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State of Minnesota
Department of Human Services

Human Services Building
444 Lafayette Road N
St. Paul, Minnesota 55155

March 16, 1995

Ms. Maryanne Hruby
Executive Director, LCRAR
55 State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

Pursuant to Minnesota Statutes, section 14.131, enclosed is a statement of need and reasonableness relating to Proposed Permanent Rules Governing Licensure of Residential Treatment Programs for Children With Severe Emotional Disturbance, Minnesota Rules, Parts 9545.0905 to 9545.1125.

If you have any questions on the statement of need and reasonableness, please do not hesitate to contact me at (612) 296-2794.

Sincerely,

Robert Klukas

Robert Klukas
Rulemaker

Encl.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of
Department of Human Services Rules Governing
Licensure of Residential Treatment Programs
for Children with Severe Emotional Disturbance,
Minnesota Rules, parts 9545.0905 to 9545.1125

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

Proposed parts 9545.0905 to 9545.1125 repeal and replace parts 9545.0900 to 9545.1090. Parts 9545.0900 to 9545.1090 were originally promulgated in 1971 and have not been significantly altered since they were first promulgated. The proposed rule parts govern Department of Human Services (DHS) licensure of residential treatment programs for children with severe emotional disturbance. On March 1, 1994 there were 44 such licensed programs. These programs are known informally as Rule 5 programs from the number assigned the original rule parts under the Minnesota Code of Administrative Rules (MCAR), a codification system no longer in effect.

The commissioner's authority to license programs that provide residential treatment for children with severe emotional disturbance is found in Minnesota Statutes, sections 245A.03, subdivision 1, 245A.09, 245A.095, and section 245.4882, subdivision 2. Additional related statutory authority citations include; Minnesota Statutes, sections 245.484, 245.696, subdivision 2 (14), and 245.802, subdivision 2a(6).

Rule 5 Programs

Rule 5 programs are a part of a system of mental health treatment regulated by DHS as required by the Minnesota Comprehensive Children's Mental Health Act, Minnesota Statutes, sections 245.487 to 245.4888. Rule 5 programs offer shelter care and mental health treatment services in a variety of settings using various approaches to the treatment of children in care. Some Rule 5 programs are provided by entities who offer other types of programs which are licensed separately by DHS or other government agencies. Some Rule 5 programs are accredited by private nationwide accreditation groups.

The Rulemaking Process

Several attempts to rewrite Rule 5 have occurred since it was promulgated in 1971, including rewrite attempts in the late 1970's and early and late 1980's. The current proposed rule is the result of a rulemaking process which began with the January 28, 1991 publication of the Notice of Solicitation of Outside Information or Opinions in the State Register. DHS subsequently appointed a broadly based public advisory committee (PAC) comprised of over sixty persons representing the general public, minority cultural and racial groups, mental health advocates, consumers of mental health services, professional groups involved in child care, Rule 5 licensed providers, county governments, county

courts, and other governmental agencies. The PAC's involvement in the rulemaking process meets the requirement of Minnesota Statutes, section 245A.09, subdivision 6 regarding the commissioner's duty to consult with affected parties in developing rules. The PAC met 5 times in 1991 to discuss various rule parts and topics related to the rule. During 1991 certain members of the PAC and other interested persons also gave information and comments to staff and the PAC through participation in issue "task groups" which were formed to more deeply explore certain issues related to the rule.

In 1993 the PAC met twice to review drafts of the rule, discuss unresolved issues, and review the recommendations of "work groups". In addition to two PAC meetings, four formally constituted "work groups" met five times in 1993 to discuss the following issues; shelter care, treatment in a secure setting (two meetings), staff requirements, and emergency use of seclusion and restraint. The members of the work groups were mostly PAC members, but included other persons who had expertise in areas related to the rule. In addition to the PAC and work group meetings the PAC members were invited to give comments concerning the possible fiscal impact of the rule to DHS staff at a July 6, 1993 meeting. The PAC and work group meetings and supplemental written comments played an important role in the development of the proposed rule and this statement of need and reasonableness.

In addition to the PAC and work groups, copies of the rule were given to interested persons and government agencies, certain Rule 5 providers, and a citizens group in Austin, Minnesota who were concerned about a local Rule 5 program. Department staff have presented the rule to the Children's Mental Health Subcommittee of the State Advisory Committee on Mental Health. The rule was also presented to the rules committee of the Minnesota Association of County Social Service Administrators. DHS has distributed over 200 copies of the draft rule to interested members of the public and government groups prior to publishing the notice of intent to adopt a rule in the State Register.

The latest attempt to rewrite Rule 5 was undertaken by two staff groups over a four year period. The staff involved in writing the rule in 1991 left their rulemaking assignments in early 1992 and current staff were assigned to the rewrite of Rule 5 in late 1992. Current staff began work on the rule with a rule draft which contained most of the parts of the proposed rule. Current staff assigned to Rule 5 are: Halisi Staten, Children's Mental Health; Mary Jo Verschay, Children's Mental Health; and Robert Klukas, Rules and Bulletins. Current staff are very appreciative of the cooperation and hard work by PAC members and the staff who first undertook this rule re-write effort in 1991.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes, section 14.115, subdivision 2, requires DHS to consider specific methods for reducing the impact of the proposed rules on small businesses. However, Minnesota Statutes, section 14.115, subdivision 7, paragraph (3), provides that this rulemaking procedure is excepted from this requirement because it covers, "service businesses regulated by government bodies, for standards and cost," which would include the regulation of agencies providing residential treatment programs for children with severe emotional disturbance under this rule.

Minnesota Statutes, section 14.115, subdivision 4, requires an agency to give small businesses an opportunity to participate in the rulemaking process and specifies in paragraphs (b) and (c) methods of complying. Therefore, the Department published a notice of the hearing and the proposed rule in the State Register and mailed a copy of the notice and the proposed rule to all programs now licensed by the rule.

FISCAL COSTS ASSOCIATED WITH PROPOSED LANGUAGE

The Department's Fiscal Note estimates the adoption of the proposed rule will increase costs by \$2,240,000 in year 1 and \$2,000,000 in year 2. These costs come from improved standards for staffing and the children's treatment program. The Fiscal Note is available from the Department's Rules and Bulletins Unit.

AGRICULTURAL LANDS

Because the proposed rule language does not have a direct and substantial adverse impact on agricultural land in Minnesota, Minnesota Statutes, section 14.11, subdivision 2, is not applicable.

NEED AND REASONABLENESS OF SPECIFIC PROVISIONS

The specific provisions of proposed parts 9545.0905 to 9545.1125 are affirmatively presented by the department in the following statement of need and reasonableness as required by Minnesota Statutes, section 14.131.

9545.0905 PURPOSE; OUTCOMES

Subpart 1. Purpose. This subpart states the purpose of parts 9545.0905 to 9545.1125. It is necessary to explain the purpose of the rule so that persons who are regulated by the rule and the department employees who implement the rule can more readily comply with the intent of the rule. Persons who operate or wish to open a residential program offering mental health treatment to children must be advised that the purpose of this rule is to set forth the minimum standards which apply to their program. It is also reasonable to advise interested persons that the rule implements certain parts of Minnesota Statutes, sections 245.487 to 245.4888, the Minnesota Comprehensive Children's Mental Health Act, because it is important to refer to the statutory provisions which act as a basis for certain requirements of the rule.

Subpart 2. Outcomes. This subpart states in items A through F the outcomes which the department expects to be achieved by programs which are operated in accordance with the standards established in parts 9545.0905 to 9545.1125. This subpart is needed to provide interested persons with the department's requirements for children cared for in residential programs. The requirements in this subpart are based on requirements in Minnesota Statutes section 245.4882, subdivision 1. The emphasis on outcomes in this subpart is consistent with the requirements of Minnesota Statutes, section 245A.09, subdivision 2, paragraph (a).

9545.0915 APPLICABILITY

Subpart 1. Applicability. This subpart indicates which entities are required to comply with the requirements of parts 9545.0905 to 9545.1125. It is necessary to advise interested persons that compliance with parts 9545.0905 to 9545.1125 fulfills the requirement of Minnesota Statutes, section 245A.03, subdivision 1,

paragraph (1), that residential programs must not operate without a license issued by the commissioner. It is reasonable to advise interested persons which residential programs require licensure under this rule.

It is necessary to advise operators of shelter care programs previously licensed under the present Rule 5 that their licensure under that rule and its successor, parts 9545.0905 to 9545.1125, will continue until a more suitable rule is developed to license shelter care programs. Shelter care programs currently licensed under Rule 5 would be more appropriately licensed under a pending rule because shelter care is a residential program provided for a short period of time and the child does not need to be diagnosed as having a severe emotional disturbance or receive mental health treatment to be cared for in a shelter program. The department intends to subsequently license shelter care programs under a separate rule which will encompass the unique characteristics of shelter care programs.

Subpart 2. Exclusions. This subpart indicates which entities are not required to comply with the requirements of parts 9545.0905 to 9545.1125. It is reasonable to advise interested person which programs do not require licensure under this rule to clarify the applicability of the rule to a particular program.

Item A in this subpart excludes programs from licensure under this rule according to Minnesota Statutes, section 245A.03, subdivision 2. It is necessary to exclude programs from licensure which are specifically excluded by Minnesota Statutes, section 245A.03, subdivision 2, because chapter 245A is the statute which governs the licensing of human services programs. It is reasonable to promulgate a rule which is in agreement with a governing statutory provision.

Item B in this subpart excludes from licensure under this rule foster homes and other residential programs which serve children with severe emotional disturbance who do not need care in a residential treatment program. It is reasonable to not require programs already licensed for special needs foster care to meet additional rule requirements designed for regulating larger treatment programs under this rule. It is reasonable to provide care for children with severe emotional disturbance in a less restrictive setting, such as special needs foster care, which will meet the child's needs according to Minnesota Statutes, section 245.4876, subdivision 1, paragraph (4).

Item C in this subpart excludes acute care hospitals from licensure under this rule. It is reasonable to exclude acute care hospitals from licensure under this rule because they are subject to sufficient rigorous patient care requirements under other state and national licensing and accreditation authorities. Minnesota Statutes, section 245A.03, subdivision 2, paragraph (16) excludes programs for persons with mental illness located in a hospital from licensure by the commissioner.

9545.0925 DEFINITIONS

This part defines words or phrases that have a specific meaning in parts 9545.0905 to 9545.1125, that might otherwise be assigned other possible interpretations or that need exact definitions to be consistent with statute. Terms used in a manner consistent with common use in the practice of mental health treatment are not defined unless a definition is necessary to clarify the

rule. The incorporation by reference of definitions from this rule's enabling statutes, The Minnesota Comprehensive Children's Mental Health Act, Minnesota Statutes, sections 245.487 to 245.4888, and the Human Services Licensing Act, Minnesota Statutes, Chapter 245A, into this rule eliminates the duplication of effort and chance for error involved in transcribing a definition from statute, and ensures that the meanings of the terms in the rule will correspond with the meanings of those same terms in the enabling statutes both now and in the future. Similarly, the incorporation of definitions by reference from other rules and statutes insures that the meanings assigned to these terms will be consistent with the cited rule or statute both now and in the future.

Subpart 1. Scope. This subpart indicates that the definitions in part 9545.0925 apply throughout parts 9545.0905 to 9545.1125. It is necessary to clarify that the definitions apply to the entire sequence of parts 9545.0905 to 9545.1125, but not necessarily to other rules. It is reasonable to define certain terms in the rule to promote a clear understanding of the terms as they are used in the rule and as a means to improve rule compliance.

Subpart 2. Administrative discharge. This subpart defines an "administrative discharge" as the discharge of a child from a Rule 5 program before the child reaches the treatment goals stated in the child's individual treatment plan. It is reasonable and necessary to define the term "administrative discharge" because programs governed by this rule occasionally discharge a child before the child reaches the treatment goals for the child while in treatment in the residential program. This type of discharge may occur because the child cannot receive appropriate care from the program for a variety of reasons.

Subpart 3. Applicant. This subpart incorporates the definition of "applicant" contained in Minnesota Statutes, chapter 245A, into this rule. This subpart is necessary to clarify which entities are considered to be the "applicant". It is reasonable to use the standard definition of "applicant" contained in chapter 245A, because this rule derives statutory authority from chapter 245A, and the rule's purpose is to implement chapter 245A. The rule terms related to administrative licensing matters should have meanings consistent with chapter 245A. The definition in the rule is reasonable because it includes a broad range of entities which could operate a program under this rule.

Subpart 4. Case manager. This subpart incorporates the definition of "case manager" contained in Minnesota Statutes, section 245.4871, subdivision 4, into this rule. This subpart is necessary because the term "case manager" is used several times in this rule and therefore needs to have a consistent meaning throughout the rule. The use in this rule of the definition as it appears in the Minnesota Comprehensive Children's Mental Health Act, Minnesota Statutes, sections 245.487 to 245.4888, is reasonable because it is important to be consistent with the act which provides statutory authority for this rule. It is also reasonable to use terms consistent with the act, because this rule is meant to implement the act. The definition provides a reasonable description of the powers, duties training, and reporting relationships of the "case manager" which would assist an interested person in understanding the role of the "case manager" in providing care for a child in need of services provided by a residential mental health program services.

Subpart 5. Child. This subpart defines a "child" as a person under 18 years of age. This subpart is consistent with the definition of "child" in Minnesota Statutes, section 245.4871, subdivision 5. It is necessary to use a term in a manner which is consistent with the usage in the statute which provides statutory authority for this rule. It is reasonable to advise interested persons of the age limit for persons who are being considered for possible treatment in a program governed by this rule. The definition of "child" in this rule is also consistent with the definitions of "child" under Minnesota Statutes, sections 245A.02, subdivision 4; and 257.801, subdivision 4.

Subpart 6. Child with severe emotional disturbance. This subpart incorporates the definition of "child with severe emotional disturbance" contained in Minnesota Statutes, section 245.4871, subdivision 6. It is necessary to use the term in a manner consistent with this rule's enabling statute, because the term describes criteria for admission to a program licensed under this rule. It is reasonable to be consistent with the statutory standard for determining eligibility for admission to programs licensed under this rule.

Subpart 7. Clinical supervision. This subpart incorporates the definition of the term "clinical supervision" contained in Minnesota Statutes, section 245.4871, subdivision 7, into this rule. It is necessary to use the term in a manner consistent with this rule's enabling statute, because the term is used to describe one of the duties required of a mental health professional according to this rule and Minnesota Statutes, section 245.4882, subdivision 2. It is reasonable to tell interested persons the specific meaning of the term in this rule, because the common meanings of the words could be different than the meaning intended in this rule.

Subpart 8. Commissioner. This subpart incorporates the definition of "commissioner" contained in Minnesota Statutes, section 245A.02, subdivision 5, into this rule. This subpart is necessary to clarify the meaning of "commissioner" in this rule. The term "commissioner" is used throughout this rule as an abbreviation for the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative. The abbreviation is used to shorten the length of the rule. It is reasonable to use an abbreviation to delete unnecessary words in a reference frequently repeated in the rule. It is necessary to indicate within the definition that the "commissioner" may delegate authority to persons from the department and county or private agencies, to notify interested persons that other authorized persons may act on behalf of the commissioner. It is reasonable for the "commissioner" to delegate functions described in the rule, because it would be impractical and physically impossible for the "commissioner" to perform all of the tasks assigned to the commissioner in this rule. It is reasonable to allow the "commissioner" to delegate functions in this rule to qualified staff and agencies who can effectively manage and control the implementation of this rule.

Subpart 9. Cultural competence. This subpart clarifies the meaning of the term "cultural competence". The definition of the term "cultural competence" is necessary to establish its meaning and set a standard for the provision of this service. The definition in this subpart is based on a definition contained in a Child Adolescent Service System Program (CASSP) publication. (M. Isaacs and M. Benjamin, December 1991) The CASSP is nationally recognized for its efforts to

establish models for the provision of mental health services to children with severe emotional disturbance. It is reasonable to set a standard for "cultural competence", because thirty percent of the children placed in programs governed by Rule 5 are children of color. The definition is also reasonable because it supports the mission of the children's mental health service system in Minnesota Statutes, section 245.487, subdivision 3, paragraph (3), clause (v).

Subpart 10. Department. This subpart explains that the word "department" means the Minnesota Department of Human Services in this rule. It is necessary to clarify what is meant by the word "department", because the word may have a different common meaning. It is reasonable to use the term "department" as an abbreviation, because it removes the need to use the entire name of the Minnesota Department of Human Services and thus eliminates unnecessary words from rules.

Subpart 11. Diagnostic assessment. This subpart incorporates the definition of "diagnostic assessment" contained in Minnesota Statutes, section 245.4871, subdivision 11, into this rule. It is necessary to use the term in a manner consistent with this rule's enabling statute, because "diagnostic assessment" has a specific meaning in statute and contains a list of required medical evaluations and considerations which could not be readily inferred from the term unless they were contained in the definition. It is also reasonable to give the term a specific meaning because a "diagnostic assessment" is used to develop the child's treatment plan and acts as an indication of the need for placement and continued stay in a program governed by this rule.

Subpart 12. Discipline. This subpart clarifies the meaning of the term "discipline" as it is used in this rule. It is necessary to define this term because it is open to several possible interpretations and it has a specific meaning as used within this rule. The definition is reasonable because it sets a standard governing when discipline may be used and who must be notified of the program's discipline policies. The definition is consistent with the requirements of Minnesota Statutes, section 245.826, because this subpart specifies conditions under which "discipline", a potentially restrictive procedure, may be carried out.

Subpart 13. Emotional disturbance. This subpart incorporates the definition of the term "emotional disturbance" contained in Minnesota Statutes, section 245.4871, subdivision 15, into this rule. It is necessary to use the term in a manner consistent with this rule's enabling statute, because the term is used to describe a condition and specify complicated measurement criteria which are related to the admission of a child to a program licensed under this rule. It is reasonable to tell interested persons the specific meaning of the "emotional disturbance" in this rule, because the common meanings of the words could be different than the meaning intended in this rule.

Subpart 14. Family. This subpart incorporates the definition of the term "family" contained in Minnesota Statutes, section 245.4871, subdivision 16, or in the case of an Indian child, Minnesota Statutes, sections 257.35 to 257.3579, into this rule. It is necessary to use the term in a manner consistent with this rule's enabling statute, except that special meaning is attached to the term when it is applied to the family of an Indian child. It is reasonable to advise interested persons of the special meaning of "family" as it is used in this rule.

It is reasonable to define "family" within this rule because the license holder is required to involve the child's family with the treatment of the child in programs governed by this rule. Indicating the specific meaning of "family" will aid license holders in complying with the rule. It is also reasonable to recognize the special meaning of the term "family" in providing care to an Indian child, because there are specific state and federal laws that apply to Indian children cared for outside of the home.

Subpart 15. Functional assessment. This subpart incorporates the definition of the term "functional assessment" contained in Minnesota Statutes, section 245.4871, subdivision 18, into this rule. It is necessary to advise interested persons to refer to the statute for the requirements of a "functional assessment", because the definition in statute is complex and it is important to assign consistent meanings to terms used in this rule and the rule's enabling statute. It is reasonable to define the term in this rule because the child's "functional assessment" contains a standard set of important information about the child which must be considered when the child's individual treatment program is developed.

Subpart 16. Incident. This subpart clarifies the meaning of "incident" as it is used in this rule. It is necessary and reasonable to define the term "incident" because it has several possible meanings and the use of the term to describe an event is not the preferred usage of the term. The definition of the term is also necessary because it is related to the plan requirements in part 9545.1005.

Subpart 17. Individual family community support plan. This subpart incorporates the definition of the term "individual family community support plan" contained in Minnesota Statutes, section 245.4871, subdivision 19, into this rule. It is necessary to advise interested persons to refer to the statute for the requirements of a "individual family community support plan", because the term refers to a complex set of requirements and it is important to assign consistent meaning to terms used in this rule and the rule's enabling statute.

Subpart 18. Individual education plan. This subpart incorporates the definition of the term "individual education plan" contained in part 3525.0200, subpart 6a, into this rule. It is necessary to use the definition of "individual education plan" in Minnesota Department of Education rules, part 3525.0200, subpart 6a, to describe a child's education plan because the education of each child in residential treatment is governed by chapter 3525. It is reasonable to use a definition of the term "individual education plan" which is consistent with the meaning of the word as it is commonly used by education professionals in Minnesota.

Subpart 19. Individual treatment plan. This subpart incorporates the definition of the term "individual treatment plan" contained in Minnesota Statutes, sections 245.4871, subdivision 21, into this rule. It is necessary to advise persons to refer to this rule's enabling statute for the definition of "individual treatment plan" because the definition in statute is complex and it is important to assign consistent meanings to terms used in this rule and this rule's enabling statute. It is reasonable to define the term "individual treatment plan", because the child's "individual treatment plan" is the plan which controls all the

recommended treatments a child may receive.

Subpart 20. Informed consent. This subpart defines what is meant by "informed consent" in this rule. The definition in this subpart is necessary and reasonable because it is consistent with the requirements for "informed consent" in the Minnesota Commitment Act of 1982, Minnesota Statutes, section 253B.03, subdivision 6. It is reasonable to include a child's parent or legal representative among those who may give "informed consent", because they are permitted to give consent according to Minnesota Statutes, section 253B.03. It is reasonable to include oral documented consent according to part 9545.1025, subparts 6 and 7, because some children who require medication are transferred to a Rule 5 licensed program without signed written consent forms in the child's record. It is reasonable to allow the program to obtain timely documented oral consent from a person authorized to give consent which would allow the continuation of the child's required medication, because the delays involved in getting written "informed consent" could cause the child to fail to receive medications when they are needed to preserve or improve the child's health and functioning. According to comments made by several members of the Rule 5 PAC, the families or legal representatives of children cared for in Rule 5 programs may experience difficulty in filling out and returning forms, such as a written informed consent form, to the program or physician in a timely fashion.

Subpart 21. Isolation. This subpart defines what is meant by "isolation" in this rule. It is reasonable to define the term isolation because most of the residential treatment programs for children with severe emotional disturbance governed by this rule include "isolation" as a possible intervention which may be used if clinically appropriate for the treatment of a child. It is necessary to define "isolation" because the imprecise use of the term could cause confusion with another restrictive technique, referred to as "time-out". The definition of "isolation" is reasonable because it includes the usual elements of "isolation" as it is currently practiced in programs governed by this rule: It is involuntary; the child is away from other children; the room used for "isolation" may be locked; and the child may be readily observed by staff.

Subpart 22. Legal representative. This subpart combines the statutory requirements which describe the possible kinds of "legal representative" who may act as a "legal representative" for a child. Minnesota Statutes, section 525.619, paragraph (c), empowers a guardian appointed by the court "to authorize medical or other professional care, treatment or advice" and specifies the limitations applicable to the guardian's authority. Minnesota Statutes, section 257.351, subdivision 8, a provision of the Indian Family Preservation Act, specifies who may act on behalf of an Indian child if the parent's rights have been voluntarily transferred or terminated under state law. "Legal representative" acts as an abbreviation which describes persons who are authorized to decide on services for a child with severe emotional disturbance. Use of an abbreviation is reasonable because it shortens the rule. Defining the abbreviation by citing the applicable statutes is reasonable because it ensures consistency with the statutes.

Subpart 23. License. This subpart incorporates the definition of the term "license" contained in Minnesota Statutes, section 245A.02, subdivision 8, into this rule. It is necessary to define the term license so that interested persons

will understand the meaning of the term in this rule and be able to comply with the license requirements. It is reasonable to use the definition of "license" contained in chapter 245A, because this rule derives part of its statutory authority from Minnesota Statutes, sections 245A.03 and 245A.09, and its purpose is to implement chapter 245A, therefore the rule needs to use terms related to administrative licensing matters which have meanings consistent with chapter 245A.

Subpart 24. License holder. This subpart incorporates the definition of the term "license holder" contained in Minnesota Statutes, section 245A.02, subdivision 9, into this rule. It is necessary to define the term "license holder" so that interested persons will understand the meaning of the term in this rule and be able to comply with license requirements. It is reasonable to use the definition of "license holder" contained in chapter 245A, because this rule derives part of its statutory authority from Minnesota Statutes, sections 245A.03 and 245A.09, and its purpose is to implement chapter 245A, therefore, the rule needs to use terms related to administrative licensing matters which have meanings consistent with chapter 245A.

Subpart 25. Medication assistance. This subpart explains what is meant by "medication assistance" in this rule. It is necessary to define "medication assistance" to provide interested persons with a clear understanding of its meaning in the rule. This subpart is reasonable because it uses a definition that is clear and easily understood by lay persons, program staff, and medical personnel. The definition of "medication assistance" in this subpart is reasonable because it is similar to the definition of "medication assistance" in Minnesota Rules, part 9555.9600, subpart 18, which governs adult day care licensing.

Subpart 26. Mental health practitioner. This subpart incorporates the definition of the term "mental health practitioner" contained in Minnesota Statutes, section 245.4871, subdivision 26, into this rule. It is necessary to use the term "mental health practitioner" in this rule in a manner consistent with its use in the Minnesota Comprehensive Children's Mental Health Act (the act), Minnesota Statutes, sections 245.487 to 245.4888, because this rule derives its statutory authority from the act and needs to be consistent with the act. It is reasonable to refer interested persons to the definition of "mental health practitioner" in the act because the definition is complex and lengthy and may be subject to change in statute.

Subpart 27. Mental health professional. This subpart incorporates the definition of the term "mental health professional" contained in Minnesota Statutes, section 245.4871, subdivision 27, into this rule. It is necessary to use the term "mental health professional" in this rule in a manner consistent with its use in the Minnesota Comprehensive Children's Mental Health Act (the act), Minnesota Statutes, sections 245.487 to 245.4888, because this rule derives its statutory authority from the act and needs to be consistent with the act. It is reasonable to refer interested persons to the definition of "mental health professional" in the act because the definition is complex and lengthy and may be subject to change in statute.

Subpart 28. Physical holding. This subpart explains what is meant by the term "physical holding" in this rule. It is necessary to define "physical holding" to provide interested persons with a clear understanding of its meaning in this rule. This subpart is reasonable because it describes the procedures for restricting the movements of a child when it is necessary to protect the safety and well-being of the child or others. This subpart is reasonable because it is consistent with requirements of Minnesota Statutes, section 245.826.

Subpart 29. Physical restraint or restraints. This subpart explains what is meant by the terms "physical restraint" or "physical restraints" in this rule. It is necessary to define "physical restraint or restraints" in this rule because "physical restraints" other than a "physical restraint", such as a splint or brace, used for medical purposes are forbidden in this rule. It is reasonable to broadly define a "physical restraint" as "the use of devices to limit a child's movement or hold a child immobile" rather than to attempt to list all the restraining devices available, because an exhaustive list would be impractical to compile and the list would likely include some common items such as tape and belts which have other uses not prohibited in this rule.

Subpart 30. Prior authorization for emergency use of isolation or restraints. This subpart explains what is meant by the term "prior authorization for emergency use of isolation or restraints" in this rule. It is necessary to define "prior authorization for emergency use of isolation and restraints", to inform interested persons of the minimum standards for authorization of the emergency use of isolation or restraint which must be met in a licensed program. It is necessary and reasonable to require that a person qualified by education, training, and experience, such as a physician, psychiatrist, or licensed psychologist, be required to provide the prior authorization described in this subpart, because it meets the requirement in Minnesota Statutes, section 144.651, subdivision 31. It is reasonable to require that the person providing the authorization review the child's assessments and other important behavioral and medical information to determine the type of restraint to be used and other conditions of the restraint child so that restraint does not cause unwarranted physical or mental injury to the child. It is reasonable to require that the prior authorization be in writing so that the authorization can be reviewed for compliance by the Department as needed.

It is necessary and reasonable to have "prior authorization for emergency use of isolation or restraint" because the children residing and receiving treatment in programs licensed by this rule have severe emotional disturbance and need 24 hour out-of-home care and supervision due to their severe emotional disturbance. Since children with severe emotional disturbances who receive residential program services under this rule have unplanned emergency crises, it is important that the program anticipate the need to respond appropriately with as much forethought as possible to address an emergency crisis. To assure that the staff's behavioral intervention is individualized the child's needs it is necessary to require that the appropriate professional give prior authorization for the intervention based on a review of the child's assessments and other important behavioral and medical information.

Subpart 31. Psychotherapy. This subpart incorporates the definition of the term "psychotherapy" contained in Minnesota Statutes, section 148A.01, subdivision 6,

into this rule. It is reasonable to use the definition of the term "psychotherapy" contained in Chapter 148A, because it offers a commonly accepted and concise description of the practice of psychotherapy. It is necessary to define "psychotherapy" to provide interested persons with a clear understanding of its meaning in this rule.

Subpart 32. Psychotropic medication. This subpart explains what is meant by the term "psychotropic medication" in this rule. It is necessary to define "psychotropic medication" in this rule to distinguish medications given to a child to treat physical ailments from medications given to a child to treat a mental health condition, because "psychotropic medications" require specific informed consent procedures in the rule which may not apply to other types of medication. The definition of "psychotropic medication" is reasonable because it provides a sufficiently broad description of medications which would be considered "psychotropic" by mental health professionals, but is not so broad as to include medications which were not administered to treat mental illness or affect behavior and may have a minor incidental effect on the psyche, such as antihistamines.

Subpart 33. Punishment. This subpart explains what is meant by the term "punishment" in this rule. It is necessary to define "punishment" in this rule to distinguish it from other actions taken with a child as a result of the child's behavior. It is also necessary to define "punishment" because punishment of a child is prohibited in this rule. It is reasonable to define "punishment" to include any action toward a child that would "harm or injure" the child, because many children in Rule 5 programs are in treatment to recover from the harm and injury resulting from abuse.

Subpart 34. Resident district. This subpart incorporates the definition of the term "resident district" contained in part 3525.0200, subpart 19a, into this rule. It is necessary and reasonable to define the term "resident district" by incorporating by reference the definition of the term contained in Minnesota Department of Education rules, because the education of a child in a Rule 5 program is required by law to be carried out according to the rules developed by the Minnesota Department of Education.

Subpart 35. Residential program. This subpart incorporates the definition of the term "residential program" contained in Minnesota Statutes, section, 245A.02, subdivision 14, into this rule. It is necessary to define "residential program" so that interested persons may know which programs are governed by this rule. It is reasonable to incorporate the definition contained in one of this rule's enabling statutes to promote consistency between the rule and statute and shorten the rule by avoiding the repetition of the entire statutory citation in the rule.

Subpart 36. Residential treatment. This subpart incorporates the definition of the term "residential treatment" contained in Minnesota Statutes, section 245.4871, subdivision 32, into this rule. It is necessary to define "residential treatment" governed by this rule, to distinguish it from other forms of mental health treatment which are not governed by this rule. It is reasonable to incorporate the definition contained in one of this rule's enabling statutes to promote consistency between the rule and statute and shorten the rule by avoiding the repetition of the entire statutory citation in the rule.

Subpart 37. Shelter services. This subpart explains what is meant by the term "shelter services" in this rule. It is necessary to define "shelter services" so that interested persons may know which programs are governed by this rule. It is reasonable to use the definition of "shelter services" which is agreed upon by the public advisory committee made up of current shelter providers, mental health providers, advocates, DHS staff and others.

Subpart 38. Special mental health consultant. This subpart incorporates the definition of the term "special mental health consultant" contained in Minnesota Statutes, section 245.4871, subdivision 33a, into this rule. It is necessary to define "special mental health consultant" to distinguish this role and function from other types of mental health consultants. It is reasonable to incorporate the definition contained in one of this rule's enabling statutes to promote consistency between the rule and statute and shorten the rule by avoiding the repetition of the entire statutory citation in rule. "Special mental health consultant" is a term used in these rules to describe a person who has special expertise in providing mental health services to a child of minority race or minority ethnic heritage.

Subpart 39. Staff supervision or supervisor. This subpart explains what is meant by the term "staff supervision or supervisor" in this rule. A definition is necessary to clarify meaning of "staff supervision" in these rules. The definition is also necessary to differentiate "staff supervision" and "clinical supervision" because there could be confusion about the differences and similarities between the two services. The definition of "staff supervision" is reasonable because it is easily understandable by readers of this rule and is consistent with current practice in the state Rule 5 programs.

Subpart 40. Time-out. This subpart explains what is meant by the term "time-out" in this rule. A definition is necessary to clarify the meaning of "time-out" in this rule. The definition is reasonable because it accurately and simply describes this behavior management and intervention method as it is appropriately applied in Rule 5 programs.

Subpart 41. Treatment team. This subpart explains what is meant by the term "treatment team" in this rule. It is necessary to define "treatment team" so that persons affected by the rule know which persons comprise the "treatment team". The definition is reasonable because it requires the "treatment team" to be made up of those persons involved in planing and carrying out the child's treatment plan.

Subpart 42. Updated diagnostic assessment. This subpart explains what is meant by the term "updated diagnostic assessment" in this rule. A definition is necessary to clarify its meaning in these rules. The definition is also necessary to differentiate "diagnostic assessment" and "updated diagnostic assessment" because of confusion about the differences and similarities between the two services. The definition is reasonable because it is consistent with Minnesota Statute, section 245.4876, subdivision 2.

9545.0935 CONDITIONS OF LICENSURE

Part 9545.0935 requires an entity offering residential mental health treatment to children to be licensed under this rule according to the administrative licensing requirements of Minnesota Rules, parts 9543.1000 to 9543.1060. Part 9545.0935 is necessary because it is important to advise all entities interested in providing residential treatment services to children that they must be licensed according to Minnesota Statutes, section 245A.03, subdivision 1, paragraph (1).

The Commissioner of Human Services is granted specific authority by Minnesota Statutes, section 245A.09, to adopt rules governing the operation, maintenance, and licensure of programs subject to licensure under sections 245A.01 to 245A.16. Minnesota Statutes, section 245A.095, requires the commissioner to develop and review rules governing programs serving persons with mental illness. The authority to promulgate rules governing the licensure of children's mental health residential programs and other programs has been used to promulgate a uniform licensing rule, parts 9543.1000 to 9543.1060, which sets forth uniform administrative licensing procedures for residential and non-residential programs. It is reasonable to incorporate by reference the department's uniform licensing procedures into this rule thus shortening the rule by eliminating duplicate language regarding the administrative details of licensing and variance procedures. It is also reasonable to incorporate the department's uniform licensing procedures into this rule because it eliminates the need to change this rule when the department makes future changes in its licensing procedures. It is necessary to incorporate the administrative licensing procedures in parts 9543.1000 to 9543.1060, by reference because it sets forth the procedure the department will use to issue a license to a children's residential mental health treatment program governed by parts 9545.0905 to 9545.1125.

9545.0945 PROGRAM AND SERVICE STANDARDS.

Subpart 1. Program capability. This part describes the services which must be offered by a licensed program and the outcomes which must result from the services. It is necessary to describe the program capability of a Rule 5 residential treatment program and prescribe program services so that Rule 5 programs, county case managers, parents, children, the state licensing and governing agencies and other interested parties will know what services are expected for the children served in these programs. It is also necessary to require "therapeutic" services for the children and their families served by the program, that meet the requirements of Minnesota Statutes, section 245.4882, subdivision 1. It is necessary and reasonable to have children's services scheduled at accessible times so that the children will be available to receive the services. It is necessary to expect services to be appropriate to the child's age or level of functioning so that the services rendered have optimum chance of success. It is reasonable to describe program capability in this rule because program licensees, staff, county staff, case managers, and state licensing and governing agencies expect and require such direction from the state which establishes what is expected in return for the payment of public funds and all the entities are used to this format.

Item A. This item is both necessary and reasonable because individual and group psychotherapy services are considered core services for the treatment of children with serious emotional disturbance. The Child Welfare League of America (CWLA)

recommends that residential treatment programs provide specialized individual and group counseling to meet outcomes of a service plan that prepare the child for family reunification and independent community living. (CWLA, 1991, 49-55) The Council on Accreditation of Services for Families and Children, Inc. defines residential treatment as providing psychotherapeutic treatment for children with serious emotional disturbance. (Council for Accreditation of Services for Families and Children, 1985)

It is necessary to state the minimum qualifications of staff able to perform this service to establish minimum standards of care and to notify licensees, staff, counties, parents, children and other interested persons who can provide individual psychotherapy services. It is reasonable to have a mental health practitioner provide this service because this person, as described by Minnesota Statute, has training or experience in the provision of services to children with emotional disturbance. This is also a reasonable standard because it is current practice in the state's Rule 5 programs. It is necessary to have a mental health professional supervise the mental health practitioner providing this service because Minnesota Statutes, section 245.4882, subdivision 2, specifically requires that a Rule 5 program, "must be clinically supervised by a mental health professional." It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095. Because individual and group psychotherapy is clinical work, it is necessary and reasonable to have a mental health professional supervise persons providing this service. This expectation is also reasonable because it is current practice in mental health service agencies and residential treatment programs to have a mental health professional supervise mental health practitioners.

Item B. It is necessary to define crisis assistance services as stated because this service is defined in Minnesota Statutes, section 245.4871 subdivision 9a. Crisis assistance services are necessary because children with serious emotional disturbance have psychiatric crises. These children and their parents need training in order to recognize factors that precipitate a psychiatric crisis, anticipate behaviors and symptoms and know which resources to use when crises occur. It is necessary for the Rule 5 program staff to provide this service because Minnesota Statutes, section 245.4882 subdivision 1, paragraphs (3) and (5), requires residential treatment services to "help the child gain the necessary skills to return to the community" and "work with families throughout the placement to improve the ability of the families to care for children with severe emotional disturbance in the home." CWLA also recommends that, "The residential treatment program should remedy, arrest, and prevent social, emotional, and behavioral difficulties of the child in conjunction with the family; expand or develop the competencies of the child; promote healthy development; and prepare the child for family reunification or independent community life." (CWLA, 1991) It is reasonable to have crisis assistance services provided by the residential treatment program because the staff are trained in the behaviors and symptoms of children with a severe emotional disturbance who are in crisis and are acquainted with the children residing at the program. It is reasonable to have a mental health practitioner provide this service because this person has training and experience in the provision of services to children with emotional disturbance. This is also a reasonable standard because it is current practice in Rule 5 programs. It is necessary to

have a mental health professional supervise the mental health practitioner providing this service because Minnesota Statutes, section 245.4882 subdivision 2, specifically requires that a Rule 5 program, "must be clinically supervised by a mental health professional." Because crisis assistance services are clinical in nature, it is necessary and reasonable to have a mental health professional supervise persons providing these services. It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095.

Item C. Some children receiving Rule 5 residential treatment services are taking psychotropic medication prescribed by a physician for the purpose of controlling or alleviating their severe emotional disturbance. Minnesota Statutes, section 245.4882, subdivision 1., paragraphs (3) and (5), state that residential treatment must "help the child gain the necessary skills to return to the community" and "work with families throughout the placement to improve the ability of the families to care for children with serious emotional disturbance in their home." Therefore, it is necessary for residential treatment programs to provide medication education to children in care and their families so that the families are able to care for the child upon the child's return home. An Ohio Department of Mental Health survey showed that "aftercare clients who receive medication education were more likely to have attitudes favorable and predictive of adherence." (Ohio Department of Mental Health, 1988-1989) This proposed part has been reviewed and recommended by the Rule 5 PAC as setting forth reasonable program requirements. It is necessary to require that the person providing medication education be a registered nurse or licensed physician because the effect the medication may have on the child's physical and mental health and the physical, emotional, or behavioral changes resulting from the child's use, misuse or refusal to use prescribed psychotropic medication requires a very specialized body of knowledge that registered nurses and physicians have. It is reasonable to have registered nurses or physicians provide this information because they have this expertise and come into contact with the child in their role of providing care to children in the program. It is necessary to develop rules which set standards for adequate staff and staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095.

Item D. It is necessary to expect Rule 5 programs to offer instructions in independent living skills designed to strengthen a child's ability to function in a less restrictive environment than a residential treatment program because Minnesota Statutes, section 245.4882, subdivision 1, paragraph (2), requires the program to "help the child improve family living and social interaction skills" and paragraph (3), requires the program be designed to "help the child gain the necessary skills to return to the community." The statutes, however, do not define the term or specify a standard for providing these skills. This rule part is therefore necessary to clarify what instruction in independent living skills is and set service standards.

The CWLA also lists "daily living experience, including life skills and routines" as one of the service elements that should be provided by residential group care agencies. (CWLA, 1991) This proposed rule part has been reviewed and recommended by the Rule Advisory Committee as setting forth reasonable requirements of the program. It is necessary to specify who can provide this instruction so that

license holders, Rule 5 staff, children, family, and other interested persons will know who is qualified to perform this duty. It is reasonable to specify that mental health practitioners or child care workers supervised by mental health practitioners may perform this instruction because mental health practitioners are qualified to adequately instruct children in independent living skills and child care workers are qualified, if supervised by a mental health practitioner. It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095.

Item E. It is necessary to require recreation, leisure, and play activities because Minnesota Statutes, section 245.4882 subdivision 1, paragraph (2), states that residential treatment must be designed to "help the child improve family living and social interaction skills". It is also necessary to require that recreation services be a part of a Rule 5 residential treatment program because play and recreation are critically important in the development of a child. "However, in the case of an emotionally disturbed child, isolation from peers is the norm. Whether because of their own behavior or because of the attitudes of their peers, severely emotionally disturbed children are often not included in the play associated with healthy normal development. Consequently, these children often miss important opportunities for growth and their handicap may be compounded. Play and recreation activities can serve several functions for the severely emotionally disturbed child. The child can learn new skills that build self-confidence and enhance self-image. The opportunity is provided for the development of important social skills such as cooperation and good sportsmanship. Appropriate recreational activities can allow a child to form a positive relationship with a significant other outside the family such as a coach. Finally, recreational activities can serve as a form of respite for the family." (CASSP, 1989, 89)

CWLA states that; "The residential group care agency should provide recreational experiences for all children in its care, as age-appropriate, and develop objectives pertaining to recreation within their service plans. Recreational and leisure-time activities provide opportunities for the physical, social, and emotional development of children and, as such, should be incorporated into the daily life of the children in group care.

Recreation cannot be separated from the total living experience of children. Play is a learning experience as important as formal education. The agency's recreational activities should further the physical, social and emotional development of each child...The recreational needs of children should be planned within the daily routine of the group care agency. Recreational and leisure-time activities should serve as a channel for energy and stimulation of relationships with others. Recreational activities can help children make choices, solve problems, and develop physically. As therapeutic endeavors, they add a richness to the group care agency's therapeutic milieu.

Relationships between children and their parents can build as a result of recreational and leisure-time activities, which should be a planned part of family interventions." (CWLA, 1991, 65)

It is reasonable to state the outcomes expected to be achieved by recreation, leisure and play activities to the licensee, staff, child, parents, and interested persons, because all those persons should know and participate in

achieving the goals of the service. It is necessary to state who can perform this task so that interested persons will know who is qualified to perform this task. It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095. It is reasonable to specify that child care workers under the supervision of a mental health practitioner or a recreational therapist can perform this duty because these workers are qualified to provide this service.

Item F. It is necessary to require Rule 5 programs to provide social and interpersonal skills development because Minnesota Statutes, section 245.4882, subdivision 1, requires that, "Residential treatment must be designed to :... (2) help the child improve family living and social interaction skills." and "(3) help the child gain the necessary skills to return to the community." Additionally, the CWLA states that the residential group care agency should have a service "forming positive and growth-producing adult relationships with families, peers and others. The residential group care agency should provide counseling and support to the children in its care, as age-appropriate, in the development of long-term relationships with family members, adults, and peers. The child's current relationships with family, peers, and significant others should be in the service plan. The child, as age appropriate, should receive regular, supportive feedback from the worker's observations of these relationships. Experiential learning in communication skills and conflict management can be very helpful. Socially isolated children should be helped to connect with any group or person that can contribute to their social skills through recreational activities, leisure-time groups, volunteers, and so on." (CWLA, 1991, 56 & 57)

It is reasonable to list outcomes expected by the provision of social and interpersonal skills development services because that is the goal of the service. Stating the goal makes it clear and understandable to the license holder, child, staff, parents and interested others what the purpose of this service is.

It is necessary to state who is to perform this duty so that persons reading this rule will know who the state has determined is qualified to perform it. It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095. It is reasonable to specify that child care workers under the supervision of a mental health practitioner can perform this duty because these workers have adequate skills and credentials to provide this service.

Item G. It is necessary to require that vocational skills development services be provided by residential treatment programs because, "One of the most neglected dimensions within the overall system of care for emotionally disturbed children is vocational." (Stroul & Friedman, 1986, 83) The authors go on to say, "While employment is an essential key to successful integration into community life, only one-third of all youth with disabilities graduates to a job or some form of advanced education (National Council on the Handicapped, 1986). According to the National Council on the Handicapped, most school systems in this country do not guide disabled youth into employment opportunities. The lack of systematic vocational services is blamed, in part, for the continued high unemployment rate

among persons with disabilities. Without a strong vocational dimension, the system of care will fail to prepare emotionally disturbed youngsters for the transition to employment." (Stroul & Friedman, 1986, 85) CWLA also recommends vocational services and vocational education as necessary components of a residential group care agency: "The residential group care agency should provide a vocational counseling service that assists children, as age-appropriate, to look realistically at their prevocational and vocational needs. Although vocational education can teach actual job skills, vocational counseling can help children examine their own interests, abilities, and aptitudes, and establish appropriate work behaviors and future goals for a realistic adult working life. Even with very young children, it is important to examine attitudes about work and the skills necessary to acquire and retain a job." (CWLA, 1991, 58) Additionally, CWLA states, "The residential group care agency should ensure that all children in its care, as age-appropriate, receive appropriate prevocational and/or vocational education to help them prepare for economic independence. The prevocational educational services of the residential group care agency should include: Assistance in obtaining job preparation experiences such as supervised chores, work incentive programs, mock job interviews, and practice applications; provision of work-study programs; discussion of suitable occupations; assistance in setting realistic vocational goals and planning the steps for achieving them; assistance in conducting assessments of vocational skills; assistance in accessing vocational programs in the community, school system, or the private sector; assistance in locating role models in the community for specific career interests; assistance in conducting a self-evaluation of job performance skills; and teaching of appropriate work behaviors." (CWLA, 1991, 64 & 65)

It is reasonable to require that vocational skills development services be designed in this way because it is consistent with CASSP and CWLA standards as well as what the Rule 5 PAC found reasonable. It is necessary to state who can perform this duty so that persons reading this rule will know who the state has determined is qualified to perform it. It is reasonable to specify that persons providing these services be at least mental health practitioners or must be child care workers supervised by a mental health practitioner because these workers have adequate credentials to perform this service. It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095. It is necessary and reasonable to allow the license holder to make vocational skills development services available to the child through the school district because school districts are required to provide this service, if the child has an individual education plan, and it could be more costly for the license holder to solely provide this service. In addition, Minnesota Department of Education rules at part 3525.2950, require the school district to provide coordinated secondary transition planning for each child. It is necessary to have the license holder coordinate vocational skill development services with the child's secondary transition plan developed by the school because it is important to have these two service providers work together in the provision of this service. It is reasonable to expect this coordination because both parties have legal responsibilities for vocational services to the child.

Item H. Minnesota Statutes, section 245.4882, subdivision 1, paragraph (5), specifies that residential treatment must be designed to "work with families throughout the placement to improve the ability of the families to care for the

children with severe emotional disturbance in the home." The Council on Accreditation of Services for Families and Children recommends the residential treatment center provide "services to help the child and family" throughout placement (Council on Accreditation of Services for Families and Children, 1985, 104). It goes on to state that these services shall be designed to "resolve conflicts in the child/family relationships and achieve understanding of separation from the family and preparation for return home or to another environment." (Council on Accreditation of Services for Families and Children, 1985, 104) The CWLA states, "The residential group care agency should actively engage the family, wherever in the best interests of the child, in counseling services to improve family functioning; to examine the special needs and stresses of the family, as well as the child in placement; to change attitudes and behaviors to increase the child's opportunity for success after reunification; to examine their appropriate roles as parents; and to develop improved parenting skills. Individual change for the child is only one of the major goals of the group care counseling service. Research and experience have consistently shown that individual change must be accompanied and supported by change in the family and other support systems if the group care service is to have a lasting benefit...Parents have a rightful and important role in the lives of their children and can be powerful allies in their treatment."(CWLA, 1991, 60) N.E. Finkelstein presents methods of interventions for integrating families into the therapeutic process of residential treatment for children with emotional disturbances. (N.E. Finkelstein, 1974) Children in residential treatment often come from homes with multiple problems and mental health workers have the complex task of defining the target area for change. At times the focus of treatment may be the child alone, the family, or the extended family system. Parental involvement and support of agency care is very important for a child's acceptance of self and the child's ability to benefit from treatment. It is recommended that the parents become involved with the treatment milieu and become familiar with parenting methods used in the residential treatment program. (N.E. Finkelstein, 1974) B.J. Friesen notes "Honesty: a respectful, non-blaming attitude; being supportive to the child and the parents and efforts to include the parents in decision-making were all rated as 'very important' professional behaviors by a great majority of parents...Information needs identified by parents included; assessment, available treatment, causes of the disorder, how to cope with raising a child with an emotional disorder, and long-range (transitional) planning."(Friesen, B.J., 1989) This part is necessary to clarify the meaning of instruction in parenting skills and set service standards. This part prescribes the outcome that the service is designed to achieve but does not specify the particular service or procedures. Parents of children with severe emotional disturbance may have to cope with situations that require knowledge and training about how to address the behaviors of a child with severe emotional disturbance. This training may include information about child development, health, safety and other child-rearing issues specific to the child with severe emotional disturbance. It is reasonable to have residential treatment programs provide instruction in parenting skills because they have expertise on working and living with children who have severe emotional disturbances.

It is necessary to state who is to perform this duty so that persons reading this rule will know who the state has determined is qualified to perform it. It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections

245A.09 and 245A.095. It is reasonable to specify that persons providing parenting skills services must be supervised by a mental health practitioner because these workers would meet the minimum requirements supported by the advisory committee to provide this service.

Item I. In order to have an impact on the child and support change for the child and the child's family, it is necessary to provide family support services. The CWLA states that residential group care services should be child-centered and family-focused. They also state, "The group care agency should provide its services from an orientation that recognizes that a problem affecting one family member affects the whole family. A child should be seen in the context of its larger economic, social, cultural, religious, and political environment." (CWLA, 1991, 50) Additional support for this approach can also be found in B.J. Friesen's parent survey (Friesen, 1989). In this survey parents reported that support groups for siblings and parents were difficult to find. Informal support was received from a variety of sources, with emotional support being the most helpful. Parents identified the importance of association with other parents in similar circumstances. In the report of the Education and Partnership Project of the Children's Mental Health Initiative, parents were identified as resources in need of support: "Like parents of children with other disabilities, parents of children with emotional disturbance will also benefit from support, information, and advocacy. Formation of parent support groups and advocacy organizations provides an opportunity for parents to navigate more easily the frequently confusing array of diagnoses, services, and systems." (Education and Partnership Project of the Children's Mental Health Initiative, 1989, 18) It is reasonable to have the residential treatment program provide this service because they have the special skills and expertise in dealing with children with severe emotional disturbance and are important players in teaching and empowering the families to gain insight into family dynamics and conflict resolution as well as improved coping skills and support for the reintegration of the child into the family and community. It is necessary and reasonable to state in this rule that these services be provided at times, including evenings and weekends, that are mutually agreed upon by family and program staff because this service can only be effective if it is provided when families can participate. It is necessary to state who is to perform this duty so that persons reading this rule will know who the state has determined is qualified to perform it. It is necessary to develop rules which set standards for adequate staff and for staff education and training requirements according to Minnesota Statutes, sections 245A.09 and 245A.095. It is reasonable to specify that the person providing this service must be at least a mental health practitioner because a mental health practitioner is commonly accepted as having the minimum training and skills needed to effectively deal with family dynamics and systems involving children with emotional disturbance.

Subpart 2. Cultural competence. This subpart requires programs licensed under this rule to improve the cultural competence of the child during treatment. It is necessary to establish outcomes which will promote the improved cultural competence of children in treatment, so that when children leave treatment and return to the cultural milieu of their home community they will be able to function within their home communities. This requirement is consistent with Minnesota Statutes, section 245.4882, subdivision 1. This subpart is necessary because it establishes a basic licensing standard according to Minnesota

Statutes, section 245A.09, subdivision 2, paragraph (c), clause (3). A high percentage of children in treatment are either persons of color or come from a cultural background which is different from the majority of people in Minnesota. Conversely a small percentage of employees who provide program services to children in programs licensed by this rule are persons of color or are persons not from the majority cultural background group. It is reasonable to require programs to utilize persons as employees, consultants, or volunteers with racial or cultural backgrounds similar to those of the children in treatment because it exposes children in treatment to persons with whom they can readily identify, and who are able to be positive role models as required by Item A of this subpart. It is reasonable to provide treatment programs that meet the special cultural needs of the children served by the program, because this is consistent with Minnesota Statutes, section 245.487, subdivision 3, paragraph (3), clause (v). Therefore, it is reasonable to require staff to be trained and competent in cultural aspects of mental health treatment of children so that they will be able to use culturally appropriate treatment approaches.

Subpart. 3. Interpretive services. This subpart requires the license holder to have interpretive services for children and their families who do not understand spoken or written English. It is necessary to have interpretive services be available so that children and their representatives who are hearing impaired or do not understand English well can understand what the program is doing and be able to communicate with program staff. This subpart is necessary because it establishes a basic licensing standard according to Minnesota Statutes, section 245A.09, subdivision 2, paragraph(c), clause (3). It is reasonable to expect the license holder to provide this service because they are providing 24 hour care and treatment for the child and therefore must have a way to communicate to provide effective treatment and to involve the child and the child's representative in this care and treatment. It is necessary to state this requirement in rule so that it is clear to the license holder, child, child's representative and other interested persons that it is the license holder's responsibility to provide interpretive services. It is also necessary to state that the license holder must not use a child as an interpreter because such an action would place both the child acting as interpreter and the child receiving interpretation services in inappropriate positions and would compromise the confidentiality of treatment information. It is reasonable to not use a child as an interpreter because adult interpreters are available in the state.

Subpart 4. Emergency medical, mental health, and dental services. This subpart requires the license holder to have emergency medical, dental, and mental health services available as needed for children in care. It is reasonable and necessary to have a system for meeting emergency, medical, mental health, and dental needs of the children, because the license holder is responsible for providing all the needs of children in their care on a 24 hour a day basis. It is necessary to state this requirement in this rule so that it is clear to the license holder and other interested parties what is expected regarding emergency medical, mental health, and dental services. This subpart is necessary because it establishes a basic licensing standard according to Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), clauses (3) & (5). It is necessary to state that the license holders's access system assures contact with a mental health professional or a physician within 30 minutes after the emergency is identified so that the child's emergency needs are dealt with promptly by a

qualified professional. It is reasonable to expect the emergency to be addressed within 30 minutes because that is a realistic time period in which emergency care can be accessed while still assuring that the child is getting immediate attention. It is reasonable to require the license holder to make available a mental health professional because the child residing in a residential treatment program for children with severe emotional disturbance would have more mental health emergencies than children without a severe emotional disturbance. It is also reasonable to assure contact with a physician because a physician would have the expertise to deal with other medical emergencies and have hospital admission privileges. The Council on Accreditation of Services for Families and Children recommends that: "Medical and dental services are provided with the consent of the parent or legal guardian, either by the program or through arrangement, in accordance with a written plan which details emergency procedures." (Council on Accreditation of Services for Families and Children, 1985, 104) Additional support is also found in the Minnesota Office of the Ombudsman for Mental Health and Mental Retardation report, as follows; "The Office expects that appropriate and timely medical/dental care will be provided to clients in residential programs. Therefore, the finding that 20% of the programs indicated difficulty in obtaining timely medical/dental care for clients on at least one occasion is unacceptable. The Department of Human Services (DHS), county social service agencies, and Rule 5 programs must insure that children/adolescents with emotional disturbance receive appropriate and timely medical/dental care." (Minnesota Office of the Ombudsman for Mental Health and Mental Retardation, 1990, 24)

Subpart 5. Grievance procedure. This subpart requires the license holder to have a grievance procedure which allows a child or the child's representative to complain about any aspect of the child's treatment. This subpart is necessary to meet the requirements of Minnesota Statutes, section 144.651, subdivision 20, which sets forth the minimum standards for a grievance procedure. It is reasonable to require a grievance procedure for children in a residential treatment program to insure that there is a method for the child and other persons concerned about the child's treatment to complain about the child's treatment and make suggestions for improvement in the child's treatment. It is reasonable to give the child and the child's parent or legal representative a copy of the grievance procedure at or prior to admission so that persons seeking admission to a program will know about the program's grievance procedure at or prior to admission. It is reasonable to require the program to provide the needed grievance forms and to assist the child or the person filing the grievance on behalf of the child, because the child is dependent for all its needs on the program. Therefore, it is reasonable to require the program to assist the child or the child's representative in filing the grievance properly to insure that there is a clear understanding of the condition or problem being grieved. It is reasonable to require the license holder to make a documented response within a week to the grievance specifying what actions will be taken by the license holder to address the complaints and concerns of the child, because children who are in the care of the license holder rely on the license holder for care and protection from harm or injury. It is also reasonable and necessary to advise the license holder that the grievance procedure required under this subpart does not remove any of the requirements for responding to an allegation of abuse or neglect of a child under Minnesota Statutes, section 626.556.

Subpart 6. Staffing pattern and minimum staff/child ratio. This subpart establishes the requirements for staffing patterns and the staff to child ratio for programs licensed under this rule. This subpart is needed to meet the requirement of Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), clause (1), which requires human services licensing rules to establish standards for, "adequate staff that take into account the age distribution and severity of handicap of persons served by the program". This subpart of the proposed rule is based upon and closely resembles the requirements of part 9545.1050 of the existing rule. This subpart of the proposed rule differs most markedly from the existing rule part 9545.1050, in the staff to child ratio requirements for the care of children ages 0 to less than 6 years, because the existing rule was written at a time when programs licensed under this rule cared for children as young as four years and did not care for infants and very young children as provided under the proposed rule. A 1993 survey of the programs serving very young children and infants was the basis for the ratio of staff to children in the proposed rule. It is reasonable to require programs providing care to very young children to have fewer children per staff person because very young children and infants are more dependent on adults for meeting their needs. More staff need to be present to assist very young children and infants in the event of an emergency, such as a fire or disaster.

9545.0955 ADMISSIONS CRITERIA AND PROCESS.

This part establishes the requirements a license holder must meet when admitting a child to a program. It is necessary to state the admissions criteria and process in this rule so that only children with severe emotional disturbance who are eligible and in need of residential treatment are admitted to the residential program. It is reasonable to state the admissions criteria and process in this way so that standards of admission and the admission process are consistent statewide.

Subpart 1. Conditions governing admission. This subpart establishes conditions in items A through F for the admission of a child to a residential mental health treatment program.

Item A. It is reasonable to state that the child be under 18 years of age at the time of admission because the program is required by the Children's Comprehensive Mental Health Act, Minnesota Statutes, sections 245.487 to 245.4888, to be designed for children under 18 years of age.

Item B. The screening requirement in this item is necessary and reasonable because it is prescribed by Minnesota Statutes, sections 245.4885, subdivision 1, and 245.4882, subdivision 1.

Item C. This part is necessary because some children requesting admission in a residential treatment program licensed by this rule will not use public funds for the service. A standard of screening is needed to assure that such children are eligible and in need of these services. It is reasonable to use the same standards and requirements set in statute for screening for residential treatment when public funds are used because it would assure consistency in admission standards and admit only eligible children in need of residential treatment services. Setting consistent screening standards without regard to who pays

assures that the program is serving the child's needs according to Minnesota Statutes, sections 245.4882 and 245.4885.

Item D. This item is necessary to assure that the child is admitted to a treatment program that meets the requirements of Minnesota Statutes, section 245A.095, subdivision 1a. This item is reasonable because it is consistent with the statutory requirements and informs affected persons.

Item E. This rule requirement is necessary because these programs are not designed to provide primary chemical abuse treatment or detoxification services. It is necessary to require that this treatment not be needed at the time of admission because the child may need such treatment later, even though this need is not evident in the screening process. This requirement is reasonable because residential treatment programs are specifically designed for the treatment of children with severe emotional disturbances and children admitted to these programs should be in primary need of treatment for their severe emotional disturbance and not chemical abuse treatment or detoxification.

Item F. It is necessary to assure that the license holder's program can meet the developmental and mental health needs of the child being considered for admission because receiving appropriate treatment is the purpose of the child going to the residential program. It is reasonable to state this requirement in the admissions criteria and process section because, although all programs licensed under this rule will be serving children with severe emotional disturbance, individual programs will have additional admissions criteria reflecting their sub-specialties, (e.g. serving only children aged 12 to 17, or under 12 years of age, or only serving girls over 12 who have been sexually abused.) Because the license holder can set these additional admission criteria and have sub-specializations, it is necessary and reasonable to have this requirement as a basic license standard to best meet the child's needs.

Subpart 2. Information at the time of admission or intake. This subpart requires the license holder to place information in the child's file at admission. Requiring the license holder to place specific information regarding the child in the child's file is necessary to provide a record for the license holder, the child, the child's parents or legal representative, the licensing authority, and interested others. Requiring that items A through H be in the file is reasonable as this information will establish an understanding by the license holder, child, child's parents, and appropriate others regarding the child's life experiences, assessments and race or cultural heritage. It is necessary for the license holder to have this information at admission in order to design the child's individual treatment plan. The CWLA states, "Obtaining factual information about a family's personal, medical, and social history. The residential group care agency should obtain for the children in its care all available personal, medical, and social history and information. Too often, complete information of past personal events is not obtained for children in group care. Information regarding past physical or sexual abuse, medical history, and other personal information can have a dramatic bearing on the child's progress in group care. A lack of knowledge often can hamper the resolution of the problems of separation and result in unrealistic expectations about future familial support." (CWLA, 1991, 38)

Item I. In order to document the child's, parent's, or guardian's understanding of the program's discipline and restrictive procedures policy, it is necessary to have the child's parent or legal guardian sign a statement indicating that they understand and have received prior notification about the license holder's policies and procedures regarding discipline and the use of restrictive procedures during the child's treatment. It is reasonable to have this done at intake to assure that the child and interested others are aware of the program's policies at the time of admission. It is reasonable to acknowledge the receipt of information by a signed statement because this is a procedure commonly used to acknowledge understanding or give permission.

Item J. It is necessary to state in the rule the expectation that the license holder has advised the child of the available advocacy services so that the child or the child's parent or legal representatives are aware of these services if they desire them. Minnesota Statutes, section 144.651, subdivision 4, requires that programs give this information to potential clients at admission. It is reasonable to have a signed statement documenting compliance with this requirement because it provides a record to use to monitor compliance with this rule requirement.

Item K. Because the specifics of Minnesota Statutes, sections 144.651 and 144.652, are not common knowledge, it is necessary to require that the license holder document the provision of advice concerning the child's rights and provision of Minnesota Statutes, section 144.651, to the child and others as required in this subpart. It is reasonable and necessary to require programs to comply with Minnesota Statutes, section 144.651, subdivision 4, which requires the program to advise children ages 16 and 17 of their rights under Minnesota Statutes, section 253B.04, subdivision 2. If a program admits an informally committed child 16 or 17 years old, the child must be advised in writing of their rights according to Minnesota Statutes, section 253B.04. It is reasonable to expect the license holder to provide this information to the child because the license holder will have custody of the child during treatment and the license holder is the entity which will protect and inform the child during the child's stay in treatment.

9545.0965 EDUCATION PLANNING.

This part sets forth the license holder's obligations regarding the education planning for a child in care. It is necessary to have a section outlining the responsibility of the program regarding the child's education planning so that it is clear what these expectations are. It is reasonable to expect the program to facilitate the child's school attendance and enroll the child in the local school district, or, if appropriate, the child's home school district because the program provides care for the child on a daily basis and education is a major and important part of the child's day. Requiring the license holder to be responsible for educational planning will also facilitate the cooperation between the school district and residential program. To assure access to needed and available services it is necessary to have the license holder refer the child to the local school district or home school district for an assessment of eligibility for special education services if the child has no individual education plan. This requirement is reasonable because the school district is responsible to provide special education services and the license holder is

responsible to help the child obtain available services. The Council on Accreditation of Services for Families and Children, suggests that a residential treatment center provide the following: "There is an individual educational plan for each child, and education in the least restrictive environment appropriate for the child's acute care needs is available either as an integral part of the program or through arrangement with an accredited program." (The Council on Accreditation of Services for Families and Children, 1985, 104)

9545.0975 DEVELOPING AND REVIEWING THE INDIVIDUAL TREATMENT PLAN.

Subpart 1. Developing the plan. This subpart requires the license holder to develop an individual treatment plan that meets the requirements of Items A to E. It is necessary to state in rule how the individual treatment plan should be developed and reviewed because the state has specific requirements regarding these items which the license holder must meet. Minnesota Statutes, section 245.4876, subdivision 3, requires that providers of residential treatment develop an individual treatment plan for each child in care. The statute also requires the child's individual treatment plan to be based on a diagnostic assessment, and to the extent possible the child and the child's family should be involved in all phases of developing and implementing the individual treatment plan. The requirements in this section are reasonable because they have been approved by the PAC, and are consistent with what mental health professionals and national experts in the field do when developing and reviewing an individual treatment plan.

The requirement in item D, subitem 10 is reasonable because it is consistent with the requirement in Minnesota Statutes, section 144.651, subdivision 21, that a patient's communication rights may be restricted only for medical or programmatic reasons.

The Council on Accreditation of Services for Families & Children, recommends the requirements of a treatment plan as follows: "Treatment planning: specifies the diagnosis to the current Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, a diagnostic summary, prognosis, specific treatment modalities to be used, and the estimated length of treatment; is done in a timely and responsive manner, with an initial plan developed within the first two weeks after admission and a full plan within thirty days; is reviewed for appropriateness and effectiveness every 90 days by the clinical personnel, at more frequent intervals where younger children are involved or individual needs dictate; and involves parents or legal guardians in the planning and review process, and includes planning for their participation in the treatment program and assumption of as much parental responsibility as possible." (Council on Accreditation of Services for Families and Children, 1985, 103 & 104)

It is reasonable to require the license holder to develop an individual treatment plan within ten working days of admitting a child, because it allows some time for the child to acclimate to the program before the plan is written and allows time for the plan development process to take place with the child and family. This time is also required in Minnesota Statutes, section 245.4876, subdivision 3. The requirements of this subpart are reasonable because the requirements are a part of accepted practice within the care industry and are noted in several publications. A CASSP publication which contains a discussion of individualized service plans for the child supports this subpart. (CASSP, 1986, 18 & 19) CASSP

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

Item E is reasonable because it addresses all the needs stated in the different plans of care a child may have. The case placement plan is required of the county by part 9560.9610, and the plan for transition to the community is required by Minnesota Statutes, section 245.4882, subdivision 3.

Subpart 2. Quarterly review of individual treatment plan. This subpart requires a license holder to review a child's individual treatment plan at least every 90 days. Because a child's mental health needs may change over time and the changes have implications for treatment, it is necessary to establish a minimum standard for review and revision of the individual treatment plan. To support consistency and uniformity of services, it is necessary to specify who must review and revise the individual treatment plan and the basis for and frequency of the review. It is reasonable to have the treatment team members participate in the review because these are the people who are knowledgeable about the services currently being provided and the extent to which the services are meeting the child's needs. It is reasonable to have the review address the success of the original plan, whether that plan requires change, and how the original plan and discharge date should be modified if change is indicated because the child's needs can only be addressed if the individual treatment plan is current. Determining whether any prior authorization for the use of isolation or restraint should be continued is reasonable because this need may change over time. Monitoring the receipt of services is an important function as noted by the CWLA as follows: "The appropriateness and value of the residential group care services should be subject to regular monitoring and evaluation...Activities should be monitored so that: Agreed-upon services are provided to the child and family, as outlined in the service plan; Services being provided remain appropriate for the child and family; and Services are provided in accordance with licensing, regulatory, and accreditation standards." (CWLA, 1991, 45) Having copies of the summary distributed to the child, the child's family and legal representatives and the county case manager within ten working days after the review is completed is necessary to assure that these persons are informed of the outcomes of this review process. It is reasonable to have this summary distributed within ten working days because this allows the license holder enough time to prepare a summary that remains a current report. Documenting that the child was advised of the right to appeal is necessary and reasonable to show compliance with Minnesota Statutes, section 245.4887. Having the individual treatment plan reviewed every 90 days is required in Minnesota Statutes, section 245.4876, subdivision 3. Requiring documentation of the quarterly review is necessary to provide a record of service for the license holder, child, child's parents, guardian, the licensing authority, and interested others. Since Minnesota Statutes, section 245.4887, requires that the child be advised of the right to appeal each time the individual treatment plan is reviewed, documenting that the child was so advised is reasonable to determine compliance.

Subpart 3. Progress notes. This subpart requires the license holder to record a child's progress notes in the child's file at least weekly. Progress notes are necessary to document the care of the child and should include information about

what care was provided, who gave the care, and how the child responded to the care. This documentation is necessary to record the child's progress toward the goals and objectives identified in the individual treatment plan. It is reasonable to require progress notes because this is an accepted practice of mental health clinics, hospitals and other 24 hour care programs to relay information to other caretaker staff regarding the child and to maintain a historical perspective regarding what happened to the child while in the care of the program. Requiring that the child's progress be noted at least weekly is necessary so that the license holder knows how often the progress notes are required to be done. Requiring weekly progress notes is reasonable because it is an adequate time frame which allows the license holder to identify the child's progress or lack of progress while not requiring the license holder to do unnecessary record keeping.

9545.0985 CRITERIA FOR CONTINUED STAY, DISCHARGE, AND DISCHARGE PLANNING.

This part establishes criteria for a child's continued stay in and discharge from a licensed program and also sets standards for the license holder to follow when doing the child's discharge planning. It is necessary to state in the rule the criteria for continued stay, discharge and discharge planning which the license holder must meet so that the license holder and other interested parties know these criteria. It is necessary to establish minimum service standards required by Minnesota Statutes, section 245A.09, subdivision 2, to assure that each child receives a consistent and adequate level of care. This part is reasonable because it informs affected persons of statutory requirements.

Subpart 1. Continued stay criteria. This subpart requires the license holder to develop continued stay criteria according to Items A, B, and C of this subpart. It is necessary and reasonable to state in Item A that the child must be less than 18 years old because according to Minnesota Statutes, section 245.487, subdivision 2, mental health treatment including residential treatment program services as described in this rule should be specifically designed for children with emotional disturbance. Setting the age limit for admission at 18 is reasonable and necessary because according to Minnesota Statutes, section 245.4871, subdivision 5, "child" means a person under 18 years of age. Item B is necessary and reasonable because it is consistent with Minnesota Statutes, section 245.4882, subdivision 1, which states "length of stay is based on the child's residential treatment need..." and "Services must be appropriate to the child's age and treatment needs..." Additionally, subdivision 4, states "that placement decisions for residential treatment services are based on the clinical needs of the child." Item C is necessary because a child may meet the continuing stay criteria of Item B where continuing residential treatment is necessary and appropriate but the license holder may no longer be able to provide the service needed by the child. This situation could occur in a number of scenarios such as when the child's emotional disturbance is exacerbated and the program is not designed or staffed to provide for this change in treatment needs or the child becomes older than the ages of children served by the program (a child enters a program designed for 10 to 12 year olds, and subsequently the child becomes 13 years of age), or the child's condition no longer requires the specialized treatment of a specific program.

Subpart 2. Discharge criteria. This subpart requires the license holder to have criteria for the discharge of a child from the treatment program. This subpart is necessary and reasonable because it is mandated by Minnesota Statutes, section 245.4882, subdivisions 3 and 4.

Item A. It is necessary and reasonable to state that attaining the age of 18 years old is a discharging criterion condition because Minnesota Statutes, sections 245.487, subdivision 2, and 245.4871, subdivision 5, define residential treatment as a service for a child, and a child is someone under age 18. Therefore, persons over age 18 are not eligible for this service.

Item B. It is necessary and reasonable to discharge the child from the residential treatment program if the child's condition has changed to the extent that the placement is no longer appropriate. It could be that the child's emotional disturbance has improved to the point that residential treatment is no longer needed or the child needs a different program.

Item C. The license holder is responsible to meet the child's needs. If the license holder is not able to provide the services the child requires, then the license holder must discharge the child to a program where the child's needs can be met. This is necessary and reasonable because it is required by Minnesota Statutes, section 245A.095, subdivision 1a.

Subpart 3. Discharge planning criteria. This subpart requires the treatment team to develop a discharge plan which is coordinated with the child's other plans, including the individual education plan, family reunification plan, and family community support plan. It is necessary to state a time frame for discharge and notification of planning prior to discharge to assure that proper coordination takes place with family, case managers, schools, and other providers. Thirty days is a reasonable amount of time to require for discharge planning because it allows enough time to coordinate and notify parties who are involved with the child, or who will be involved with the child after discharge, or work on any remaining treatment or administrative issues. This time frame is also short enough to allow a person ready for, or in need of discharge, to leave the program in a reasonable time frame. Specifying whom discharge services must be coordinated with is necessary and reasonable because it is consistent with requirements in Minnesota Statutes, section 245.4882, subdivisions 3 and 4.

It is necessary to prescribe that the advice from a special mental health consultant be sought when the plan is developed for children who are from a racial or cultural minority group because these children often have different needs not identified by staff from the majority racial or cultural group. To assure that children from the minority racial or cultural group have their needs met, it may be necessary to use a special mental health consultant. It is reasonable to get planning advice in this way because not all residential treatment programs will have special mental health consultant staff but would be able to access this specialized expertise for this planning purpose.

It is necessary to specify the contents of the discharge plan so that minimum standards of practice are clear to license holders and interested persons. Requiring a discharge plan is a reasonable way to be in compliance with Minnesota Statutes, section 245.4882, subdivisions 3 and 4, which requires residential

treatment programs to plan for the child's care after leaving the program including transition to the community and to utilize discharge criteria requirements.

Requiring the plan to identify the methods, strategies, and resources to be used in assisting the child and the child's family make the transition from residential treatment to less restrictive community based services is reasonable because this information will establish an understanding between the license holder, child, child's parents or guardian, and interested persons of what is expected and how it will be accomplished. It is necessary and reasonable to recommend the family community support services and agencies which will be involved with the child and the child's family after the child's discharge from the residential treatment program because the residential treatment program staff is in the best position to know what ongoing or new services the child requires. It is necessary and reasonable to have the transition planning component of the individual treatment plan recommend strategies for involving the services identified above while the child is still in residential treatment because "transition should be a part of the ongoing treatment process, not an isolated occurrence." (CWLA, 1991, 46) It also is necessary to assure that the education and mental health service systems are working together. It is reasonable to require the individual education plan and the individual treatment plan be incorporated in the discharge plan because both planning documents deal with the same person and would likely have overlapping concerns and needs identified.

Requiring the plan to specify the license holder's recommendations for follow-up care in the community is necessary and reasonable because the license holder has worked closely with the child and would have specialized knowledge of the child and child's needs and should make a recommendation to the child's subsequent care giver for the child's follow-up care.

It is necessary and reasonable to name the individuals responsible for specific tasks related to the child's recovery and the time lines for completing these tasks in order to assign persons and specify their duties so that all involved parties understand what is to be done in the transition and who is to do it. It is necessary and reasonable to have a separate section noting recommendations for continuing care and treatment of a child with severe emotional disturbance or other needs, who is being discharged due to the child becoming 18 years of age, because this is a circumstance that includes additional legal and treatment issues. The child, upon turning 18 years of age, is no longer eligible for residential treatment program services or other services under the Minnesota Comprehensive Children's Mental Health Act, but is considered an adult and may be eligible for services under the Minnesota Comprehensive Adult Mental Health Act. Parent or guardian involvement is now legally replaced with the consent for service by the new adult; unless the parent or guardian has received court orders to retain legal representation of the person. A plan of service to note and address this special circumstance must be developed to assure that the person's changing needs will be met in a different system of care.

Subpart 4. Notice of discharge. This subpart requires the license holder to prepare a written notice of discharge for a child being discharged from the program. It is necessary to provide notification of discharge because this duty is required by Minnesota Statutes, section 245.4882, subdivisions 3 and 4. It

is reasonable to require that the written discharge notice be prepared at least 30 days prior to discharging the child because that is consistent with the time lines of developing a discharge plan.

It is necessary and reasonable to require written notice of the projected discharge date be given to the child, the child's case manager, parent or legal guardian, and local education agency to which the child will be transferred upon discharge because these are the persons involved in the child's current and future care.

Requiring that the notice provide a copy of the child's individual education plan, the information about appeals and the license holder's offer to meet with the county caseworker or person responsible for the child's care after discharge is necessary for the successful transition of the child to another setting. It is reasonable to require this notice to inform the license holder, child and other involved parties what is expected.

Subpart 5. Administrative discharge. This subpart establishes the requirements for an administrative discharge of a child from a licensed program. It is necessary to have a section in this rule regarding administrative discharge to establish minimum standards when such a discharge occurs. The standards prescribed for an administrative discharge are reasonable because they provide for quick but thoughtful action on the part of the license holder. It is reasonable to provide programs with an option to discharge a child, before the child attains the treatment goals in the individual treatment plan, whom the program cannot properly care for.

Subpart 6. Discharge summary. This subpart requires the license holder to place the child's written discharge summary containing the information in Items A through E in the child's file. It is necessary to have a discharge summary to establish a record of the services provided by the program and the progress and outcome of these services. The summary provides a quick review of the child's treatment history in the program. It is reasonable and necessary to list the name and address of the caregiver of the child following discharge, the name and address of the case manager, and the name of agencies that will be providing services for the child and family after discharge as a record of services provided the child to comply with Minnesota Statutes, section 245.4882, subdivisions 3 and 4. Additional support for part 9545.0985 Criteria for continued stay, discharge, and discharge planning can be found in the CWLA's guidelines (CWLA, 1991, 45, 46, 47, 88).

9545.0995 STANDARDS GOVERNING THE USE OF RESTRICTIVE TECHNIQUES AND PROCEDURES

Part 9545.0995 sets standards for the use of certain types of restrictive techniques which may be applied by authorized persons to a child during the course of the child's treatment in a licensed program. Part 9545.0995 is necessary because Minnesota Statutes, section 245.826 specifically requires the commissioner of human services, when amending the rules governing programs serving children with emotional disturbance in parts 9545.0900 to 9545.1090, to develop rule provisions which govern the use of restrictive techniques and procedures in programs serving children with emotional disturbance. Accordingly, this rule part sets forth the limitations, but does not encourage or require the

use of restrictive techniques including time-out, physical holding, and isolation, in programs serving children with emotional disturbance.

Subpart 1. Policy. Subpart 1 prohibits the use of certain restrictive techniques and procedures prohibited by Minnesota Statutes, section 245.826. This subpart also requires that the license holder control a child's behavior using the least restrictive methods consistent with the child's individual treatment plan. The prohibition of certain restrictive techniques and procedures establishes a policy requirement that programs avoid abuse and neglect as defined in Minnesota Statutes, section 626.556.

This subpart is needed to meet the requirements of Minnesota Statutes, sections, 245A.095, subdivision 1a, which requires the commissioner to develop licensing rules that assure persons with mental illness will receive needed treatment or support in the least restrictive environment. It is reasonable to prohibit restrictive techniques and procedures and corporal punishment which are likely to mentally or physically harm a child entrusted to the care of a mental health treatment program to protect the child and meet the requirements of Minnesota Statutes, section 245.826. The CWLA states that: "Corporal punishment...is not an appropriate or acceptable response to negative behavior under any circumstances." (CWLA, 1991, 82 & 83) Comments from PAC members during PAC meetings also indicated that prohibiting corporal punishment and requiring programs to use restrictive techniques within the limitations of program policies are appropriate license requirements which promote good residential care practices and protect children from harm.

Subpart 2. Standards governing the use of time-out. This subpart sets forth the conditions which a license holder must meet when implementing a time-out procedure in a program licensed under this rule. This subpart is needed to describe the conditions of time-out so that an interested person can distinguish time-out from the more restrictive procedure called "isolation". This subpart is needed and reasonable, because it meets the requirements of Minnesota Statutes, section 245.826, which allows the commissioner to specify the standards for restrictive techniques and procedures which are not prohibited by statute. The conditions in items A through H are reasonable and were reviewed and approved by the PAC and meet the standards which are practiced by persons providing residential care under the current Rule 5.

Subpart 3. Emergency use of isolation or physical holding. This subpart requires the license holder to use isolation or physical holding only in an emergency to prevent a patient from causing physical harm to self or others. This subpart is consistent with the standards set forth in Minnesota Statutes, section 144.651, subdivision 31, regarding the use of isolation and restraint. The requirement to use isolation or physical holding only in an emergency is supported by of CWLA regarding "physical restraint" and "confinement". (CWLA, 1991, 83 & 84)

Subpart 4. Policies on emergency use. This subpart requires the license holder to develop policies and procedures to be followed by all persons caring for children in the program regarding the emergency use of isolation and restraint as a basic licensing standard. It is necessary to require programs to develop policies on the emergency use of isolation and restraint, because Minnesota

Statutes, section 245A.09, subdivision 2, requires that rules include basic licensing standards for the services provided to persons in licensed programs. The child caring agency's development of policies for the use of behavioral interventions, including isolation and physical holding, is recommended by the CWLA. (CWLA, 1991, 79 & 80) It is reasonable to follow the CWLA standards, which call for policies on the use of behavioral interventions, because they are national standards commonly used by child caring agencies in Minnesota and these standards are generally consistent with the standards in the Minnesota Comprehensive Children's Mental Health Act, Minnesota Statutes, sections 245.487 to 245.4888.

Subpart 5. Standards governing emergency use of physical holding. This subpart requires the license holder to meet certain rule requirements when using physical holding with a child. It is necessary to require the approval of a physician, psychiatrist, or mental health professional for the use of physical holding, except as stated in this subpart, to meet the requirements of Minnesota Statutes, section 144.651, subdivision 31. The use of physical holding in the event of an emergency and the requirement for staff to be trained in the use of this procedure are reasonable and are supported by the CWLA, regarding "physical restraint". (CWLA, 1991, 83) The standards for the use of physical holding of a child in items A to E were reviewed and approved by the PAC as being reasonable and consistent with current practice in child caring programs.

Subpart 6. Standards governing the emergency use of isolation. This subpart requires the license holder to meet certain rule requirements when using isolation with a child. It is necessary to require the approval of a physician, psychiatrist, or mental health professional for the use of isolation, except as stated in this subpart, to meet the requirements of Minnesota Statutes, section 144.651, subdivision 31. The requirements for the use of isolation established in this subpart are also needed and reasonable because they comply with Minnesota Statutes, section 245.826, which requires the commissioner to include rule provisions governing restrictive techniques and procedures. The requirements of this subpart for the use of isolation are reasonable and are supported by the CWLA regarding "confinement" (CWLA, 1991, 83 & 84).

Subpart 7. Documentation. This subpart requires the license holder to document the reasons for and conditions of the emergency use of isolation or physical holding. It is necessary to require the license holder to document the emergency use of isolation or physical holding so that interested persons may review the record of the use of those procedures. The record of the use of isolation and physical holding which contains the documentation required in this subpart is reasonable because it contains sufficient detail to allow an interested person to determine whether these rules and program policies were followed and whether the child may have suffered harm during the isolation or physical holding procedure. The documentation of items A through L is necessary to allow the department to monitor compliance with the requirements of this rule and governing statutes.

Subpart 8. Administrative review. This subpart requires the program administrator to review the emergency use of physical holding or isolation to determine if the program's policies were carried out in the proper manner by qualified persons. It is necessary to review the emergency use of physical

holding and isolation to insure that the rights and the health of the child are being served by persons carrying out the procedure. The review of the use of confinement is recommended in the CWLA's standards, (CWLA, 1991, 83 & 84)

Subpart 9. Committee review. This subpart requires the license holder to empanel a committee of administrators, child care staff, and a mental health professional to review the emergency use of isolation and physical holding of children in the program. It is necessary to require a review of the emergency use of isolation and physical holding to insure that these restrictive procedures are implemented according to program policies and to insure that the program policies are appropriate for use with the children cared for and give the proper instructions to staff who must implement the policies. It is reasonable to require that policies be reviewed by a committee comprised of persons with the different backgrounds needed to develop sound policies for the care of children because the combined insights into the child's behavior of the administrative and child care staff and mental health professional are likely to give an overview of the use of physical holding which will result in the most limited use of the physical holding procedure. It is also reasonable to require that corrective actions be considered by the license holder if the committee determines that corrective actions should be considered, because the committee is knowledgeable about the program and the children it serves and its advice merits consideration.

9545.1005 DISCIPLINE; RULES OF CONDUCT.

Subpart 1. Policies and procedures governing discipline. This subpart requires the license holder to develop and utilize written policies and procedures regarding discipline. It is necessary to state in rule the criteria for discipline and rules of conduct so that the license holder, child, child's parents or legal representative, and other interested parties are aware of the state's requirements in this area. It is reasonable to advise interested persons of the purpose of discipline because it explains the outcomes which should result from a proper discipline policy and procedure. This section is reasonable because it is consistent with Minnesota Statutes, sections 245.826, regarding restrictive techniques and 245.4882, subdivision 1, regarding providing care in the least restrictive setting. It is necessary to require the license holder to utilize written policies and procedures for implementing, documenting, and monitoring the use of discipline because this assures the Department that policies and procedures have been developed and can be monitored and written policies are more clear to program staff than orally communicated policies.

Having written policies and procedures is a reasonable way to prove that the program is in compliance with this rule part. It is necessary to have the program make these policies and procedures available to parents, referring agencies, and staff to assure that these persons have access to this information. It is reasonable to expect the program to make these policies and procedures available to these persons because these are the persons working with the child. The CWLA addresses discipline and behavioral management on pages 78-84. The discipline policies and procedures in this rule section follow the CWLA guidelines.

Under Item A, the rule states that only age-appropriate techniques will be used. It is necessary and reasonable to use only age-appropriate discipline techniques, because discipline must be appropriate to the child's age according to Minnesota

Statutes, section 245.4882, subdivision 1.

Under Item B, it is necessary and reasonable to list the methods of discipline that staff are to use, including methods for managing stress and reducing impulsive behavior because staff needs to know what is appropriate or expected of them so they can comply. It is necessary and reasonable to include methods for managing stress and reducing impulsive behaviors because children with severe emotional disturbance, often have difficulty handling stress and often have impulsive behaviors. Therefore, in order to work with children with severe emotional disturbance and teach them how to better manage themselves these methods are necessary.

Under Item C, it is necessary to list the discipline that will result from specific behaviors to establish consistency and uniformity among staff. It is reasonable to have the same discipline apply to the same behavior on a regular basis because children and staff need to know what is expected of them and need to know what consequences will result from specific behaviors.

Under Item D, it is necessary and reasonable to list which staff are authorized to use disciplinary actions and the types of actions authorized because many different types of staff work in a 24 hour residential treatment program and some staff, such as janitorial or secretarial support, may have authorization in limited circumstances to use disciplinary actions. Examples of this would be: a program has the policy that all persons will be treated with respect; all staff have the authority to remind a child who is swearing at them that this is disrespectful; all staff have the authority to call for help from other staff or the police if a child becomes violent; only professional staff can do physical holding and isolation.

Under Item E, it is necessary and reasonable to specify how the license holder will ensure that a child's individual treatment plan takes precedence over general disciplinary procedures if there is a conflict between a child's individual treatment plan and the general disciplinary procedures because the individual treatment plan is the preeminent plan for care of the child. This plan is also a better guide to follow for disciplining a child because it is updated regularly and reflects the child's current treatment needs. It is reasonable to include this policy in the written policies and procedures of the program so that it is available to all staff.

Under Item F, it is necessary to state how the license holder's quality assurance plan will provide for documenting and monitoring the use of discipline and evaluating the effectiveness of the discipline because a major function of programs licensed under this rule is behavior management and skill training. Therefore, the quality assurance plan should address the use of discipline because it is one of the programs' major functions.

Under Item G, it is necessary and reasonable to require that the plan be approved by a mental health professional for use by program staff because Minnesota Statutes, section 245.4882, subdivision 2, requires that residential services be clinically supervised by a mental health professional. It is also necessary and reasonable to require the program director to approve the discipline plan, because the program director is responsible for the overall functioning of the

program.

Under Item H, it is necessary that the plan is reviewed and approved annually by a mental health professional and the program director to assure that the plan is consistent with current methods of discipline. Since the mental health professional is the person that is mandated by statute to clinically supervise the program it is reasonable to have the mental health professional review and approve the discipline plan. It is also reasonable to have the program director review and approve this information because the program director is responsible for the program and its functioning. It is necessary and reasonable to have the review include the results of quality assurance activities required in part 9545.1055, because the quality assurance plan monitors and evaluates incidents of emergency use of isolation and physical holding and use of treatment modalities. It is important to review and incorporate recommendations from the quality assurance plan in order to update the policies and procedures on discipline.

Subpart 2. Rules of conduct. This subpart requires the license holder to have rules of conduct for the children in the program. It is necessary to have rules of conduct for the children in the program so that the children, program staff, and interested others know what the expectations are for conduct and there can be consistent application of the rules of conduct. The rules of conduct requirements are reasonable because they follow the CWLA guidelines for behavior management, setting behavioral expectations and behavioral interventions. (CWLA, 1991, 78-84)

Item A, (1) requires the rules of conduct to indicate or describe what the program considers to be appropriate behavior and inappropriate behavior because the children, program staff, parents and other interested parties could not know this information without such notice. It is reasonable to require the license holder to state which behaviors are appropriate or inappropriate so that the children, staff, and interested others are aware of behavioral expectations because the program is a residential program and children living there usually have behavior problems or issues and it is the program's job to work with the children on improving problematic behavior. Under (2), it is reasonable and necessary to state the consequences that will be applied in recognizing and rewarding appropriate behavior and modifying inappropriate behavior so that the children, program staff and interested others have this knowledge and so that there is consistency in application of consequences. Under (3), it is necessary and reasonable to indicate or describe the circumstances for the emergency use of restraint and isolation because the use of isolation and restraint should be limited and restricted under this rule and it is important that the child, parents, staff and interested others know this information. Under (4), it is necessary and reasonable to indicate or describe that an individual treatment plan takes precedence over the rules of conduct if there is a conflict in order to be in compliance with part 9545.1005, subpart 1, Item E.

Under Item B, it is necessary to expect that no later than at the time of admission, the license holder must explain and provide a copy of the program's rules of conduct to the child and the child's parent or legal representative to ensure that they are made aware of these rules of conduct prior to the child's admission to the program. Because the child will be expected to follow these

rules or accept the consequences, it is important that the child have this information to make informed choices about behavior. The child's parent or legal representative is an important part of the child's treatment, and their legal consent to treatment at the program is needed, unless a court orders the child's treatment. Therefore, it is important that the information about the rules of conduct is understood and supported by them at the time that the child is admitted to the program. It is necessary to require that the license holder obtain a signature from a child older than seven years, and the child's parent or legal representative indicating they have received a copy of and understand the rules of conduct to show proof to the licensing agency that this action has occurred. It is reasonable to expect persons receiving the rules of conduct to sign an acknowledgement because it is common practice in this country to acknowledge understanding, show approval or give permission by one's signature. It is important that the child be included in this sign off because the child is the person expected to follow the rules of conduct or take the consequences and it provides evidence that the child has knowledge of the existence of the rules. Having the child sign this form is also a way to empower the child regarding their behavior. Since the child and the child's legal guardian must be aware of the rules of conduct in order for the child to be successful at the program; and in order for the program to be successful with the child it is necessary for the child and child's guardian to understand the rules of conduct. To understand the rules of conduct, they must be written or spoken in language understood by the child and child's guardian. Therefore, it is necessary to require the license holder to make interpreted copies of the rules and an interpreter available if the child or the child's legal guardian requires an interpreter to understand the rules of conduct. Minnesota Statutes, sections 144.651, subdivision 4, requires programs to make interpreters or interpreted copies of all program rules and policies available to children. These actions are also reasonable because if the program was qualified to work with this child and child's legal guardian then the program would have access to an interpreter or interpreted copies of the rules of conduct.

Under item C, it is necessary to require the license holder to post the rules of conduct in a place where they are visible and accessible to the children in the program so that the children can easily check what the rules are if they do not know or remember from their rule copy. It is reasonable to require the program to post the rules of conduct because posting rules as a reminder of conduct expectations is a common practice in 24 hour programs, schools, libraries, and many other places where non-related persons live or congregate.

9545.1015 COMPLIANCE WITH MALTREATMENT OF MINORS ACT.

Subpart 1. Notice to children and families. This subpart requires the license holder to inform the child and the child's family and legal representative of the license holder's obligations to report the maltreatment of minors under Minnesota Statutes, section 626.556, and under the license holder's own policies. This subpart is necessary and reasonable because the child and the child's parents need to know what will happen in the event that a child entrusted to the care of a program is neglected or abused. It is reasonable to bring up the topic of abuse and neglect to make the child and the child's parents aware of the possibility of abuse and neglect and the program's policies concerning abuse and neglect.

Subpart 2. Notice to staff. This subpart requires the license holder to distribute written material explaining the program's policies and the requirements according to Minnesota Statutes, section 626.556, to staff persons during orientation and annual training and whenever a staff person requests the written material. It is necessary and reasonable to notify staff of changes related to the reporting of the maltreatment of minors laws and policies, because staff are mandated reporters according to Minnesota Statutes, section 626.556, subdivision 2, and therefore need to know about proper reporting policies and laws.

Subpart 3. Policies and procedures. This subpart requires the license holder to develop policies and procedures to follow if an employee or other person chosen by the program to care for a child in the care of the program is suspected of maltreatment of a child in care. This subpart is needed under Minnesota Statutes, sections 626.556, and 245A.09, subdivision 2, with respect to the commissioner's duty to recommend rules which include basic licensing standards to ensure a child's safety. It is reasonable to require a program to have rules which promote a child's safety by requiring that staff persons suspected of maltreatment be reported to the proper authorities according to Minnesota Statutes, section 626.556. It is also reasonable to require the program director and license holder to annually review and revise the reporting of the maltreatment of minors policy as needed based upon current statutes and current quality assurance information, because the law or the information about occurrences at the program may change enough to justify a change in the program's policies. The program director and license holder should be responsible for reviewing the policies and procedures because they are persons who should have enough experience and information to make an appropriate reporting of maltreatment of minors policy change if a change is warranted.

9545.1025 USE OF PSYCHOTROPIC MEDICATIONS.

Subpart 1. Conditions governing use of psychotropic medications. This subpart requires the license holder to meet the conditions in this subpart if the program admits children for whom psychotropic medication is prescribed by a physician. It is necessary to address the use of psychotropic medication in this rule because a number of children with severe emotional disturbance are prescribed psychotropic medication as part of their treatment plan for their severe emotional disturbance. It is reasonable to require the program to follow uniform procedures regarding psychotropic medication because the program is responsible for developing and implementing the plan of care for children using psychotropic medication and because the use of psychotropic medication is a specific intervention method for an identified need within the plan of care.

Under item A, it is necessary and reasonable to require that the use of psychotropic medication is included in the child's individual treatment plan because this is a specific method and plan of care which addresses an identified need of the child while in the program. It is necessary and reasonable to have the use of psychotropic medication based on the prescribing physician's diagnosis and the diagnostic and functional assessments because the prescribing physician is medically trained to prescribe medication based on diagnosis and because the diagnostic and functional assessments are standardized tools that can aid the physician, case manager and program staff to individualize the use of the

psychotropic medication to the child.

Under item B, it is necessary and reasonable to have the license holder document: (1) a description in observable and measurable terms of the symptoms and behaviors that the psychotropic medication is to alleviate in order to evaluate the efficacy of the psychotropic medication on a systematic basis and to determine a baseline of symptoms and behaviors to compare psychotropic medication initiation or dosage changes against; (2) the data collection methods the license holder will use to monitor and measure changes in the symptoms and behaviors that are to be alleviated by the psychotropic medication in order to quantify the rate or level of the behavior and symptoms to insure professionally accepted methods are used and to insure all persons involved in the collection or review of this data will be aware of the procedures used to obtain the data. It is reasonable to document the data collection methods because the data are a major variable upon which psychotropic medication decisions are reached. Documentation assures that the way in which this data was gathered is recorded. Under subitem (3), it is necessary to document the criteria to prompt review by the physician for possible dosage increase, and decrease, or medication discontinuation because a staff person would not generally have the background or medical training to know about such criteria unless the criteria were made available to them. It is reasonable to list the criteria in the individual treatment plan because that is the plan directing the care of the child at the program. It is necessary that the program staff are aware of the psychotropic medications that each child is on and the criteria to prompt review by a physician, because the residential treatment program is responsible for children in its care.

Under item C, it is necessary and reasonable to state that psychotropic medication must not be administered as punishment, for staff convenience, as a substitute for a behavioral or therapeutic program, or in quantities that interfere with learning or other goals of the individual treatment plan, to protect the child's well being, because instances have been recorded where psychotropic medications have been misused. Several court cases, federal regulations, and professional literature over the past 20 years have emphasized the prohibition against the use of psychotropic medication for purposes prohibited in this item. It is reasonable to require that psychotropic medication be used for the explicit purpose of reducing or relieving symptoms of severe emotional disturbance using the lowest and optimal dosage that is effective in controlling such symptoms without unduly interfering with other aspects of the child's development.

Subpart 2. Monitoring side effects. This subpart requires the license holder to monitor the possible side effects of psychotropic medication prescribed for a child in care. This subpart is necessary to protect the health and safety of the child by requiring that the license holder monitor the presence of side effects from the use of psychotropic medications in order to detect and correct side effects and to avoid high risk side effects. Additionally, this subpart is necessary to inform the license holder of their role in monitoring side effects of medication prescribed to children in the program. It is reasonable to hold the license holder responsible for this function because the child can easily be observed at the program by staff and the program is responsible for the child's 24 hour plan of care, and because most Rule 5 programs do not have a physician to monitor medication on site every day. It is necessary and reasonable that the

license holder have the presenting physician or a pharmacist list possible side effects of the psychotropic medication because the presenting physician or a pharmacist would have this knowledge or easy access to this information while the license holder would not necessarily be aware of these side effects. It is necessary and reasonable to require the license holder to document and check for side effects under the direction of a licensed nurse or physician because persons so licensed are qualified by experience and training to recognize side effects of medication. Stating that the oversight can be done by a nurse or a physician is reasonable because it allows the license holder flexibility in meeting this rule requirement and promotes rule compliance if a physician is not available to provide this oversight. Requiring that the license holder document and check for side effects at least weekly for the first month after a child begins taking a new psychotropic medication or an increased dose of currently used psychotropic medication is reasonable and necessary because; according to John E. Kalachnik, DHS staff person who coordinated two training manuals on psychotropic medications and their side effects, "This is a high risk period for side effect development."

Psychotropic medication side effects can be associated with medication noncompliance or interference with other aspects of the child's life. It is reasonable to require the license holder to check for side effects at least quarterly, because side effects can also potentially develop over longer periods of psychotropic medication use. Furthermore, it is necessary and reasonable to clarify that the license holder must use standardized checklists or rating scales in addition to appropriate physical or laboratory assessments as determined by the physician, so that the license holder will have a standard for meeting the responsibility to monitor side effects. Many side effects are functional in nature and do not have laboratory assessments or may occur within therapeutic monitoring ranges. It is also reasonable to require the license holder to use a standardized side effects inventory to assure consistent and thorough assessment of the possible presence of harmful side effects. Failure to use of such instruments leads to significantly less detection of side effects. (Corso, et al, 1992, 890-896)

It is necessary to list examples of standardized checklists or rating scales such as the Monitoring of Side Effects Scale (MOSES) or Systematic Assessment for Treatment Emergent Effects (SAFTEE) so that license holders know what is meant by "standardized checklists" or "rating scales". It is reasonable to use these two assessment tools as examples because they are readily accessible and treatment providers in Minnesota know about these scales. The MOSES was specifically developed for psychotropic medication by a task force of physicians, pharmacists, nurses and psychologists. The SAFTEE has been extensively developed by the National Institute of Mental Health. It is also necessary to state that other scales developed for a specific drug or drug class must be used as monitoring tools because this balances the essential use of a standardized side effects inventory with the fact that a specific drug or drug class may have a more specific monitoring tool than the MOSES or SAFTEE. It is reasonable to have the license holder provide the assessments to the physician for review because the physician is the health professional responsible for the health care of the child and trained to take into account side effects in the context of the child's total health. It is reasonable to have the license holder provide the assessments to the physician for review because the physician needs the information to give the child proper care and a license holder can easily supply this information to the physician.

Subpart 3. Monitoring for tardive dyskinesia. This subpart requires the license holder to monitor a child for tardive dyskinesia if the child is prescribed antipsychotic medication or amoxapine. It is necessary and reasonable to require monitoring for tardive dyskinesia (TD) because these side effects represent a public health concern for children with emotional disturbances who are prescribed antipsychotic medication or amoxapine. Few data exist on TD for children who do not have autism or mental retardation. Data that do exist indicate that: (1) 75% of actual TD cases for children are withdrawal TD which goes away within 12 weeks after antipsychotic discontinuation; and (2) about 7% of children prescribed antipsychotic medication for extended periods of time have TD compared to the generally accepted 15% to 40% for adults depending on the age group. (Richardson, M. A., Haugland, G., Craig, T. J., 1991, 148: 1322-1328) According to these authorities, child and adolescent psychiatric patients who are prescribed antipsychotic medication require systematic monitoring using rating scales for TD and the full range of neurological side effects. TD is an important concern for five basic reasons: (1) a high percentage of patients experience this side effect; (2) potentially severe nature; (3) potentially persistent nature even after antipsychotic medication discontinuation; (4) the lack of consistent long-term pharmacological treatment for TD; (5) litigation award upwards of \$2,000,000 at the expense of physicians and providers to patients who develop TD when proper standards related to the use of antipsychotics are not followed. (Kalachnik, J. E., et al, 1988, 12: 749, 750) It is necessary and reasonable to have the license holder under the direction of a licensed nurse or physician because tardive dyskinesia is a health concern and a licensed nurse or physician is qualified to provide oversight for the license holder's staff.

It is reasonable to require that the license holder document and check for tardive dyskinesia at least once every three months because the American Psychiatric Association TD Task Force Reports recommend TD assessments every three to six months for patients prescribed antipsychotic medication and because TD may develop over longer as opposed to shorter periods of time. Because children may be more vulnerable to tardive dyskinesia, the three month period was chosen for this rule. Other than special cases such as empirical trials of various medications in an attempt to control extreme TD, no reference in the professional literature advocates more frequent ongoing TD monitoring. This time frame is also consistent with DHS rules governing other client populations such as individuals with developmental disability who may be taking prescribed medication for a long time. It is necessary and reasonable to require that a child prescribed antipsychotic medication or amoxapine for more than 90 days must be checked for tardive dyskinesia at least 30 and 60 days after discontinuation of the antipsychotic medication or amoxapine because, except for a rare case, TD does not develop unless the client is prescribed antipsychotic medication for at least three months or longer and because the period immediately after antipsychotic medication discontinuation is the period of concern for withdrawal TD and the effects this might have on the child and the child's individual treatment plan. (Schooler, N.R. and Kane, J.M., 1982, 39: 486-487)

It is necessary to require the use of a standardized instrument rating scale including the Dyskinesia Identification System: Condensed User Scale (DISCUS) or the Abnormal Involuntary Movement Scale (AIMS) to assure consistent and thorough assessment of the presence of harmful side effects. According to R.M.

Wettstein, "In the absence of a uniform method of assessment, particularly for tardive dyskinesia, symptoms ratings become idiosyncratic to the individual examiner." (R.M. Wettstein, 1985, 117, 118) The use of AIMs or DISCUS or other standardized instruments for the monitoring of tardive dyskinesia is reasonable because it provides for the systematic monitoring of side effects. It is reasonable to have the license holder provide the assessments to the physician for review so that the physician has the necessary information when determining if the child has TD. It is reasonable to have the license holder provide this information because the license holder is responsible for monitoring and documenting the data and therefore can readily provide the data to the physician. The provision of monitoring results to the physician is reasonable because the physician needs the information to make a determination about the need for further tests or changes in medication.

Subpart 4. Standards governing administration of psychotropic medications. This subpart requires persons who administer medications to children to either be appropriately licensed, certified, or trained, and requires a registered nurse to review the administration of medications at least weekly. Because employees other than a physician, registered nurse, or licensed practical nurse may be responsible for medication assistance, it is necessary to require standards governing the administration of psychotropic medications. It is reasonable to require these standards because training to administer medication is readily available. It is necessary to require this training by the successful completion of a trained medication aide program for unlicensed personnel offered through a post-secondary institution or by a registered nurse to assure that the training is adequate and is done by qualified personnel. This subpart is necessary because Minnesota Statutes, section 245A.09, subdivision 2, paragraph c, clause (1), requires the commissioner to set basic licensing standards, including adequate staff requirements, and section 245A.095, requires the commissioner to review rules regarding staff training. It is reasonable to provide this training in one of these ways because it allows the program and the employee options in receiving this training while assuring a minimal training standard. It is reasonable to require that the specific medication administration training provided by a registered nurse to unlicensed personnel must be documented to chronicle what training has occurred as evidence of compliance. Documenting specific medication administration training is reasonable because it can be easily accomplished by the license holder. It is reasonable to require that this training document be placed in the unlicensed employee's personnel records to show proof that this training requirement was met. This requirement is reasonable because all program staff have a personnel file and this is a standard and accessible place to store this information. It is necessary to require that a registered nurse must provide consultation and review of the license holder's administration of medications at least weekly, because a registered nurse administration of medications and an at least weekly oversight review assures oversight frequently enough to correct problems in a timely fashion. It is reasonable to require a registered nurse's consultation because nurses are available across the state. A weekly oversight review is reasonable because it is not a burdensome requirement and it still assures timely oversight. It is necessary to require that the registered nurse consultation shall include the review of the license holder's compliance with subparts 5 and 6 so that the nurse knows what is expected in the consultation. It is reasonable to include subparts 5 and 6 in this consultation because they involve psychotropic medication review

and informed consent for the administration of psychotropic medication which are topics that a registered nurse knows about.

Subpart 5. Psychotropic medication review. This subpart requires the license holder to conduct a psychotropic medication review at the indicated intervals for a child who is prescribed psychotropic medication. It is necessary to require a psychotropic medication review to assure that psychotropic medications are being used effectively to reduce or relieve symptoms of the severe emotional disturbance. It is reasonable to require this review because the use of the psychotropic medication is part of the treatment plan that the program is responsible for carrying out. It is reasonable to require that the license holder conduct a psychotropic medication review as frequently as required by a physician, but at least monthly for the first six months and at least quarterly thereafter because the first three to six months of treatment generally constitute the acute phase of treatment and the more frequent review schedule assures that the medication is doing what it was prescribed to do. Some children do not respond to a particular psychotropic medication while others require several dosage adjustments which must be reviewed within the context of side effects and other individual treatment plan variables. Additionally, the medication may no longer be necessary after short-term use combined with the use of other treatment program interventions. A quarterly review is adequate once stabilization and the need for maintenance have been established. The physician may set a more frequent medication review schedule because the physician has the knowledge and skills necessary to determine if an additional or different review schedule is necessary for an individual child's case. It is reasonable to require that the license holder must consider and document specific items at the quarterly review and provide this information to the physician for review because the license holder is responsible for the individual treatment plan which is reviewed quarterly. Minnesota Statutes, section 245.4876, subdivision 3, requires residential treatment programs to review the individual treatment plan every 90 days after intake. The use and effect of psychotropic medication is a part of the individual treatment plan, and it is reasonable to review information on psychotropic medications at that time. It is necessary to list specific items that are considered and documented in the medication review because this assures that a consistent and standardized inventory has been used to base the risk-benefit decision upon. It is important that this information is provided to the physician for review because it will provide the physician with relevant information about the child's reaction to and effectiveness of the psychotropic medication. This will allow the physician the opportunity to review basic variables and to determine if further in-depth actions are required.

Item A. It is necessary and reasonable to list symptoms and behaviors of concern and any corresponding diagnosis because the medication's purpose is to alleviate diagnosed symptoms and behaviors of concern and the physician needs to be aware of the medication's outcome.

Item B. It is necessary and reasonable to require that data collected since the last review be documented so that this information is readily and consistently available to persons working with the child. These are the data on the specific symptoms and behaviors which are compared from review to review to determine psychotropic efficacy and whether changes in medication may need to be made.

Item C. It is necessary to require documentation of the level of symptoms and behaviors and whether this level meets the criteria prompting physician review for possible dosage increase or decrease because such quantifiable outcome measurement assures effective medication usage. It is reasonable to expect the license holder to consider and document this information because program staff are available to observe and record this information and the information is important in determining whether the child's individual treatment plan is being fulfilled. This also prompts the program and the physician to document the rationale for decisions made as a result of meeting or not meeting the established behavior levels.

Item D. It is necessary to require the license holder to consider and document any side effects observed and actions taken, because this information is directly related to the use and amount of the psychotropic medication prescribed. It is reasonable to expect the license holder to consider and document this information because it is important in carrying out the child's treatment plan and program staff are available to observe and record this information and this information is a necessary part of the risk-benefit analysis.

Item E. It is necessary and reasonable to require the license holder to consider and document the status of other therapies or interventions being used and how they relate to decisions about the child's psychotropic medications because the license holder is responsible for the child's plan of care while the child is in the program. Interactive effects between psychotropic medications and other therapies can occur and coinciding alterations may make it difficult to determine which variable is helping a child.

Item F. It is necessary and reasonable to require the license holder to consider and document the child's goals in the individual treatment plan and whether these goals are adversely affected by the psychotropic medication because formulation and implementation of the plan of care as written in the child's individual treatment plan is the responsibility of the license holder. The control of a behavior or symptom of concern which also has adverse effects on other treatment goals requires ongoing review.

Item G. It is necessary and reasonable to require the license holder to consider and document any factors such as illness or environmental changes because illness or environmental changes can have significant impact on the effectiveness of psychotropic medication and the treatment data for a specific period.

Subpart 6. Informed consent. It is necessary to require the license holder to obtain informed consent before any nonemergency administration of psychotropic medications because psychotropic medications can cause side effects, can effect other areas of care, and require a therapeutic alliance in order to be used most effectively. Therefore, the child's parent or legal representative should be knowledgeable about the psychotropic medication and give permission for its administration. See the definition of informed consent in part 9545.0915 and the requirements in subpart 7 below. Informed consent, in one form or another, is standard operating procedure in almost all medical or educational interventions or activities. It is reasonable to require the license holder to obtain the informed consent because the license holder is the party responsible for the child's individual treatment plan. It is necessary to inform and involve the

child in the decision-making to the extent possible, because the child is the person receiving the medication and medication noncompliance might occur without the child's participation. This action can also be empowering and therapeutic for the child in directing the plan of care. It is necessary to qualify this informed consent by the child "to the extent possible" because there may be instances when the child may be unable to give informed consent such as when the child is too young or intellectually unable to understand informed consent.

Item A. It is necessary and reasonable to state when and how the license holder is to obtain informed consent so the license holder knows how to meet this requirement. It is reasonable to require informed consent before the nonemergency initiation of a psychotropic medication because initiation of medication before informed consent would negate the premise and intent of informed consent. Additionally; the requirements of Minnesota Statutes, section 144.651, are applicable to the child or the child's parent and the child's representative in the areas of information about treatment, participation in planning treatment, and the right to refuse care. It is necessary to differentiate between antipsychotic medication and other psychotropic medication for purposes of informed consent procedures because professional references stress informed consent as necessary and good clinical practice when psychotropic medication is prescribed, but do not recommend written informed consent per se when psychotropic medication is used with children or persons diagnosed with a mental health disorder who are not admitted under a commitment order or developmentally disabled. (Kaplan, H. I., and Sadock, B.J., 1988, 121: 666, 667, 670, 671) However antipsychotic medication is an area of concern in the literature due to the risk of tardive dyskinesia (TD) and other neurological side effects. Professional opinion is split on the need for written informed consent in this area. (DeVaugh-Geiss, J., 1979, 136: 959-962) Additionally, commitment laws in Minnesota for persons diagnosed with a mental health disorder as well as Minnesota Supreme Court decisions in cases such as Jarvis and Blilie view antipsychotic medication in a more stringent light requiring specific written informed consent by a legally authorized representative or, in some cases, a formal court review. In light of this situation, the low percentage of antipsychotic medication use with children compared to other medications such as antidepressants or stimulants and the serious nature of a case requiring the use of antipsychotic medication and a coinciding higher standard of care, it is reasonable to require written informed consent before initiation of antipsychotic medications.

In the case of nonantipsychotic psychotropic medication, it is reasonable to require written informed consent within one month of oral informed consent to strike a balance between the interests of the child who may require such medication, and the parent's rights as an authorized representative of the child to initially approve the medication at least orally, and the reality of some parents not returning written informed consent forms on a timely basis. During a child's stay in residential treatment, it may be necessary for the proper care of the child to begin the administration of a psychotropic medication or change the type or amount of a prescribed psychotropic medication. Unfortunately, some children in care do not have a parent or guardian who could be readily contacted to give consent and some children have parents who are less likely to return consent forms. Therefore, it is reasonable to begin administration of nonantipsychotic psychotropic medication under witnessed informed oral consent

with written informed consent to follow as soon as possible, but no longer than 30 days from the initiation of the medication.

An emphasis on completed consent forms is somewhat misdirected in that it does not emphasize the educational role of informed consent, which is more beneficial to the process of treating a child with severe emotional disturbance. The limited treatment value of informed consent documentation is noted in the following; "The legal doctrine of informed consent is a crude reminder that psychiatrists must respect the rights of patients, including their right to be informed and to make treatment choices...Respect for persons incorporates and goes beyond informed consent. It is unfortunate that so much emphasis has been placed on informed consent--its rituals, documentation, and difficulties--at the expense of the higher ethical standard of respect for persons." (Kaplan, H.I. & Sadock, B.J., 1988, 120-122) It is reasonable that the oral informed consent process should include the educational aspects of the process and be standardized to a greater degree, with documented evidence provided by the license holder. The license holder must minimize the expectation that a consent form is a substitute for educational aspects of the informed consent process. The oral informed consent process may present a "red flag" to the provider that possible formal inquiry may be required and that a problem with parental participation may exist if the informed consent form is not returned within one month despite reminders by the provider.

Item B. It is reasonable to require informed consent be renewed in writing within six months because the six month point of treatment generally represents the distinction between short-term and long-term use of psychotropic medication. (American Psychiatric Association, 1979, 18: 167) It is expected that the child's parents or guardian would be extensively involved in such a decision with adequate time available for written informed consent. Similarly, it is reasonable to require at least yearly renewal of informed consent in writing because it is not difficult to include an annual informed consent renewal in the process for reviewing the individual treatment plan. The provider is not substantially inconvenienced by renewing informed consent annually because the treatment plan, including psychotropic drug treatment, is developed in cooperation with the parties who may give consent and is reviewed quarterly as the major treatment review point. Even with maintenance cases, new variables, risks, or the developmental process dictate that informed consent is an ongoing dynamic process and not a one-time static event.

Item C. It is necessary and reasonable to identify the exact person serving as the child's legal representative from whom informed consent must be obtained in order to inform providers and to avoid confusion on this issue.

Item D. It is necessary to differentiate the emergency use of a psychotropic medication from the nonemergency use, define what constitutes an emergency, and state that informed consent is not necessary before emergency initiation because clinical reality will probably present cases which the rule will apply to. The exemption from consent prior to emergency initiation is reasonable because there is no such requirement in the professional literature or according to Minnesota Statutes, section 144.344. It is reasonable to require specific action on the license holder's part in an emergency psychotropic medication initiation in order to protect the rights of the child. A major and dangerous event has occurred if

an emergency treatment intervention is used, and the child's parent or guardian should be advised of the situation. As a result of the emergency, an in-depth review of the child's existing treatment plan, involving the child's parent or legal representative, is needed to determine if possible changes to the plan are needed in response to the emergency. It is reasonable to require written informed consent within 30 days for any continued use of a psychotropic medication initiated on an emergency basis because such continued use is expected to be formally reviewed with the child's parent or legal representative within the context of the child's treatment plan. The 30 day limit is consistent with the time period for written informed consent for other psychotropic medications initiated on a nonemergency basis and allows the program to overcome possible difficulties of contacting some parents without unduly interfering with a child's need for such continued medication. The inability to involve the child's parents or legal representative within 30 days may serve as a "red flag" to the provider that formal outside review, such as review by the court, may be necessary.

Subpart 7. Information to be communicated in obtaining consent. This subpart requires certain information to be communicated to the child's parents or legal guardian and, if possible, the child when obtaining informed consent. This subpart is necessary to inform the license holder of the documented information which the license holder must provide to the child's parent, legal representative, and to the extent possible, to the child. The information delineated in items A to G is reasonable because it is consistent with the Department's policy on the monitoring of psychotropic medications which is contained in Psychotropic Medication Monitoring Manual. (John E. Kalachnik and Nord, Gerry B., 1985) Additionally, the items represent information generally recommended by treatment professionals to be provided as part of the informed consent process. (C. W. Lidz, et al, 1984,)

Subpart 8. Refusal to consent to administration of psychotropic medication. This subpart requires the license holder to take certain measures if informed consent for the administration of psychotropic medication takes place. This subpart is necessary to inform the license holder what to do if the authorized person refuses consent for a psychotropic medication. This subpart is reasonable because it is consistent with the Department's policy on informed consent as it relates to psychotropic medication and was agreed to by the advisory committee. It balances the requirement for due process and the right to refuse treatment with actions which may be necessary on the provider's part if the refusal endangers the child or others. The requirement in item B, that the program obtain a court order to override the refusal to consent to medication is reasonable because it is consistent with the requirements of Minnesota Statutes, section 253B.03, subdivision 6c, regarding administration of neuroleptic medication. Item C is reasonable because it does not allow a program to punish a child who refuses psychotropic medication, but allows a program to discharge a child following a due process procedure if the child's refusal of psychotropic medication results in the program being unable to properly care for the child.

9545.1035 TREATMENT IN A SETTING WITH SECURE CAPACITY.

This part establishes the requirements that a program must meet if the program offers treatment in a setting with secure capacity. Minnesota Statutes, section 245.4882, subdivision 5 requires the commissioner to participate in developing a plan to increase the in-state availability of treatment within a secure setting. Part 9545.1035 is needed to fulfill this legislative mandate because the provision of this specialized mental health treatment service requires program standards established by rule which are different than residential mental health treatment rules governing programs which treat children who require treatment in a less restrictive environment. There are currently six Rule 5 programs with approximately 60 total beds, offering treatment in a setting with secure capacity. Five of these programs are a part of or are associated with Joint Commission on Accreditation of Hospitals accredited programs. These programs treat children with severe emotional disturbance who may present a threat of harm to themselves or others.

The topic of treatment in a setting with secure capacity received special consideration during the rule development process. This rule part was considered by a subcommittee of the PAC called a "work group" which met twice. It was subsequently reviewed by the whole PAC. The extensive discussion of the use of secure programs or secure areas within a larger program to treat children with severe emotional disturbance centered around protecting the rights of the child while at the same time ensuring that the program could provide treatment and control a child who was likely to harm self or others so that the child would recover from severe emotional disturbance and be less likely to harm self or others. Part 9545.1035 generally reflects the consensus of the work group and the PAC.

Subpart 1. Definition. This subpart defines "treatment in a setting with secure capacity". It is necessary to define "treatment in a setting with secure capacity" to distinguish this mode of treatment from treatment in a less restrictive setting so that an interested person can determine if the more rigorous requirements of part 9545.1035, should apply to a particular residential mental health treatment program. The definition is reasonable because it limits this kind of residential treatment to those children who require treatment in a more restrictive setting to prevent harm to the child or others. It is reasonable to include the possibility of the use of locks to secure the treatment setting in this definition, because the use of locks or other devices to limit entry or egress from the program is the current practice among providers of residential mental health "treatment in a setting with secure capacity".

Subpart 2. Limitations on admission to a residential mental health program offering treatment in a setting with secure capacity. This subpart requires the license holder to determine if the child's diagnostic assessment and individual treatment plan indicate that the child should receive treatment in a setting with secure capacity. Providing treatment to children whose diagnostic assessment indicates they pose a likely threat of harm to themselves or others in a setting with secure capacity complies with the requirements of Minnesota Statutes, section 245A.095, subdivision 1a, to provide treatment in the "least restrictive, most appropriate environment" that meets the child's needs. A child who is a threat of harm to self or others needs the protection and security afforded by

a treatment setting with secure capacity to insure that the child will not harm self, harm others, and be less likely to be harmed by others. It is reasonable to require a child receiving treatment in a setting with secure capacity to have an individual treatment plan which identifies the need for providing the child with treatment in a setting with secure capacity to meet the requirements of Minnesota Statutes, sections 245.4871, subdivision 21 and 245.4876, subdivision 3. The CWLA recommends that secure settings be used only for those children who would otherwise endanger themselves or others, or runaway or escape, and that the degree of restrictiveness be limited to that which is required for security. (CWLA, 1991, 21-23)

Subpart 3. Prohibited placements. This subpart prohibits a program from admitting a child to a setting with secure capacity unless the child meets the requirements of subpart 2, and also prohibits transferring a child to a secure setting part of a program as a punishment for violating the program's rules. This subpart is needed to meet the requirements of Minnesota Statutes, sections 245.4882, subdivision 1, and 245A.095, subdivisions 1a and 2, regarding placing children in the least restrictive most appropriate treatment settings that meet the child's treatment needs. Treatment in a setting with secure capacity is intended to be a "specialized treatment service" for children under Minnesota Statutes, section 245.4882, subdivision 5, for children with emotional disturbance who exhibit violent or destructive behavior toward themselves or others. Treatment provided under part 9545.1035, must be provided only to those children whose diagnostic assessments indicate it is needed under Minnesota Statutes, section 245.4871, subdivision 11.

Subpart 4. Staff ratio. This subpart establishes the minimum ratio of staff to children for programs offering treatment in a setting with secure capacity. This part is needed and reasonable because it meets the requirements of Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), clause (1), which requires the commissioner to establish basic standards, including standards for adequate staff. The ratio of staff to children in a program offering treatment in a setting with secure capacity is higher than for the general licensing category governed by parts 9545.0905 to 9545.1125, because the children cared for in a secure setting are in need of the most intensive treatment available within this rule. Because the children present a risk of harm to themselves and others, they require greater vigilance by staff and the ability of staff to respond in sufficient numbers in the event of a crisis. The staff ratio required in this rule part reflects an average staff to child ratio used in current practice by programs offering this kind of treatment.

Subpart 5. Additional staff training. This subpart requires staff who provide treatment services in a setting with secure capacity to have additional training beyond the training required of staff who provide treatment services in a setting which does not have secure capacity. This subpart is needed and reasonable because it meets the requirements of Minnesota Statutes, section 245A.095, subdivision 2, paragraph (5), which requires the commissioner to review rules governing mental health programs and recommend staff training requirements as needed. This subpart also meets the requirements of Minnesota Statutes, sections 245A.09, subdivision 2, paragraph (c), and 245.69, subdivision 1, paragraph (a), which requires the commissioner to develop rules which include standards, such as standards for adequate staff and training. It is reasonable to require

additional training for staff who provide treatment services in a setting with secure capacity because staff need to have more skills and knowledge to deal with the children cared for in this setting who are more likely to pose a risk of harm to themselves, other children in care, and to staff. The specific requirement for eight hours is the compromise consensus of the work group and PAC. It is reasonable to give the program managers discretion in choosing which subjects will benefit staff who must deal with children who present a risk of harm to self or others, because the program managers know which training will be most appropriate for an individual staff person working with children with severe emotional disturbance.

Subpart 6. Notice to the commissioner and compliance with codes. This subpart requires the program to notify the commissioner of its intent to offer treatment in a setting with secure capacity and to comply with any additional health, fire, or building code requirements. This subpart is necessary to advise interested persons that there may be additional code and rule requirements which must be met to operate a residential mental health treatment program which includes offering treatment in a setting with secure capacity. It is reasonable to require the prospective operators of a program which includes treatment in a setting with secure capacity to notify the commissioner of their intent to do so, so that the commissioner can instruct the department staff to assist the prospective operator with complying with the rules in this part.

Subpart 7. Limitations on the use of rooms for isolation. This subpart requires the license holder to follow the requirements of part 9545.0995, if a child is locked in a room in the part of the program facility offering treatment in a setting with secure capacity. It is necessary to meet the requirements of part 9545.0995, when using isolation with a child, because part 9545.0995, sets the standard for the appropriate safe use of restrictive procedures including isolation of a child. It is reasonable to require that the license holder not assume that providing treatment in a setting with secure capacity would give the license holder blanket authority to lock up children nor does providing treatment in a secure setting relieve the license holder from observing the requirements of rule parts established to ensure that a child receives appropriate treatment and that the child is free from abuse.

9545.1045 SHELTER SERVICES

This rule part establishes the standards for providing shelter services to children in programs licensed by this rule. It is necessary to establish standards for shelter services to protect and promote the health and safety of children cared for. This part is reasonable because it meets with commonly accepted industry guidelines for providing shelter services. According to the CWLA "Emergency shelter care is a program of service that gives immediate attention to a child's crisis situation. The emergency shelter care program should provide: Overnight and short-term shelter; Crisis intervention counseling; Stabilization; Placement, or other post-discharge planning; Protective custody; and Diagnostic assessment... Emergency shelter care is a program of service that should be used as an immediate intervention for a child or family in crisis when the necessary combination of needed services cannot be effectively delivered in a family or family foster home; when the safety of the child can be better protected by removal from the home; and/or when a diagnostic assessment in a residential setting is useful in placement planning." (CWLA, 1991, 98 & 99)

Subpart 1. Applicability of subparts 2 to 10. This subpart indicates which entities are required to comply with the requirements of part 9545.1045. It is necessary to advise residential mental health treatment program license holders who provide shelter services that they must comply with this rule part until the commissioner adopts rules specifically to govern the licensure of shelter services available to children in a variety of residential settings. It is reasonable to advise license holders of residential treatment who provide shelter services, of licensing requirements unique to the provision of shelter services so that they know that the requirements they must meet for their shelter services program. The CWLA states, "Through the licensing of child-placement agencies, residential group care facilities, family foster homes, and child day care facilities, states and provinces exercise their police power to protect children from risks against which they have little or no capacity for self-care and protection. . . Licensing provide basic protection by the state or province for the well-being and protection of its children." (CWLA, 1991, xiv) It is necessary to have the license holder designate the number of beds for shelter services in the application for licensure so that the licensing agency and other interested persons will have documentation of the number of beds which these rule sections apply to. In a program offering both residential mental health treatment services and shelter services, specifying how many beds will be licensed as residential treatment and how many beds will be licensed as shelter services tells the licensing agency which part of the program must meet the requirements of this rule part.

Subpart 2. Description of services. This subpart requires the license holder to describe the shelter services according to the specified requirements of part 9545.0945. The provision of shelter services in a residential treatment facility has a different purpose and shorter time frame than the provision of residential mental health treatment services. While some of the program and service standards are the same, certain program and service standards would not be appropriate or relevant to shelter services. Therefore, it is reasonable and necessary to require that an application to license shelter services would describe only those program and service standards applicable to shelter services. Justification for requiring part 9545.0945, subpart 1, item E, Recreation, leisure, and play activities; item F, Social and interpersonal skills development; subparts 2, Cultural competence; 3, Interpretive services; 4, Emergency medical, mental health, and dental services; 5, Grievance procedure; and 6, Staffing pattern and minimum staff/children ratio, can be found in the SNR at part 9545.0945, regarding program and services standards. This subpart is necessary to set the minimum standard necessary to properly care for a child in shelter. It is necessary and reasonable to have the description state how the applicant will provide program services, address cultural needs, collaborate with community services, and work with families to meet children's needs so that the licensing agency and interested persons will be informed how these requirements will be accomplished. It is necessary and reasonable to state that the license holder is not expected to work with families to meet children's needs if contact with the family is prohibited by the court or contraindicated by the child's condition so that legal requirements are met and the best interests of the child are served according to Minnesota Statutes, section 245.4885. It is reasonable to document this information in the child's record so that the licensing agency and other appropriate persons will know why the license holder was not working with the family. It is reasonable to document this information in the child's

record because that is where information pertinent to the child's immediate needs or individual treatment plans are kept.

Subpart 3. Initial assessment. This subpart requires the license holder to meet certain admission requirements and perform certain assessments of the child required under this subpart. The definition of "shelter services" in part 9545.0925, subpart 35 does not include all the mental health assessments required for admission to a "residential treatment" program because shelter services are designed to meet the basic needs of a child needing out-of-home placement whether or not the child has an underlying mental health treatment need. It is necessary to meet requirements governing admission in part 9545.0955, subpart 1, items A and E, when a shelter services program admits a child, because item A requires that the child is under 18 years of age at the time of admission and item E requires that the child does not need primary chemical dependency treatment or detoxification at the time of admission. It is reasonable to use item A as an admission criterion because it is a minimum standard which requires the admittee to be a child within the meaning of the rule. It is reasonable to use item E as an admission criterion because shelter services are not designed to handle children who are intoxicated or have chemical dependency. Other programs licensed by the department have different criteria to handle children who are intoxicated or have chemical dependency. Additional justification for these two admission requirements can be found in part 9545.0945 of this SNR.

To assure that the child has a safe and protected living environment it is necessary to meet the requirements of item B by assessing the child's vulnerability to maltreatment and develop a plan to reduce the child's risk of maltreatment while in the shelter. CWLA states "The emergency shelter care program should provide an immediate, safe, and protected living environment." (CWLA, 1991, 99) It is reasonable to have the program staff assess the child's vulnerability to maltreatment and develop this plan because the purpose of shelter services is to provide a safe and protected environment for the child.

The assessment is required to give appropriate attention to the child's immediate needs, because the child may be admitted as a result of a crisis situation and little information may be available regarding the child's medical or personal background. When doing an initial assessment, it is reasonable to require the license holder to meet the requirements of item C by assessing the child's situation, condition, and immediate needs because the assessment is the basis for developing the immediate needs plan required in subpart 5. Item C is necessary to clarify that the assessment will serve in lieu of the information taken at the time of admission required under part 9545.0955, subpart 2, because the information required under that subpart is overly detailed for the purpose of shelter services. It is reasonable to require only relevant assessment information be collected and documented at the time of admission.

Subpart 4. Physical examination. This subpart requires the license holder to arrange a basic health screening for child within 24 hours of admission to the shelter program and other appropriate subsequent examinations of the child if they are indicated. The purpose of shelter services is to give immediate attention to a child's needs during a crisis situation. Many children using shelter services have medical and dental needs that should be addressed while the child is receiving shelter services. Examples of this include ear infections,

ringworm, pink eye, asthma, toothaches, and physical abuse bruises that do not need emergency medical attention but require follow-up care and documentation. To assure that the child's health care needs are being met and that the spread of communicable and infectious conditions is contained, it is necessary to require that the license holder arrange for a qualified professional to conduct a basic health screening to determine whether the child needs a physical examination by a licensed physician or dental examination by a dentist. It is reasonable to require the license holder to provide this service because the license holder is responsible for children in their care. It is necessary to state this requirement in this rule so that it is clear to the license holder and other interested parties what type of physical examination is expected. The CWLA states that, "The emergency shelter care program should provide indicated special assessments for children with special needs...Medical/dental assessment, plan, and care for any emergency condition and medical need that can be remedied during the course of the child's stay in the emergency shelter care program." (CWLA, 1991, 101) It is reasonable to require the license holder to conduct the basic health screening within 24 hours of admitting the child to shelter services so that the child's medical and dental needs are adequately met, because a child may have a serious medical condition which must be dealt with promptly. It is reasonable to require the license holder to make an appointment with a licensed physician to complete the physical examination within three working days of admission to assure that the child is getting timely follow-up care by the appropriate health care provider based on the results of the basic health screening. It is reasonable to expect that the license holder will make the medical appointment, because the license holder is responsible for the care of the child.

It is necessary to define in rule who is a qualified professional so that the license holder and other interested persons will know who can provide the basic health screening. Because the rule pertains only to children 18 years of age or younger, it is necessary and reasonable to require that the qualified professional have expertise in child health care and be appropriately licensed.

Subpart 5. Immediate needs plan. It is necessary to require the license holder to develop a plan for meeting the child's immediate needs within 24 hours of admission because the purpose of shelter services is to attend to the child's immediate need for services such as assessment, evaluation, or placement planning. This subpart is also necessary because Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), requires the commissioner to develop licensing standards, including program services and health standards such as planning for the child's needs. It is reasonable to require an immediate needs plan so that all parties involved can give information and are aware of the child's plan of care. Requiring that the plan be developed within 24 hours of admission is reasonable because that time line assures a timely development of the plan of care while allowing the staff sufficient time to assess and review the child's needs.

It is necessary to state in rule that the immediate needs plan in this subpart may be used in lieu of the individual treatment plan in part 9545.0975, subpart 1, so that the license holder and other interested persons will know that the license holder may prepare either plan. It is reasonable to use the immediate needs plan instead of the individual treatment plan which is designed to address

a child's longer term needs, because the immediate needs plan was specifically written to meet the needs of children while in short-term shelter services.

It is necessary to state in the rule the requirements for the immediate needs plan so that the license holder and interested others will know what the immediate needs plan must contain. It is reasonable to have the plan identify what is immediately needed to help stabilize or ameliorate the child's situation, behavior, or condition based on the assessment in subpart 4, the physical examination, and the immediate needs plan because the child's plan of care should be based on the child's identified needs. It is reasonable to require that short-term objectives and methods for meeting the child's identified needs be specified in the immediate needs plan so that the staff and other involved parties are aware of the expected outcomes of the child's stay in shelter and ways to achieve those outcomes. It is reasonable to require that the plan address short-term objectives because shelter services are short-term by design.

It is necessary to require the license holder to indicate shelter services program responsibilities for meeting needs identified in the county's placement plan because the county is required by part 9560.0610, to have a placement plan for each child in out-of-home placement and the shelter program is under contract to the county to act as the county's agent by providing the services. This is a reasonable requirement because the immediate needs plan is the plan of care for the child while receiving shelter services. It is reasonable to require that the child's care plans be coordinated and consistent to avoid duplication of effort by care providers and contradictory care services which may adversely effect a child.

Subpart 6. Diagnostic assessment. This subpart requires the license holder to refer a child for a diagnostic assessment if the license holder believes the child may have a severe emotional disturbance. Because shelter services are intended to provide intervention services due to a behavioral or situational crisis, some of the children seen by shelter services staff will have a severe emotional disturbance. The child with a severe emotional disturbance will need mental health services beyond what can be provided by shelter services and for a longer time period than shelter services provides care. Additionally, it is important to get a diagnosis in order to verify the severe emotional disturbance and to use the diagnostic assessment to appropriately describe the child's needs and develop treatment plans. The child with a severe emotional disturbance also is eligible for specific services under the Minnesota Comprehensive Children's Mental Health Act. These specific services include case management, family community support services and residential treatment services. Therefore, to assure that the child with a severe emotional disturbance is properly identified and treated, it is necessary to require that the license holder refer a child to the county for a diagnostic assessment if the license holder has reason to believe that a child has or may have a severe emotional disturbance. It is reasonable to require that the license holder refer a child for the assessment or screening within 72 hours of recognition of the need to assure that the child's needs are taken care of in a timely fashion. Referring the child for assessment or screening within 72 hours is reasonable because it allows the license holder sufficient time to secure the assessment and screening services for a child, even if the child's behavior is noted on a weekend. Comments were made by the Rule 5 PAC members that many children with severe emotional

disturbance are brought in on Friday night and there is no way to get an assessment or screening before the following Monday.

Subpart 7. Follow up contact. This subpart requires the license holder to again request a screening or assessment for a child with a severe emotional disturbance, if the county does not respond to the request in subpart 6 within three working days. It is necessary to require that the license holder follow-up contact with the county within three working days if the county does not respond to the initial request, because it is important for a child who is believed to have a severe emotional disturbance to have a diagnostic assessment or screening. It is reasonable to require the license holder to follow-up with the county because the license holder is responsible for the care of the child.

Subpart 8. Individual stabilization plan. It is necessary to require the license holder complete the child's individual stabilization plan within five days after the child is admitted because one of the purposes of shelter services is to stabilize a child's crisis situation. It is reasonable to have a stabilization plan so that staff can coordinate their efforts to stabilize the child based on a commonly known plan. It is reasonable to expect this plan to be completed within five working days because that amount of time allows the staff to get to know and assess the child and child's situation and prepare the stabilization plan. It assures that the crisis stabilization and assessment purposes of shelter services are being addressed in a timely fashion. It is necessary and reasonable to require that the stabilization plan must be based on the license holder's assessment of the child's needs and must include a schedule for meeting the needs so that the plan is based on an assessment and time lines are set to meet the child's needs. It is reasonable to name the person or agency responsible for meeting the needs so that all of the child's needs are assigned to a designated responsible party.

Subpart 9. Discharge recommendations. This subpart requires the license holder to prepare a discharge recommendation for each child in care. It is necessary to state that the discharge requirements of this subpart may be used in lieu of discharge requirements contained in part 9545.0985, for a child who is receiving shelter services under this part so that the license holder providing shelter services will know which discharge requirements they are required to follow. It is reasonable to have the discharge requirements of short-term shelter services be different than those required for residential treatment services because the purposes of these services are different.

Under item A of this subpart it is necessary and reasonable to require the license holder to prepare discharge recommendations for a child residing in the shelter for more than five days to expedite the child's return home or to another care provider. Five days is a reasonable amount of time for staff to assess the child's situation and develop a discharge plan because it allows sufficient time to observe the child condition and work with county to determine the likely placement of the child or determine the parameters for the child's placement. It is necessary and reasonable to require that the discharge recommendations address the services, supports, and referral necessary to return the child to the family when possible or to another care setting as an alternative to the family because the purpose of shelter services is to provide short term care during a crisis and then plan for the child to go to a longer term appropriate setting.

To assure that appropriate persons involved with the care of the child get relevant information about the child, it is necessary to require the license holder to forward all medical, behavior, and incident notes regarding the child to the child's subsequent caregiver or county case manager. It is reasonable to require the license holder to forward this information because the license holder has this current information readily available.

Under item B it is necessary to require that if the child is in a shelter facility less than five days, the license holder must prepare a discharge summary which at the minimum, meets the requirement of part 9545.0985, subpart 6, item E, to document where the child went upon being discharged from the shelter program and what agencies were involved providing services to the child. It is reasonable to require that the license holder document this information because information about the child's destination and who will provide care for the child is the minimal documentation and follow-up provided to a vulnerable child who required crisis services. It is necessary to state what the license holder must do at discharge for a child in a shelter facility for less than five days so that the license holder knows what discharge procedures are required.

Subpart 10. Limitations on length of stay. This subpart requires the license holder to perform certain duties if the license holder retains a child beyond 30 or 90 days. This subpart is necessary to inform the license holder and other interested persons about the limitations on length of stay for children receiving shelter services. It is reasonable to limit the length of stay for shelter services because the purpose of shelter services is to provide a short term intervention to a crisis situation. According to the CWLA, "...The emergency shelter care program should not be misused by using it to provide an extended residential stay as a means of responding to a chronic problem." (CWLA, 1991, 99) It is necessary to state that the license holder must apply for a variance according to part 9545.0935, to retain a child in shelter beyond 90 days so that it is clear to the license holder and other interested persons what is expected regarding limitations on a child's length of stay in a shelter program. It is reasonable to have the license holder apply for a variance according to part 9545.0935 because that rule part pertains to conditions of licensure. Requiring the license holder to apply for a variance if a child is in the shelter beyond 90 days is reasonable because that amount of time in the shelter program may indicate that the child requires a different or longer term residential setting to meet the child's care needs. It is necessary to state in rule that if a child must remain in the shelter longer than 30 days, the treatment team must review the necessity of the child remaining in the facility and develop alternative placement plans because the shelter services are designed to be short term, address a child's crises, and provide immediate services such as assessment, evaluation, or placement planning. The CWLA's Standards of Excellence for Residential Group Care Services, recommends that "The use of the emergency shelter care program should be limited to a maximum of 30 days." (CWLA, 1991, 99) Thirty days is a commonly accepted amount of time for shelter services and is long enough to handle a child's crisis, stabilize, and refer the child to other care resources.

It is necessary to require the treatment team to review the necessity of the child remaining in the facility and consider alternative placement plans to assure that the child's needs are being addressed and that a process is underway to have the child move out of the shelter and into a more appropriate care

setting. It is reasonable to have the treatment team review this situation because the team is made up of persons who are knowledgeable, interested, and responsible for the care of the child. It is necessary and reasonable to expect that each team member be involved in the review process because the team members have professional expertise and responsibility for the child and can respond to different aspects of the child's needs. If a member of the treatment team is not included in the review process, it is reasonable to require the license holder to document the reason for this exclusion, because each team member has an interest and expertise regarding the child and should be involved in making decisions about the child's care. The exclusion of a treatment team member may be because the person was ill or out of town or because inclusion of the team member was contraindicated in the treatment of the child. Documentation of the exclusion provides information to interested persons about why the team member was not included in the review process. It is reasonable to require the license holder to document this information because the child's current file and plan of care are the responsibility of the license holder. It is necessary and reasonable to require that the determination of the treatment team be placed in the child's file and a copy sent to the entity placing the child in the program because the license holder is responsible for the child's file while at the shelter and the entity placing the child in the program needs to know the outcome of the review of the child's placement.

9545.1055 QUALITY ASSURANCE

Part 9545.1055 requires the license holder to develop a quality assurance plan, using client satisfaction surveys, to identify the strengths and weaknesses of the treatment program and possible areas and methods of improving the delivery of appropriate treatment services to children in care. Minnesota Statutes, section 245A.095, requires the commissioner to develop rules to assure that persons in treatment receive appropriate care. This part's requirement that the quality assurance plan be based on the goals and objectives of the client's individual treatment plan and the goals and objectives of the treatment program plans is needed and reasonable because the purpose of the individual treatment plan and the program plan are to foster the appropriate care of children in the program. It is also necessary to require programs to review the relationship of the treatment offered to program goals, because Minnesota Statutes, section 245.4876, subdivision 1, paragraph (11), requires treatment to be provided in a manner most likely to facilitate progress toward the child's treatment goals.

The inclusion of a quality assurance plan in the operation of the treatment program is reasonable because it is an industry practice recommended by the CWLA. (CWLA, 1991, 120 & 121) A treatment program's implementation of quality assurance planning is similar to the Continuous Quality Improvement (CQI) activities required of all Minnesota state agencies. It is reasonable to require a program to maintain a culture of continuing quality improvements which monitors and evaluates the items listed in this part, because it will assure that children receive appropriate care. It is also reasonable to require a program to use the cues provided by items B, C, D, and E of this part to develop a plan of action because the cues help to identify the program's problems and suggest solutions to them and may point to opportunities for program improvement. The periodic use of client satisfaction surveys which includes responses from the children, their families, case managers, referring agencies, and court staff is reasonable because it affords the program a broad sample of informed opinion regarding the

program's strengths and weaknesses.

9545.1065 PERSONNEL POLICIES, PROCEDURES, AND RECORDS

Subpart 1. Policy requirements. This subpart requires the license holder to have written personnel policies which meet the requirements of this subpart. It is necessary to require the license holder to have written personnel policies that are available to all employees so that it is clear to the employees, the licensing agency, and interested others what the program's personnel policies are. It is reasonable to have the license holder provide the personnel policies in written form because that is a commonly accepted way to record and communicate information. The Council on Accreditation of Services for Families and Children states: "The agency has written personnel policies which are: formally adopted by the governing body;... readily available to personnel. Agency policies specify: personnel practices; working conditions; wages and benefits;... training and development opportunities for personnel..."(Council on Accreditation of Services for Families and Children, 1985, 15)

Item A. It is necessary and reasonable to require that the personnel policies comply with federal, state, and local regulations so that this expectation is known by the license holder, employees, and other interested persons. Since federal, state, and local regulations regarding personnel policies and procedures often change over time and are too lengthy to list in the rule it is necessary and reasonable to incorporate these regulations by reference. On page 16 of Provisions for Accreditation of Agencies Serving Families and Children under Personnel Practices it states, "The agency complies with applicable laws and regulations governing fair employment practices and contractual relationships."

Item B. It is necessary to require that the personnel policies assure that employee retention, promotion, job assignment, or pay are not affected by a good faith communication between the employee and the Minnesota Department of Health, the Minnesota Department of Human Services, or other agencies investigating complaints regarding a child's rights, treatment, alleged maltreatment, health, or safety concerns because the employee has a legal and ethical obligation to report to these agencies when a child's health or safety is in danger. It is reasonable that this item include the employee's protection from adverse action from a program because it is consistent with Minnesota Statutes, section 626.556, subdivision 4a.

Item C. It is reasonable that the personnel policies contain job descriptions that specify the position title so that the employee and all interested persons know the position title. It is reasonable to list the qualifications in the job description so that all interested persons are aware of the skills and training needed to have this position. It is also reasonable to list the tasks and responsibilities in the job description so that the employee doing this job and other interested persons know the specific duties of the job. It is reasonable to list the degree of authority to execute job responsibilities in the job description so that the employee and others know the extent to which the employee can make discretionary decisions. It is reasonable to list the standards of job performance related to specified job responsibilities in the job description so that the employee and other interested persons know what outcome measure will be applied to individual job duties. It is reasonable that the job description contain 1) a position title, 2) qualifications, 3) tasks and responsibilities,

4) degree of authority to execute job responsibilities and 5) standards of job performance related to specified job descriptions to avoid confusion, encourage employees to meet the standard, and because the job description would be the document where these items characterizing the position would commonly be found.

Item D. It is necessary to require that the personnel policies provide for annual job performance appraisals based on the standards of job performance in the job description so that the employee and other persons know about this requirement. It is reasonable to have annual job performance appraisals because that is a common time frame in the public and private sectors to review an employee's job performance. It is reasonable to require that the job performance appraisal is based on the standards of job performance stated in the job description so that the employee and program are aware of and understand the standards for job performance. It is also reasonable to review employee performance to provide information to the employee regarding the employee's performance, including suggestions about improving the employee's job performance in areas which would improve the care of children in treatment, because the performance review provides a structured format for relating the employees performance to the care of children. Such a review would be based on objective standards that would be known to the employee in that job. The Council on Accreditation of Services for Families and Children, states: "At least once a year, personnel reviews are conducted jointly between each employee and direct-service volunteer and the person to whom they are accountable for their performance. Personnel reviews include: an assessment of job performance in relation to the quality and quantity of work defined in the job description and to the objectives established in the most recent evaluation." (Council on Accreditation of Services for Families and Children, 1985, 19)

Item E. It is necessary and reasonable to require that the personnel policies specify the behaviors that constitute grounds for disciplinary action, suspension, or dismissal, and the policies about employee mental health and chemical use problems so that the employee and other interested persons will be aware of what the program considers as "unacceptable behaviors" and the consequences of such behaviors. The Council on Accreditation of Services for Families and Children states regarding personnel practices, "The agency follows established guidelines regarding conditions for disciplinary probation and non-voluntary termination of personnel, as appropriate, including; violations of agency policy; and/or documented substandard performance." (Council on Accreditation of Services for Families and Children, 1985, 16)

Item F. It is necessary and reasonable to state in this item that the personnel policies must prohibit sexual involvement with clients according to Minnesota Statutes, chapter 148A, so that the employee and other interested persons are aware of this prohibition and children are protected from the prohibited practices.

Item G. It is necessary and reasonable to prohibit maltreatment of minors as specified under Minnesota Statutes, section 626.556, so that the employee and other interested persons are aware of this law and children are protected from the prohibited actions.

Item H. It is necessary to include a code of ethical conduct for all employees and volunteers which states the license holder's expectation for the ethical behavior of all employees and volunteers so that the employees, volunteers and other interested persons are aware of the ethical conduct code. It is reasonable to give programs flexibility in drafting a code of ethical conduct so that the code can be written to match a program's unique characteristics. The Council on Accreditation of Services for Families and Children states, "Standards for productivity and performance are established as a guide to supervisory and line personnel (Council on Accreditation of Services for Families and Children, 1985,16)."

Item I. It is necessary and reasonable to require that the personnel policies set forth a staff grievance procedure so that the employee and other interested persons are aware of this policy. It is reasonable to have a staff grievance procedure according to the Council for Accreditation of Services for Families and Children: "The agency maintains grievance procedures to provide personnel the opportunity and means to lodge complaints and appeals." (Council for Accreditation of Services for Families and Children, 1985, 16)

Item J. It is necessary and reasonable to specify a program of orientation for all new staff based on a written plan that provides for regular training which is related to: the specific job functions for which the employee was hired; the program's orientation policies and procedures; and the needs of the children to be served so that the employee and other interested persons are aware of this policy. It is reasonable to provide orientation to employees so that all employees know the program's basic policies and procedures related to administrative and child treatment activities. The Council on Accreditation of Services for Families and Children states "The agency offers orientation for new personnel with respect to agency objectives, resources, policies, and services. All personnel are oriented to the agency's goals, services, policies, and procedures and its relationship with other community resources." (Council on Accreditation of Services for Families and Children, 1985, 18)

Subpart 2. Recruitment. This rule part is necessary to assure that the license holder has a written plan for recruiting and employing staff members who are representative of the racial, cultural, and ethnic groups, and sex of the population served by the program. The CWLA recommends that "The residential group care agency should recruit staff members who have specialized skills, knowledge, and the cultural understanding and competencies necessary for quality group care services. Particular initiatives should be undertaken to recruit and promote staff members representative of the cultural and ethnic groups served." (CWLA, 1991, 128) It is necessary and reasonable that children be able to identify with the adult role models in positions of power and responsibility in the treatment program. If an adult is of the same sex and ethnic background as the child, it is often easier for the child to make that identification.

Subpart 3. Personnel records. It is necessary to require the license holder to maintain personnel records on all staff so that written documentation exists regarding the staff person's education, training, licensure, experience and the results of the mandated background study. It is reasonable to require that the license holder maintain personnel records on all staff because the license holder employs the staff and is responsible for them and their personnel records. The

Council on Accreditation of Services Families and Children states, "The agency maintains a system of personnel records for all employees and volunteers with management and direct-service responsibility. A personnel record is maintained for each employee and volunteer with management or direct-service responsibility which contains identifying information, job description, names of persons to contact in case of emergency, performance evaluations and all documents pertaining to performance, including disciplinary actions. When agency policies and procedures require additional written documentation regarding personnel applications, acceptance, agreed-upon terms of employment, terminations, and/or other milestones in the career of its personnel, the personnel record contains, as appropriate: the application, letters of reference, agreed-upon terms of employment, health certificate, verification of education, agency training completed, termination summaries, and awards and recognition." (Council on Accreditation of Services for Families and Children, 1985, 19)

Item A. It is necessary and reasonable to require that the personnel record have information on the background study as required by Minnesota Statutes, section 245A.04, subdivision 3.

Item B. It is necessary to require that the personnel record contain documentation that the staff person's education, training, licensure, and experience is commensurate with the position for which the program employs or contracts with the person because this assures that the person is qualified to perform required job duties. It is necessary for the commissioner to be able to check a program employee's personnel record which contains details of the employee's qualifications to assure compliance with rules promulgated according to Minnesota Statutes, sections 245A.09 and 245A.095. It is reasonable to require the license holder to document the employee's education, training, licensure, and experience, because this information is readily available to the staff person to present to the license holder and it documents compliance with the rule.

9545.1075 CLINICAL SUPERVISION BY A MENTAL HEALTH PROFESSIONAL

Part 9545.1075 is necessary because Minnesota Statutes, section 245.4882, subdivision 2, requires that providers of residential mental health programs for children be clinically supervised by a mental health professional. Subparts 1, 2, and 3 are necessary to describe the activities required of a mental health professional providing "clinical supervision" as defined in Minnesota Statutes, section 245.4871, subdivision 7. Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), clause (3), requires the commissioner to set standards for the qualifications of persons administering and delivering program services. Minnesota Statutes, section 245.69, subdivision 1, paragraph (a), also requires the commissioner to prescribe standards for the qualification of personnel and the quality of professional services.

Subpart 1. Mental health professional consultation. This subpart requires the license holder to use the services of a mental health professional to provide consultation regarding program service planning, development, implementation, and evaluation. It is necessary to require the involvement of the mental health professional in the planning, development, implementation, and evaluation of program services, because Minnesota Statutes, sections 245.4871, subdivision 7, and 245.4882, subdivision 2, require clinical supervision by a mental health

professional. It is reasonable to require the involvement of a mental health professional in program services planning, development, implementation and evaluation because the mental health professional is qualified to advise the license holder regarding the clinical aspects of program services.

Subpart 2. Supervision of staff. This subpart requires clinical supervision of staff who provide children with the program services described in part 9545.0945, subpart 1. This subpart is necessary because Minnesota Statutes, section 245.4882, subdivision 2, requires that providers of residential mental health treatment services to children must be clinically supervised by a mental health professional. It is reasonable to require the clinical supervision of staff by a mental health professional because the educational and personal qualifications of a mental health professional, as defined in Minnesota Statutes, section 245.4871, subdivision 27, provides a mental health professional with the substantial clinical expertise necessary to provide oversight for the delivery of mental health services.

Under item A, the mental health professional is given a choice of methods to meet clinical supervision requirements. Allowing the mental health professional flexibility in determining whether to meet with staff as a group or individually is reasonable because it avoids inappropriately prescriptive rulemaking and allows the mental health professional to choose the most appropriate, efficient, and cost effective approach to the clinical supervision of staff. It is reasonable to give the mental health professional flexibility to choose the most appropriate means to meet the clinical supervision requirements by meeting with the staff as a group or as individuals, because the treatment needs of children and the specific information given by the mental health professional to program staff may require different approaches to clinical supervision. In certain cases the mental health professional may wish to perform the oversight responsibility by giving identical clinical information to all staff simultaneously or discuss treatment approaches for a child with staff as a group, or on the other hand the mental health professional may wish to meet individually with a staff person to discuss a child's treatment.

Item B requires the mental health professional to document clinical supervision activities. It is reasonable to require documentation of clinical supervision activities because it provides a record for review by department employees who must monitor license holder compliance with this subpart. It is also reasonable for the license holder to use documentation of the clinical supervision of employees as a sound management practice to ensure that staff providing program services to children are delivering the proper services in a way which best meets the child's needs.

Item C requires the mental health professional to advise the license holder regarding management activities related to staff development and evaluation. It is reasonable to include the comments of the mental health professional in staff development and evaluation activities because the mental health professional is familiar with the training needs and job performance of the staff who provide services to children.

Item D allows the mental health professional who supervises staff to consult with other mental health professionals who work with children in the program, rather

than supervise the other mental health professionals. This item is needed and reasonable because mental health professionals are licensed to work independent of supervision, but may benefit from consultation with the supervising mental health professional regarding the treatment of a child or the broader treatment policies of the program.

Subpart 3. Supervision of treatment.

Item A requires the mental health professional to supervise the assessment and individual treatment plan development for each child. Minnesota Statutes, section 245.4871, subdivision 21, requires the individual treatment plan to be developed under the clinical supervision of a mental health professional. Minnesota Statutes, section 245.4871, subdivision 11, requires the mental health professional's participation in the development of the diagnostic assessment. It is reasonable to require at least clinical supervision by a mental health professional in the development of important documents such as the individual treatment plan and the assessment which indicate the child's diagnosis and the treatments the child will receive because the mental health professional has the qualifications to perform and evaluate the planning and assessment required in this item.

Item B requires the mental health professional to document involvement in the individual treatment planning process by signing the individual treatment plan. Minnesota Statutes, section 245.4871, subdivision 21, requires the treatment plan to be developed under the clinical supervision of a mental health professional. The documentation of the mental health professional's involvement in the development of the individual treatment plan is reasonable because the mental health professional is qualified to develop the individual treatment plan and because it verifies the review and approval of the plan by the mental health professional and enables the department employees to monitor compliance with the requirements of this rule .

Item C requires the mental health professional to provide clinical supervision of staff by making sure that the child's individual treatment plan is being implemented and that there is documentation of the child's ongoing evaluations and treatments and the quarterly review. It is reasonable to require a mental health professional to monitor the staff's implementation of the child's individual treatment plan because the mental health professional has the expertise to determine if the plan is being followed. It is also reasonable for the mental health professional to review the documentation and evaluation of the child's progress to insure that the treatment plan is having the desired effect on the child's mental health.

Item D requires the mental health professional to document the weekly review of services to the child. It is reasonable to require the mental health professional to document the weekly review of services to the child verifying which program services the child receives, because the mental health professional, as the person providing clinical supervision of the child's treatment, should be aware of the treatments provided to the child. The requirement for documentation in this item allows department employees to monitor the license holder's compliance with this subpart.

Requiring the license holder to ensure that a mental health professional can be contacted within thirty minutes in the event that a child has a mental health emergency is reasonable because the license holder's staff needs to be able to promptly respond in a clinically appropriate manner to a significant, sudden worsening of a child's mental health. Setting the maximum time limit for being able to contact a mental health professional at thirty minutes is reasonable because the expertise of a mental health professional should be available in a comparatively short period of time to staff who must immediately deal with child's mental health emergency if the staff need clinical advice to ameliorate the mental health emergency.

9545.1085 STAFF QUALIFICATIONS

This part establishes the staff qualification requirements for the programs governed by parts 9545.0905 to 9545.1125. This part is necessary because Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), clauses (1) and (3), require the commissioner to adopt program licensing rules which include standards for adequate staff. Minnesota Statutes, section 245.802, subdivision 2a, paragraph (5), requires the commissioner to review and recommend staff education and training requirements as necessary for residential mental health programs.

Subpart 1. General staff qualifications. This subpart establishes the general qualifications for staff who are involved with program services. It is necessary to require that staff who provide, supervise, or directly administer program services must be at least 21 years of age because persons of that age are accepted in our society as adults. It is important that staff be adults because a part of staff duties will require life experience and the ability to supervise and provide services to children with a severe emotional disturbance. It is reasonable to have this age requirement because persons 21 years of age or older are available throughout the state. It is also necessary to require that staff have at least a high school diploma or a general education degree (GED) because staff must be able to read, write, problem solve and communicate in order to carry out staff duties. Having a high school diploma or a GED signifies that staff have these skills. It is reasonable to have this requirement because most people in Minnesota have a high school diploma or a GED and this level of education is generally accepted as minimum for job entry. Providing documentation of cultural competence training is also necessary because many of the children being served by the program may come from a culture different from the dominant culture. In order to provide effective treatment staff need to be culturally competent. It is reasonable to expect that cultural competency training will provide staff with some cultural competency because that is the purpose of such training.

For staff and contract consultants holding positions that require licensure, certification, or registration by Minnesota, it is reasonable and necessary that they provide evidence of current licensure, certification, or registration because such documentation shows that they have the education and training required to perform job responsibilities. The Council on Accreditation of Services for Families and Children states, "The agency retains personnel qualified to carry out its program of services. Personnel have at least the minimum education required for performance of their agency assignment. Agency personnel meet all applicable state or provincial registration, licensing or

certification requirements for their agency assignment and/or use of professional titles."(Council on Accreditation of Services for Families and Children, 1985, 16)

Subpart 2. Administrator. This subpart establishes the qualifications for the person designated by the license holder to act as the administrator of a licensed residential treatment program. It is necessary to require that the license holder designate an individual as administrator so that the licensing agency, parents, staff and other interested persons know who has the responsibility and authority to administer the program. It is reasonable to have an administrator designated because it is common to have a person assigned to direct the agency program and be responsible for the ongoing operation of the program. It is reasonable to require that the administrator have at least a bachelor's degree in the behavioral sciences, health administration, or a related field because the bachelor's degree is the minimum education an administrator would need to carry out the job's duties. It is reasonable to expect at least a bachelor's degree because such training is readily available and many persons have bachelor degrees in the behavioral sciences, health administration, public administration, or a related field. It is necessary to require that the degree be in the behavioral sciences, health administration, public administration, or a related field so that the individual has the training and competencies in the human service or health administration field needed to fulfill job duties. It is reasonable to expect the degree be in one of the above noted areas because that degree would show minimum competence to perform the job, and these degree programs are available throughout Minnesota and the United States. It is necessary and reasonable to require the administrator be responsible for the ongoing operation of the program, and maintenance and upkeep of the facility because it is important that one person be responsible for the business so that the licensing agency, parents and other interested persons know who holds this responsibility and authority. It is reasonable to require the administrator be responsible for oversight of the program and facility because these are commonly held responsibilities of a residential treatment program administrator. The CWLA states, "The chief executive officer (CEO) should be delegated by the board of trustees or directors to carry overall responsibility for all the children in care; administer the services; to administer the services; to plan and coordinate all phases of the program within the framework of the functions and policies established by the board; to evaluate continually the effectiveness of services for children and their families; and to seek new approaches and knowledge. The CEO's responsibilities include: Directing the agency program;...Supervising building maintenance, management, and purchasing." (CWLA, 1991, 129)

Subpart 3. Program director. This subpart establishes the qualifications for the person designated by the license holder to act as the program director for a licensed residential treatment program. It is necessary and reasonable to require that the license holder designate an individual as program director so that the staff and other interested persons know who the program director is and that the program director has met the education, training, and experience requirements for this position. It is necessary to require that the program have at least one program director for every 50 children receiving program services to assure that the program has adequate program oversight and supervision by a qualified person. It is reasonable to have at least one program director for every 50 children receiving program services because that ratio assures quality

care and because that ratio was reviewed and agreed to by the PAC. It is reasonable to state that the positions of program director and administrator may be filled by the same person if the person meets the qualifications in items A and B because some small programs would not need nor easily afford to have separate positions for the administrator and program director. Furthermore, this requirement is reasonable, because it gives each license holder greater flexibility to meet the state's staff qualification standards.

It is reasonable to require that the program director have a master's degree in the behavioral sciences or a related field with at least two years of work experience providing services to children with severe emotional disturbance or have a bachelor's degree in the behavioral sciences or a related field with a minimum of four years of work experience providing services to children with severe emotional disturbance because this combination of training and experience is commonly accepted in Minnesota as minimum to perform a program director's job duties. The Minnesota Comprehensive Children's Mental Health Act definitions of "case manager", Minnesota Statutes, section 245.4871, subdivision 4; "mental health practitioner", subdivision 26; and "mental health professional", subdivision 27, establish education, training, and experience requirements for professional positions related to mental health services for children.

It is reasonable to require that the program director have one year of experience or training in program administration and supervision of staff because the program director needs administrative and supervisory experience to recognize and deal appropriately with supervisory and program issues. Such experience or training is available throughout the state and nation.

It is reasonable to allow current administrators and program directors in programs now licensed under parts 9545.0900 to 9545.1090, until July 1, 1999 to complete education and experience requirements to assure that programs licensed under the existing Rule 5 have adequate time for their administrators and program directors, who do not meet the requirements of the proposed rule 5, to meet the proposed requirements for administrators and program directors. The Rule 5 PAC recommended 5 years as a reasonable amount of time for a current administrator or program director to meet the requirements of this part. It also allows staff and program continuity if the administrator and program director want to maintain their current positions, but the administrator and program director need additional education, experience, or training to fulfill staff qualifications.

9545.1095 STAFF ORIENTATION

This part establishes the staff orientation requirements for the programs governed by parts 9545.0905 to 9545.1125. This part is necessary because Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), clause (1), requires the commissioner to adopt program licensing rules which include standards for adequate staff. Minnesota Statutes, section 245A.095, subdivision 2, paragraph (5), require the commissioner to review rules for programs serving persons with mental illness and recommend staff educational and training requirements as needed. Minnesota Statutes, section 245.802, subdivision 2a, paragraph (5), requires the commissioner to review and recommend staff education and training requirements for residential mental health treatment programs.

Subpart 1. Initial staff orientation training for staff who provide program services. This subpart describes the orientation training requirements which staff who provide program services must complete within the first 45 calendar days of employment. This subpart is needed to fulfill the requirements of Minnesota Statutes, section 245A.095, subdivision 2, paragraph (5) and section 245.802, subdivision 2a, regarding the commissioner's duty to review rules and recommend staff educational and training rule requirements. The items in this subpart are reasonable because they were reviewed and approved by the PAC and they provide an adequate minimum standard for background information and training which a staff person should understand to provide adequate care to a child and avoid care practices which would be considered dangerous or abusive to a child. It is also reasonable to require that staff not use physical holding or isolation procedures with a child unless staff is trained in the policies and procedures required in item D, because these procedures could result in physical or psychological harm to the child or others when used improperly.

Subpart 2. Orientation training for staff who do not provide program services. This subpart establishes the limits for employment related orientation for staff who do not care for or provide program services to children. It is reasonable to exempt staff persons, such as cooks, gardeners, and clerical staff who do not care for children from some of the orientation requirements of subpart 1. It is also reasonable to require staff who do not care for children to receive sufficient training to be able to participate in emergency procedures and have some general information about the problems and needs of children and families who use program services.

9545.1105 INDIVIDUAL STAFF DEVELOPMENT

This part establishes the staff development and documentation requirements for the programs governed by parts 9545.0905 to 9545.1125. This part is necessary because Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), clause (1), requires the commissioner to adopt program licensing rules which include standards for staff training and adequate staff. Minnesota Statutes, section 245A.095, subdivision 2, paragraph (5), also requires the commissioner to recommend rules which establish staff training requirements. Minnesota Statutes, section 245.802, subdivision 2a, paragraph 5, requires the commissioner to review and recommend staff education and training requirements for residential mental health programs. It is reasonable to require programs to maintain staff development programs to ensure that persons who provide residential treatment for children eligible for admission according to part 9545.0955, have the necessary training and information to treat children with severe emotional disturbance.

Subpart 1. Individual staff development and evaluation plan. This subpart requires the license holder to have an annual plan for each staff person involved in delivering program services. It is reasonable to require licensed programs to have an individual development and evaluation plan for each staff person involved with delivering program services to a child in care, because each staff person has unique experiences in child care and has specific areas of knowledge and experience which may need to be enhanced to make that person more effective in working with severely emotionally disturbed children. Additionally, staff need to be trained in the use of new treatment methods. This subpart is consistent with Minnesota Statutes, section 245A.095, subdivision 2, which requires the commissioner to recommend rules which establish staff educational

requirements and training for persons employed in licensed programs governed by this rule.

Subpart 2. Amount of annual training. This subpart specifies the training requirements for staff involved in delivering program services. It is reasonable to establish minimum training requirements by rule to ensure that persons who care for children have been sufficiently trained to discharge their responsibilities for the care of children. It is reasonable to require more training for full time employees than employees who work less than half time, because full time employees are more likely to have more contact with children than employees working less than half time and are thus more likely to experience situations that require more extensive training. The amount of training for full and half-time employees was found to be reasonable by the PAC. The 40 hour requirement is similar to the training requirement for juvenile residential facility staff in parts 2935.0800 to 2935.0900.

Subpart 3. Content of quarterly training. This subpart provides the license holder with a list of topics which must be covered quarterly with each staff person involved in delivering program services. The quarterly review of the topics identified in items A through F is necessary because these items are all related to safety issues. Safety issues should be reviewed frequently to insure that all staff persons are familiar with the issues and understand their roles during an emergency. This subpart is needed because Minnesota Statutes, section 245A.09, subdivision 2, paragraph (c), clause (2), require the commissioner to include "safety standards" in the basic standards established by rules.

Subpart 4. Content of annual training. This subpart provides the license holder with a list of topics which must be covered annually with each staff person involved in delivering program services. The items listed in this subpart are reasonable because they were developed in cooperation with and reviewed by the Rule 5 PAC to reflect the wide range of training topics currently used by licensed programs. This subpart also allows annual training to include up to 25% of training hours in topics not included in the listed items to allow the individual training needs of a program or staff person to be integrated into the training program.

Item C requires training in cultural and ethnic diversities and culturally specific training for each program staff person. Cultural and ethnic diversities and culturally specific training are needed to develop cultural competence as defined in part 9545.0925, subpart 9. It is reasonable to require cultural and ethnic diversity and culturally specific training because while a high percentage of the children in treatment are from cultural and ethnic minorities, few program staff offering treatment are from cultural and ethnic minorities. It is reasonable to require program staff to understand the background of each child in treatment including the cultural or ethnic background of the child entering treatment, so that the child's individualized treatment program will be provided in a way which recognizes the child's condition in the context of both the child's past and the child's probable future after treatment. After treatment the child will probably return to the family and community in which the child lived prior to treatment, if the child is returned home.

The department recognizes that there is currently a need to develop a minimum standard for ethnic diversity and culturally specific training and, therefore, for a period of three years following the enactment of this rule, will assume the responsibility for devising and offering cultural competence training to programs governed by this rule. Eight hours of annual cultural competence training will be approved by the Commissioner of Human Services. The training will be offered each year in several locations within the state. The license holder must ensure that all staff who provide supervision or program services to children attend this training annually.

Subpart 5. First aid training required. This subpart requires the license holder to ensure that child care staff have documented first aid training. The requirements of this subpart are needed because Minnesota Statutes, section 245A.09, subdivision 2, requires the commissioner to promulgate rules which set basic licensing standards, including standards for safety and adequate staff. It is reasonable and necessary to require child care staff who provide program services to have a current American Red Cross Standard First Aid certificate because children in care in a residential program rely on the staff to provide initial care in the event of a medical emergency. Several programs governed by this rule are in areas which have limited emergency medical services which means staff must provide emergency medical treatment until emergency medical personnel can be present.

Subpart 6. Cardiopulmonary resuscitation (CPR) training required. This subpart requires child care staff who provide program services to have a current American Red Cross Community CPR certificate. The requirements of this subpart are needed because Minnesota Statutes, section 245A.09, subdivision 2, requires the commissioner to promulgate rules which set basic licensing standards, including standards for safety and adequate staff. It is reasonable and necessary to require child care staff who provide program services to have a current American Red Cross Community CPR certificate because children in care in a residential program rely on the staff to provide care in the event of a medical emergency. Several programs governed by this rule are in areas which have limited emergency medical services which means staff must provide emergency medical treatment until emergency medical personnel can be present.

Subpart 7. Orientation and training record. This subpart requires the license holder to ensure that staff orientation and training are documented. It is reasonable to require that the license holder ensure that the training and orientation requirements of this part are documented because the department employees who must monitor compliance with this rule part need a written record of training and orientation to review to determine whether the license holder has complied with this rule part.

9545.1115 PHYSICAL PLANT

This part establishes the physical plant, food handling, nutrition, and dietary practice standards for residential mental health program facilities governed by parts 9545.0905 to 9545.1125. This part is necessary and reasonable because Minnesota Statutes, section 245A.09, subdivision 2, requires the commissioner to adopt rules which set standards for health and sanitation that are appropriate for each type of license. It is also reasonable to incorporate

standards of the Minnesota Department of Health and the Minnesota Department of Public Safety by reference when appropriate under Minnesota Statutes, section 245A.09, subdivision 1, because these agencies have been delegated responsibility of enforcing standards necessary to ensure public health and safety by the legislature.

Subpart 1. Compliance with board and lodging requirements. This subpart requires all facilities housing programs licensed under Minnesota rules 9545.0905 to 9545.1125, to continue to meet the board and lodging requirements of the Minnesota Department of Health until more rigorous standards based on Minnesota Statutes, section 144.50, subdivision 6, are promulgated by the Minnesota Department of Health. Taking an approach to rulemaking that acknowledges a change in future standards required by another state department is reasonable because it advises interested persons that a change in the condition of licensure may be possible. A flexible approach to establishing physical plant and nutrition standards for children's residential treatment program facilities is reasonable because, while these program facilities are currently required to utilize board and lodging standards under parts 9545.0905 to 9545.1090, the Minnesota Department of Health has indicated an interest in revising the physical plant standards at some future date, based upon superior living facility standards in Minnesota Statutes, section 144.50, subdivision 6.

Items A and B under this subpart are necessary because the commission is required by Minnesota Statutes, section 245A.09, to promulgate rules that establish physical plant standards and food handling standards. Items A and B are reasonable because they continue the board and lodging standards which are currently required by the Minnesota Department of Health for food handling. Items C and D are reasonable because they establish physical plant conditions and practices in programs licensed under the existing Rule 5.

Item C under this subpart is necessary to establish the license holder's responsibility for meeting the dietary requirements needed to maintain a child's health while receiving treatment in the program facility. It is reasonable to require that meal plans be reviewed periodically by a person qualified to conduct a nutritional review, because children placed for care in a residential treatment program do not have adequate, palatable, nutritious food and have no other source of food than the food provided by the program facility. It is reasonable to require a program which accepts children with a medically prescribed diet to provide the diet as prescribed to insure the health of the child, because certain medical conditions such as diabetes can be affected by the food a child eats. It is reasonable to require that documentation of compliance with the diet be maintained for the program facility by the prescribing physician or other interested person and as evidence of compliance.

Item D under this subpart explains the general requirements for food served at the program facility. It is necessary to require the license holder to provide palatable food so that children in treatment will find the food desirable to be eaten. This standard is in agreement with the recommendations of the Minnesota Standards for Residential Treatment Programs which state: "The food should be well prepared, appetizing and attractively served." (CWLA, 1991, 69) It is reasonable to require that persons involved in food handling and preparation have the training necessary to accomplish the food production task assigned, because persons cannot be expected to

to know how to handle and serve food in an institutional setting without proper training.

Subpart 2. Compliance with supervised living facility requirements. Subpart 2 requires the program facilities licensed under parts 9545.0905 to 9545.1125 to comply with future rules to be promulgated by the Minnesota Department of Health as a condition of licensure. According to Minnesota Statutes, section 245A.09, it is necessary and reasonable for the commissioner to promulgate rules which avoid duplication with the rules of other departments and coordinate regulatory activities with other departments. It is current practice for the Minnesota Department of Human Services to inspect and license programs under Minnesota Statutes, chapter 245A, and for the Minnesota Department of Health to utilize its statutory authority to inspect and license the physical plant, nutrition and dietary aspects of facilities in which programs licensed by DHS are located. The subpart continues the current practices and relationships of the Minnesota Department of Health and the Minnesota Department of Human Services.

9545.1125 EMERGENCY PREPAREDNESS.

Subpart 1. Written plan required. Subpart 1 requires the license holder to develop a written plan for meeting emergency situations. This subpart is necessary because Minnesota Statutes, section 245A.09, subdivision 2 requires the commissioner to adopt rules which include standards for safety of persons in licensed program facilities. An emergency plan which is properly developed in cooperation with local authorities involved in emergency services is a reasonable requirement for program facilities which provide care for children on a round-the-clock basis because it helps to insure the children's safety in emergency situations. It is also reasonable to write the plan down and to communicate the plan to staff and residents so that those who need to act in an emergency situation can review the written plan as needed, are familiar with the plan, and are informed as to how to follow the plan.

Subpart 2. First aid kit required. Subpart 2 requires each licensed program facility to have an adequate first aid kit and that staff be aware of the location and proper use of the kit. This subpart is necessary because Minnesota Statutes, section 245A.09, subdivision 2, requires the commissioner to adopt rules which include standards for the health and safety of persons in licensed program facilities. The provision of a physician approved first aid kit in each program facility is reasonable because the first aid kit may be necessary to provide first aid care for a child or staff member who is ill or injured at the program facility. It is reasonable to require a physician's approval of the kit at the program facility because the physician has the medical expertise and the unique knowledge of the program to make an informed judgement about whether the contents of the first aid kit are appropriate for the program facility. It is reasonable to expect the program to re-supply the kit as needed to maintain the kit as it was when approved by the physician, because the facility assumes the responsibility of meeting the needs of children in care. It is reasonable to require the staff to be instructed in the proper use of the first aid kit so that staff who must use the kit to provide first aid assistance to children know how to properly apply the available first aid procedures and devices.

EFFECTIVE DATE According to Minnesota Statutes, section 14.18, it is necessary to state the effective date of a rule if it is different from the end of the period of five working days following publication in the State Register according to Minnesota Statutes, sections 14.18 and 14.27. The Rule 5 PAC felt that it was reasonable to provide programs governed by this rule six months to prepare for the implementation of this rule. Some programs will need time to change staff patterns, train staff, and hire new staff who have the qualifications required under this rule. It is reasonable to encourage compliance with the rule by giving programs governed by the rule sufficient time to comply fully with the rule. The six month period will also give the Minnesota Department of Human Services time to prepare to administer the rule and to train its employees in the requirements of parts 9545.0905 to 9545.1125.

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The Department does not plan to present expert witnesses from outside the Department.

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