensure. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 12.

Subp. 8. Provisional license. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 10.

Subp. 9. License required. This subpart is necessary to inform the public of the administrative licensing requirements in parts 9543.1000 to 9543.1060. In order to insert a cross-reference to the licensing requirements in parts 9543.1000 to 9543.1060, a new subpart is being added. It is reasonable to add a cross-reference to the administrative licensing rule to inform persons consulting the rule of the licensing requirements in parts 9543.1000 to 9543.1060.

9545.1490 LICENSING EXCEPTIONS OR WAIVERS. [See repealer.]

This part is being repealed because it is unnecessary. The requirements under this part are addressed in the administrative licensing rule in part 9543.1020, subpart 5 which addresses variance standards.

Statement of Need and Reasonableness
Administrative Licensing Rule

9545.1500 REFUSAL OF LICENSE. [See repealer.]

This part is being repealed because it is unnecessary. The requirements under this part are addressed in the administrative licensing rule in parts 9543.1030, 9543.1040, 9543.1050, and 9543.1060.

RULE 223 - Adult Day Care Licensure

9555.9600 DEFINITIONS.

Subp. 19. Minnesota Uniform Fire Code. The amendment to this subpart is necessary to correct a citation error identified by the Revisor of Statutes. Parts 7510.0200 to 7510.3000 has been subsequently renumbered as parts 7510.3100 to 7510.3280.

9555.9610 ADULT DAY CARE CENTER LICENSURE.

Subp. 3. Exemptions from licensure. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in Minnesota Statutes, section 245A.03.

Subp. 4. Licensure of existing centers. [See repealer.] This subpart is being repealed because it is unnecessary. The grandfather requirements under this subpart have expired. Therefore, this subpart is obsolete.

9555.9620 LICENSING PROCESS.

Subpart 1. Application for license. As noted in the introduction to the statement of need and reasonableness, as part of the Department's initiatives for continuous quality improvement and mandates reduction, the Department is consolidating the administrative licensing requirements in 14 program rules within a single administrative licensing rule. To accomplish this objective, the administrative licensing rule states that parts 9543.1000 to 9543.1060 apply to residential and nonresidential programs subject to licensure under Minnesota Statutes, chapter 245A, except child foster care, adult foster care, and family day care programs. The individual program rules are also being amended to include a cross-reference to the administrative licensing rule, parts 9543.1000 to 9543.1060. Finally, administrative licensing requirements in the 14 program rules are being deleted because those requirements are addressed in the administrative licensing rule.

Subp. 2. Completed application. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 2.

Subp. 3. Licensing study. [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 4.

Statement of Need and Reasonableness
Administrative Licensing Rule

Subp. 4. **Period of licensure; not transferable.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subparts 9 and 11.

Subp. 5. **License renewal, inspection, and study.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 12.

Subp. 6. **Provisional license.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 10.

Subp. 7. **License denial or suspension.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1030, 9543.1040, 9543.1050, and 9543.1060.

Subp. 8. **Posting the license.** [See repealer.] This subpart is being repealed because it is unnecessary. No regulatory interest is served by requiring providers to post their license. If a program is licensed, it is already a matter of public record. Many program prefer to post their license in conspicuous places. However, there is no regulatory reason to mandate that a license be posted. Therefore, this subpart is being repealed.

Subp. 9. **License terms.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 8.

Subp. 10. **Change in license terms.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 9.

Subp. 11. **Variance procedure.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 5.

Subp. 12. **Variance standard.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 5.

Subp. 13. **Notice.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 5.

Statement of Need and Reasonableness
Administrative Licensing Rule

9555.9630 NEGATIVE LICENSING ACTIONS.

Subpart 1. **Negative licensing actions.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1060.

Subp. 2. **Procedures.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1060.

Subp. 3. **Denial.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1030.

Subp. 4. **Suspension; revocation; probation.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in parts 9543.1050 and 9543.1060.

Subp. 5. **Immediate suspension.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1060, subpart 3.

Subp. 6. **Correction orders and fines.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1050.

Subp. 7. **Notice of negative action.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1060, subpart 6.

Subp. 8. **Reapplication after revocation or nonrenewal.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in Minnesota Statutes, section 245A.08, subdivision 5.

9555.9660 PARTICIPANT RECORDS.

Subp. 2. **Data privacy.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in Minnesota Statutes, chapter 13.

9555.9680 PERSONNEL REQUIREMENTS.

Subp. 3. **Preemployment check of criminal history records.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 4.

Statement of Need and Reasonableness
Administrative Licensing Rule

Subp. 4. **Employment disqualification factors.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 4.

9555.9700 INDIVIDUAL SERVICE PLANNING.

Subp. 2. **Initial service planning.** The amendment to this subpart is necessary to correct a citation error identified by the Revisor of Statutes. Minnesota Statutes, section 256B.091 has been repealed and replaced by Minnesota Statutes, section 256B.0911.

9555.9710 SERVICE AND PROGRAM REQUIREMENTS.

Subpart 1. **Food service and nutrition.** The amendment to this subpart is necessary to correct a citation error identified by the Revisor of Statutes.

Subp. 2. **Transportation.** This subpart is being amended to delete item A. Item A is unnecessary since it simply directs the center to comply with state and federal regulations. Item B is being amended to delete the last sentence. The two sentences in item B are incompatible. The first sentence states the "maximum" time a participant can be transported is 90 minutes. The second sentence states if the travel time exceeds 90 minutes, ten minute rest stops should be offered to participants. It is reasonable to delete the second sentence because it is incompatible with the 90 minute maximum travel time standard set forth in the first sentence.

9555.9720 SAFETY REQUIREMENTS.

Subp. 9. **Emergencies caused by fire and weather.** Item J is being deleted because the focus should be on the evacuation of residents. In most centers the switch is not controlled by the center staff and is not located in the center's living areas but rather in a more remote part of the building. During emergencies, staff need to concentrate on resident evacuation. This item is being deleted because it is unnecessary.

9555.9730 PHYSICAL PLANT AND SPACE REQUIREMENTS.

Subpart 1. **Compliance with codes.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirements under this subpart are addressed in the administrative licensing rule in part 9543.1020, subpart 2, item E.

Subp. 2. **Determination of occupancy code.** The amendment to this subpart is necessary to correct an incorrect rule cite. Part 9555.9660 includes three subparts. Item K is found in subpart 1.

Subp. 9. **Air quality.** [See repealer.] This subpart is being repealed because it is unnecessary. The requirement in this subpart references Minnesota Statutes, sections 144.411 to 144.417.

Statement of Need and Reasonableness
Administrative Licensing Rule

RULE 80 - Residential Facilities and Services
for the Physically Handicapped

9570.3400 LICENSING PROCEDURES.

This part is being amended to reference the administrative licensing rule.

9570.3500 LICENSING EXCEPTIONS. [See repealer.]

This part is being repealed because it is unnecessary. The requirements under this part are addressed in the administrative licensing rule in part 9543.1020, subpart 5.

9570.3600 REFUSAL OR REVOCATION OF LICENSE. [See repealer.]

This part is being repealed because it is unnecessary. The requirements under this part are addressed in the administrative licensing rule in parts 9543.1030 and 9543.1060.

REPEALER: Rule parts and subparts that are being repealed have been addressed in earlier parts of the statement of need and reasonableness.

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

DATE: 1/14/94



MARIA R. GOMEZ
Commissioner

Executive Orders

Executive Department

Executive Order 92-15: Directing State Departments and Agencies to Eliminate Unnecessary Rules and Regulations Affecting Minnesota Business

I, ARNE H. CARLSON, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, jobs are fundamental to supporting Minnesota's quality of life; and

WHEREAS, a healthy and thriving business community is essential to the creation of new jobs in Minnesota; and

WHEREAS, various state agencies and departments are responsible for issuing and implementing rules and regulations which directly affect Minnesota's businesses; and

WHEREAS, it is in the public interest that state agencies assist businesses in their compliance with these rules and regulations; and

WHEREAS, the state, through its public agencies and units of government must provide leadership and make a commitment to maintain and encourage the growth of job opportunities;

NOW, THEREFORE, I hereby order that:

1. All responsible departments and agencies of the State of Minnesota shall analyze and review existing rules and regulations affecting Minnesota businesses and identify all rules and regulations which do not have an immediate, necessary and substantial impact on achieving the interest intended to be protected by the rule or regulation.

2. All responsible agencies and departments of the State of Minnesota shall eliminate or revise any rule and regulation which does not have an immediate, necessary and substantial impact on achieving the interest intended to be protected.

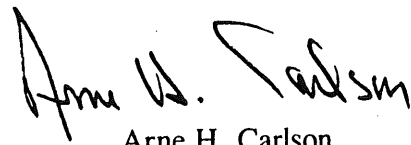
3. The head of each department or agency shall, by appropriate means, ensure that all staff are advised of this order and shall, by March 1, 1993, report to the Commissioner of Trade and Economic Development on efforts to comply with this order.

4. The Commissioner of Trade and Economic Development shall, by April 15, 1993, forward to the Governor a composite report on implementation of this order and recommend any further executive or legislative action necessary.

In addition, I hereby encourage all local units of government to take similar actions to reduce the regulatory burdens on Minnesota businesses within their jurisdiction.

Pursuant to *Minnesota Statutes* 1990, Section 4.035, subd. 2, this Order shall be effective fifteen (15) days after publication in the *State Register* and filing with the Secretary of State and shall remain in effect until rescinded by proper authority or it expires in accordance with *Minnesota Statutes* 1990, Section 4.035, subd. 3.

IN TESTIMONY WHEREOF, I have set my hand this third day of December, 1992.



Arne H. Carlson
Governor

Filed According to Law:
Joan Anderson Growe
Secretary of State

Dated: 3 December 1992

RULE 17, GENERIC LICENSING RULE -- RULE ADVISORY COMMITTEE
(As of 11/2/92)

Mike Peterson
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