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STATE REGISTER



STATE OF MINNESOTA

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VOLUME 10, NUMBER 13

September 16, 1985
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Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 10			
14	Monday September 16	Monday September 23	Monday September 30
15	Monday September 23	Monday September 30	Monday October 7
16	Monday September 30	Monday October 7	Monday October 14
17	Monday October 7	Monday October 14	Monday October 21

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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NOTICE

How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION** also.

The **PROPOSED RULES** section contains:

- Calendar of public hearings on proposed rules.
- Proposed new rules (including notice of hearing and/or notice of intent to adopt rules without a hearing).
- Proposed amendments to rules already in existence in the Minnesota Rules.
- Proposed emergency rules.
- Withdrawal of proposed rules (option; not required).

The **ADOPTED RULES** section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the *State Register* unless an agency requests this.)
- Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
- Notice of adoption of emergency rules.
- Adopted amendments to emergency rules (changes made since the proposed version was published).
- Extensions of emergency rules beyond their original effective date.

The **OFFICIAL NOTICES** section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
- Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before July 31, 1983 are published in the *Minnesota Rules 1983*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after July 31, 1983 will be included in a supplement scheduled for publication in mid-1984. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the *State Register* but are generally not published in the *Minnesota Rules 1983* due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

The *State Register* publishes partial and cumulative listings of rule in the MINNESOTA RULES AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
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PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce

Proposed Rules Governing Discrimination Because of Blindness

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

PROPOSED RULES

Persons interested in these rules shall have 30 days to submit comments in support of or opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, sections 45.023 and 72A.19. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Pursuant to Minn. Laws 1983, ch. 188 codified as Minn. Stat. section 14.115, subd. 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Richard G. Gomsrud, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101. (612)-296-5689.

A copy of the proposed rules is attached to this notice. Copies of this notice and the proposed rules are available and may be obtained by contacting Rose Weiner at the above address. (612)-296-3528.

Michael A. Hatch
Commissioner of Commerce

Rule as Proposed

2700.3200 UNFAIR AND DECEPTIVE PRACTICES.

Subpart 1. to 10. [Unchanged.]

Subp. 11. Discrimination because of blindness or partial blindness. It is unfair and deceptive to discriminate between individuals of the same class by refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of blindness or partial blindness.

With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind are subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons.

Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses his or her eyesight.

However, an insurer may exclude from coverage disabilities, consisting solely of blindness or partial blindness when the condition existed at the time the policy was issued.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language.

PROPOSED RULES

Department of Commerce

Proposed Rules Relating to Coordination of Benefits for Group Health and Accident Insurance

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

Persons interested in these rules shall have 30 days to submit comments in support of or opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, sections 45.023 and 72A.19. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Pursuant to Minn. Laws 1983, ch. 188 codified as Minn. Stat. section 14.115, subd. 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Richard G. Gomsrud, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101. (612)-296-5689.

A copy of the proposed rules is attached to this notice. Copies of this notice and the proposed rules are available and may be obtained by contacting Rose Weiner at the above address. (612)-296-3528.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2742.0100 PURPOSE AND SCOPE.

Subpart 1. **Generally.** Parts 2742.0100 to 2742.0400 are intended to establish uniformity in the permissive use of overinsurance provisions and to avoid claim delays and misunderstandings that could otherwise result from the use of inconsistent or incompatible provisions among plans. Except as specifically provided in subpart 4, it is contrary to the public policy of this state for a plan to declare its coverage to be "excess" to all others, or "always secondary," or to reduce its benefits because of the existence of duplicate coverage in a manner other than as permitted by parts 2742.0100 to 2742.0400; or to reduce its benefits because a person covered by the plan is eligible for any other coverage. It is requested that courts give effect to this public policy when they consider the interrelation of plans with order of benefit determination rules which comply with parts 2742.0100 to 2742.0400 and plans with order of benefit determination rules which differ from those in parts 2742.0100 to 2742.0400.

Subp. 2. **Description.** A coordination of benefits provision is one that is intended to avoid claims payment delays and duplication of benefits when a person is covered by two or more plans providing benefits or services for medical, dental, or other care or treatment. It avoids claims payment delays by establishing an order in which plans pay claims and providing authority for the orderly transfer of information needed to pay claims promptly. It avoids duplication of benefits by permitting a reduction of the benefits of a plan when, by the rules established by parts 2742.0100 to 2742.0400, it does not have to pay its benefits first.

Subp. 3. **Rules permissive.** Parts 2742.0100 to 2742.0400 permit, but do not require, plans to include coordination of benefits provisions.

Subp. 4. **Effect.** If a group contract includes a coordination of benefits provision, it must be consistent with parts 2742.0100 to 2742.0400. A plan that does not include such a provision may not take the benefits of another plan as defined in part 2742.0200 into account when it determines its benefits. There is one exception: a contract holder's coverage that is designed to supplement a part of a basic package of benefits may provide that the supplementary coverage shall be excess to any other parts of the plan provided by the contract holder.

2742.0200 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 2742.0100 to 2742.0400, the terms in this part have the meanings given them.

Subp. 2. **Plan.** "Plan" is a form of coverage with which coordination is allowed. The definition of plan in the group contract must state the types of coverage which will be considered in applying the coordination of benefits provision of that contract. The right to include a type of coverage is limited by the rest of this subpart.

The definition in part 2742.0300 is an example of what may be used. Any definition that satisfies this subpart may be used.

Parts 2742.0100 to 2742.0400 use the term "plan." However, a group contract may, instead, use "program" or some other term.

The term "plan" does not include:

- A. individual or family insurance contracts;
- B. subscriber contracts;
- C. coverage through health maintenance organizations; or
- D. coverage under other prepayment, group practice, and individual practice plans; except as otherwise provided in this part.

"Plan" includes: group insurance and group subscriber contracts; uninsured arrangements of group or group-type coverage; group or group-type coverage through health maintenance organizations and other prepayment, group practice, and individual practice plans; and group-type contracts.

Group-type contracts are contracts which are not available to the general public and can be obtained and maintained only because of membership in or connection with a particular organization or group. Group-type contracts answering this description may be included in the definition of plan, at the option of the insurer or the service provider and its contract-client, whether or not uninsured arrangements or individual contract forms are used and regardless of how the group-type coverage is designated (for example, "franchise" or "blanket"). The use of payroll deductions by the employee, subscriber, or member to pay for the coverage is not sufficient, of itself, to make an individual contract part of a group-type plan.

"Plan" may include the medical benefits coverage in group, group-type, and individual automobile "no-fault" and traditional automobile "fault" type contracts.

"Plan" may include Medicare or other governmental benefits. That part of the definition of "plan" may be limited to the hospital, medical, and surgical benefits of the governmental program. However, "plan" shall not include a state plan under Medicaid, and shall not include a law or plan when, by law, its benefits are excess to those of any private insurance plan or other nongovernmental plan.

The term "plan" shall not be construed to include group or group-type hospital indemnity benefits of \$30 per day or less, but may be construed to include the amount by which group or group-type hospital indemnity benefits exceed \$30 per day.

"Plan" shall not include school accident-type coverages. These cover grammar, high school, and college students for accidents only, including athletic injuries, either on a 24-hour basis or on a "to and from school" basis.

Subp. 3. **Hospital indemnity benefits.** "Hospital indemnity benefits" are those not related to expenses incurred. The term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

Subp. 4. **This plan.** In a coordination of benefits provision, this term refers to the part of the group contract providing the health care benefits to which the coordination of benefits provision applies and which may be reduced on account of the benefits of other plans. Any other part of the group contract providing health care benefits is separate from "this plan."

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PROPOSED RULES

A group contract may apply one coordination of benefits provision to certain of its benefits (such as dental benefits), coordinating only with like benefits, and may apply other separate coordination of benefits provisions to coordinate other benefits.

Subp. 5. Primary plan. A primary plan is one whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a primary plan if either item A or B is true.

A. The plan either has no order of benefit determination rules, or it has rules which differ from those permitted by parts 2742.0100 to 2742.0400.

B. All plans which cover the person use the order of benefit determination rules required by parts 2742.0100 to 2742.0400 and under those rules the plan determines its benefits first.

There may be more than one primary plan (for example, two plans which have no order of benefit determination rules).

Subp. 6. Secondary plan. A secondary plan is one which is not a primary plan. If a person is covered by more than one secondary plan, the order of benefit determination rules of parts 2742.0100 to 2742.0400 decide the order in which their benefits are determined in relation to each other. The benefits of secondary plan may take into consideration the benefits of the primary plan or plans and the benefits of any other plan which, under parts 2742.0100 to 2742.0400, has its benefits determined before those of that secondary plan.

Subp. 7. Allowable expense. "Allowable expense" is the necessary, reasonable, and customary item of expense for health care, when the item of expense is covered at least in part under any of the plans involved, except where a statute requires a different definition. However, items of expense under coverages such as dental care, vision care, prescription drugs, or hearing aid programs may be excluded from the definition of allowable expense. A plan which provides benefits only for any items of expense may limit its definition of allowable expenses to like items of expense.

When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered as both an allowable expense and a benefit paid.

The difference between the cost of a private hospital room and the cost of a semi-private hospital room is not considered an allowable expense unless the patient's stay in a private hospital room is medically necessary in terms of generally accepted medical practice.

When coordination of benefits is restricted in its use to a specific coverage in a contract (for example, major medical or dental), the definition of allowable expense must include the corresponding expenses or services to which coordination of benefits applies.

Subp. 8. Claim. "Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of services, (including supplies); payment for all or a portion of the expenses incurred; a combination of services and payment for expenses incurred; or an indemnification.

Subp. 9. Claim determination period. "Claim determination period" means a period of time, which must not be less than 12 consecutive months, over which allowable expenses are compared with total benefits payable in the absence of coordination of benefits, to determine whether overinsurance exists; and how much each plan will pay or provide.

A plan usually is a calendar year, but a plan may use some other period of time that fits the coverage of the group contract. A person may be covered by a plan during a portion of a claim determination period if that person's coverage starts or ends during that claim determination period.

As each claim is submitted, each plan is to determine its liability and pay or provide benefits based upon allowable expenses incurred to that point in the claim determination period. A determination is subject to adjustment as later allowable expenses are incurred in the same claim determination period.

2742.0300 MODEL COORDINATION OF BENEFITS CONTRACT PROVISION.

Subpart 1. General. Subpart 4 contains a model coordination of benefits provision for use in group contracts. That use is subject to parts 2742.0200, subpart 2, items B and C and 2742.0400.

Subp. 2. Flexibility. A group contract's coordination of benefits provision does not have to use the words and format shown in parts 2742.0100 to 2742.0400. Changes may be made to fit the language and style of the rest of the group contract or to reflect the differences among plans which provide services, which pay benefits for expenses incurred, and which indemnify.

Substantive changes are allowed only as set forth in parts 2742.0100 to 2742.0400.

Subp. 3. Prohibited coordination and benefit design. A group contract may not reduce benefits on the basis that another plan exists; except with respect to Part B of Medicare, that a person is or could have been covered under another plan; or a person has elected an option under another plan providing a lower level of benefits than another option which could have been elected.

No contract may contain a provision that its benefits are "excess" or "always secondary" to any plan defined in part 2742.0200, subpart 2, except in accord with the rules permitted by parts 2742.0100 to 2742.0400.

Subp. 4. Text of model coordination of benefits provision.**COORDINATION OF THE GROUP CONTRACT'S BENEFITS
WITH OTHER BENEFITS****(I) APPLICABILITY.**

(A) This coordination of benefits provision applies to this plan when an employee or the employee's covered dependent has health care coverage under more than one plan. "Plan" and "this plan" are defined below.

(B) If this coordination of benefits provision applies, the order of benefit determination rules should be looked at first. Those rules determine whether the benefits of this plan are determined before or after those of another plan. The benefits of this plan:

(i) shall not be reduced when, under the order of benefit determination rules, this plan determines its benefits before another plan; but

(ii) may be reduced when, under the order of benefit determination rules, another plan determines its benefits first. The above reduction is described in section (IV) Effect on the Benefits of This Plan.

(II) DEFINITIONS.

(A) A "plan" is any of these which provides benefits or services for, or because of, medical or dental care or treatment;

(i) Group insurance or group-type coverage, whether insured or uninsured. This includes prepayment, group practice, or individual practice coverage. It also includes coverage other than school accident-type coverage.

(ii) Coverage under a governmental plan or required or provided by law. This does not include a state plan under Medicaid (Title XIX, Grants to States for Medical Assistance Programs, of the United States Social Security Act as amended from time to time). It also does not include any plan when, by law, its benefits are excess to those of any private insurance program or other nongovernmental program.

Each contract or other arrangement for coverage under (i) or (ii) is a separate plan. Also, if an arrangement has two parts and coordination of benefits rules apply only to one of the two, each of the parts is a separate plan.

(B) "This plan" is the part of the group contract that provides benefits for health care expenses.

(C) "Primary plan/secondary plan." The order of benefit determination rules state whether this plan is a primary plan or secondary plan as to another plan covering the person.

When this plan is a primary plan, its benefits are determined before those of the other plan and without considering the other plan's benefits.

When this plan is a secondary plan, its benefits are determined after those of the other plan and may be reduced because of the other plan's benefits.

When there are more than two plans covering the person, this plan may be a primary plan as to one or more other plans, and may be a secondary plan as to a different plan or plans.

(D) "Allowable expense" means a necessary, reasonable, and customary item of expense for health care, when the item of expense is covered at least in part by one or more plans covering the person for whom the claim is made.

The difference between the cost of a private hospital room and the cost of a semi-private hospital room is not considered an allowable expense under the above definition unless the patient's stay in a private hospital room is medically necessary either in terms of generally accepted medical practice, or as specifically defined in the plan.

When a plan provides benefits in the form of services, the reasonable cash value of each service rendered will be considered both an allowable expense and a benefit paid.

(E) "Claim determination period" means a calendar year. However, it does not include any part of a year during which a person has no coverage under this plan, or any part of a year before the date this coordination of benefits provision or a similar provision takes effect.

(III) ORDER OF BENEFIT DETERMINATION RULES.

(A) General. When there is a basis for a claim under this plan and another plan, this plan is a secondary plan which has its benefits determined after those of the other plan, unless:

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PROPOSED RULES

(i) the other plan has rules coordinating its benefits with those of this plan; and

(ii) both those rules and this plan's rules, in subparagraph (B) below, require that this plan's benefits be determined before those of the other plan.

(B) Rules. This plan determines its order of benefits using the first of the following rules which applies:

(i) Nondependent/dependent. The benefits of the plan which covers the person as an employee, member, or subscriber (that is, other than as a dependent) are determined before those of the plan which covers the person as a dependent.

(ii) Dependent child/parents not separated or divorced. Except as stated in subparagraph (B)(iii) below, when this plan and another plan cover the same child as a dependent of different persons, called "parents:"

a. the benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year; but

b. if both parents have the same birthday, the benefits of the plan which covered the parent longer are determined before those of the plan which covered the other parent for a shorter period of time.

However, if the other plan does not have the rule described in a. above, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of benefits, the rule in the other plan will determine the order of benefits.

(iii) Dependent child/separated or divorced parents. If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

a. first, the plan of the parent with custody of the child;

b. then, the plan of the spouse of the parent with custody of the child; and

c. finally, the plan of the parent not having custody of the child.

However, if the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. This paragraph does not apply with respect to any claim determination period or plan year during which any benefits are actually paid or provided before the entity has the actual knowledge.

(iv) Active/inactive employee. The benefits of a plan which covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan which covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, (iv) is ignored.

(v) Longer/shorter length of coverage. If none of the above rules determines the order of benefits, the benefits of the plan which covered an employee, member, or subscriber longer are determined before those of the plan which covered that person for the shorter time.

(IV) EFFECT ON THE BENEFITS OF THIS PLAN.

(A) When this section applies. This section applies when, in accordance with section (III) Order of Benefit Determination Rules, this plan is a secondary plan as to one or more other plans. In that event the benefits of this plan may be reduced under this section. Such other plan or plans are referred to as "the other plans" in (B) below.

(B) Reduction in this plan's benefits. The benefits of this plan will be reduced when the sum of:

(i) the benefits that would be payable for the allowable expenses under this plan in the absence of this coordination of benefits provision; and

(ii) the benefits that would be payable for the allowable expenses under the other plans, in the absence of provisions with a purpose like that of this coordination of benefits provision, whether or not claim is made; exceeds those allowable expenses in a claim determination period. In that case, the benefits of this plan will be reduced so that they and the benefits payable under the other plans do not total more than those allowable expenses.

When the benefits of this plan are reduced as described above, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of this plan.

(V) RIGHT TO RECEIVE AND RELEASE NEEDED INFORMATION.

Certain facts are needed to apply these coordination of benefits rules. [The XYZ Company] has the right to decide which facts it needs. It may get needed facts from or give them to any other organization or person. [The XYZ Company] need not tell, or get the consent of, any person to do this. Each person claiming benefits under this plan must give [The XYZ Company] any facts it needs to pay the claim.

(VI) FACILITY OF PAYMENT.

A payment made under another plan may include an amount which should have been paid under this plan. If it does, [The XYZ Company] may pay that amount to the organization which made that payment. That amount will then be treated as though it were a benefit paid under this plan. [The XYZ Company] will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

(VII) RIGHT OF RECOVERY.

If the amount of the payments made by [The XYZ Company] is more than it should have paid under this coordination of benefits provision, it may recover the excess from one or more of:

- (A) the persons it has paid or for whom it has paid;
- (B) insurance companies; or
- (C) other organizations.

The "amount of the payments made" includes the reasonable cash value of any benefits provided in the form of services.

2742.0400 RULES FOR COORDINATION OF BENEFITS.

Subpart 1. General. The primary plan must pay or provide its benefits as if the secondary plan or plans did not exist.

A secondary plan may take the benefits of another plan into account only when, under this part, it is secondary to that other plan.

Subp. 2. Dependent child/parents not separated or divorced. The word "birthday" in the wording shown in subsection (4)(d)(III)(B)(ii) of part 2742.0300, subpart 4 refers only to month and day in a calendar year, not the year in which the person was born.

A group contract which includes coordination of benefits and which is issued or renewed, or which has an anniversary date on or after the later of [January 1, 1986] or [60] days after the effective date of parts 2742.0100 to 2742.0400 shall include the substance of the provision in subsection (4)(d)(III)(B)(ii) of part 2742.0300, subpart 4. That provision shall become effective on the later of January 1, 1987, or one year and 60 days after the effective date of parts 2742.0100 to 2742.0400. Until that provision becomes effective, the group contract shall, instead, use wording like this:

"(ii) . . . Except as stated in (iii) . . . , the benefits of a plan which covers a person as a dependent of a male are determined before those of a plan which covers the person as a dependent of a female."

Subp. 3. Longer/shorter length of coverage. To determine the length of time a person has been covered under a plan, two plans shall be treated as one if the claimant was eligible under the second within 24 hours after the first ended. Thus, the start of a new plan does not include a change in the amount or scope of a plan's benefits; a change in the entity which pays, provides, or administers the plan's benefits; or a change from one type of plan to another (such as, from a single employer plan to that of a multiple employer plan).

The claimant's length of time covered under a plan is measured from the claimant's first date of coverage under that plan. If that date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the length of time the claimant's coverage under the present plan has been in force.

Subp. 4. Reduction in plan's benefits when it is secondary. A secondary plan may reduce its benefits by using the alternatives in items A to C, or any version thereof which is more favorable to a covered person. This is subject to the conditions and limits described in this subpart.

A. Alternative 1, total allowable expenses. When this alternative is used, a secondary plan may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period are not more than total allowable expenses. The amount by which the secondary plan's benefits have been reduced shall be used by the secondary plan to pay allowable expenses, not otherwise paid, which were incurred during the claim determination period by the person for whom the claim is made. As each claim is submitted, the secondary plan determines its obligation to pay for allowable expenses based on all claims which were submitted up to that point in time during the claim determination period.

When this alternative is used, the suggested contract provision is as shown in part 2742.0300, subpart 4, (IV)(B).

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PROPOSED RULES

The last paragraph quoted in part 2742.0300, Subpart 4, (IV)(B) may be omitted if the plan provides only one benefit, or may be altered to suit the coverage provided.

B. Alternative 2, total allowable expenses with coinsurance. When this alternative is used, a secondary plan may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period are not more than a stated percentage, but not less than 80 percent, of total allowable expenses. The amount by which the secondary plan's benefits have been reduced shall be used by the secondary plan to pay the stated percentage of allowable expenses, not otherwise paid, which were incurred during the claim determination period by the person for whom the claim is made. As each claim is submitted, the secondary plan determines its obligation to pay for the stated percentage of allowable expenses based on all claims which were submitted up to that point in time during the claim determination period.

When this alternative is used, the suggested contract provision for use in part 2742.0300, subpart 4, (IV)(B) is as follows:

The benefits of this plan will be reduced when the sum of: (a) the benefits that would be payable for the allowable expenses under this plan in the absence of this coordination of benefits provision; and (b) the benefits that would be payable for the allowable expenses under the other plans in the absence of provisions with a purpose like that of this coordination of benefits provision, whether or not claim is made; exceeds the greater of (i) 80 percent of those allowable expenses or (ii) the amount of the benefits in (a). In that case, the benefits of this plan will be reduced so that they and the benefits in (b) do not total more than the greater of (i) and (ii).

When the benefits of this plan are reduced as described above, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of this plan.

The paragraph immediately above may be omitted if the plan provides only one benefit, or may be altered to suit the coverage provided.

C. Alternative 3, maintenance of benefits. When this alternative is used, a secondary plan may reduce its benefits by the amount of the benefits payable under the other plans for the same expenses.

When this alternative is used, the suggested contract provision for use in part 2742.0300, subpart 4, (IV)(B) is shown below.

The benefits that would be payable under this plan in the absence of this coordination of benefits provision will be reduced by the benefits payable under the other plans for the expenses covered in whole or in part under this plan. This applies whether or not claim is made under a plan.

When a plan provides benefits in the form of services, the reasonable cash value of each service rendered will be considered both an expense incurred and a benefit payable.

When the benefits of this plan are reduced as described above, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of this plan.

The paragraph immediately above may be omitted if the plan provides only one benefit, or may be altered to suit the coverage provided.

This alternative may be used in a plan only when, in the absence of coordination of benefits, the benefits of the plan (excluding benefits for dental care, vision care, prescription drugs, or hearing aid programs) will, after any deductible, be not less than 50 percent of covered expenses for the treatment of mental or nervous disorders or alcoholism or drug abuse, or under cost containment provisions with alternative benefits, such as those applicable to second surgical opinions, precertification of hospital stays, etc.; and not less than 75 percent of other covered expenses.

A plan using this alternative may exclude definitions of and references to allowable expenses, claim determination period, or both.

Subp. 5. Conditions for use of alternatives 2 and 3. Alternatives 2 and 3 in subpart 4 permit a secondary plan to reduce its benefits so that total benefits may be less than 100 percent of allowable expenses.

A plan using alternatives 2 and 3 in subpart 4 must comply with the following conditions:

A. The plan must provide prior notice to employees or members that when it is secondary (that is, it determines benefits after another plan) its benefits plus those of the primary plan will be less than 100 percent of allowable expenses; unless the primary plan, by itself, provides benefits at 100 percent of allowable expenses.

B. When the plan is secondary, it must provide a limit on the amount the employee, member, or subscriber is required to pay toward the expenses or services covered under the plan and for which the plan is secondary. The limit shall not exceed \$2,000 for any covered person, or \$3,000 for any family in any claim determination period.

C. The plan must permit a person to be enrolled for its health care coverage when that person's eligibility for health care coverage under another plan ends for any reason the person is eligible for coverage under the plan, and the enrollment is made before the end of the 31-day period immediately following either the date when health care coverage under the other plan ends; or the end of any continuation period elected by or for that person.

This unrestricted enrollment is not required if a person remains eligible for coverage under that other plan, or a plan which replaces it, without interruption of that person's coverage.

D. If the person is enrolled before the end of the 31-day period, there shall be no interruption of coverage. Thus, the requirements concerning active work of employees, members, or subscribers, or nonconfinement of dependents on the effective date of coverage, shall not be applied. However, coverage for the person under the plan may be subject to the same requirements including underwriting requirements, benefit restrictions, waiting periods, and pre-existing condition limitations that would have applied had the person been enrolled under the plan on the later of (a) the date the person first became eligible for the plan's coverage; or (b) the date the employee, member, or subscriber last became covered under the plan.

Credit shall be given under any pre-existing condition limitation or waiting period from the later of the dates described in subunits (a) or (b) to the date the person actually enrolled pursuant to the unrestricted enrollment provisions above.

E. A secondary plan which provides benefits in the form of services may recover the reasonable cash value of providing the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this provision shall be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan which provides benefits in the form of services.

Subp. 6. Excess and other nonconforming provisions. Some plans have order of benefit determination rules not consistent with parts 2742.0100 to 2742.0400 which declare that the plan's coverage is "excess" to all others, or "always secondary." This occurs because certain plans may not be subject to insurance regulation; or some group contracts have not yet been conformed with parts 2742.0100 to 2742.0400 pursuant to the effective date provisions of these rules.

A plan with order of benefit determination rules which comply with parts 2742.0100 to 2742.0400 may coordinate its benefits with a plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those contained in parts 2742.0100 to 2742.0400 on the following basis:

A. If the complying plan is the primary plan, it shall pay or provide its benefits on a primary basis.

B. If the complying plan is the secondary plan, it shall, nevertheless, pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In such a situation, payment shall be the limit of the complying plan's liability.

C. If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay its benefits accordingly. However, the complying plan must adjust any payments it makes based on such assumption whenever information becomes available as to the actual benefits of the noncomplying plan.

D. If the noncomplying plan reduces its benefits so that the employee, subscriber, or member receives less in benefits than he or she would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan; and governing state law allows the right of subrogation in subpart 8; then the complying plan shall advance to or on behalf of the employee, subscriber, or member an amount equal to the difference. However, in no event shall the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid. In consideration of such advance, the complying plan shall be subrogated to all rights of the employee, subscriber, or member against the noncomplying plan. An advance by the complying plan shall also be without prejudice to any claim it may have against the noncomplying plan in the absence of subrogation.

Subp. 7. Allowable expense. A term such as "usual and customary," "usual and prevailing," or "reasonable and customary" may be substituted for the term "necessary, reasonable, and customary." Terms such as "medical care" or "dental care" may be substituted for "health care" to describe the coverages to which the coordination of benefits provisions apply.

Subp. 8. Subrogation. The coordination of benefits concept clearly differs from that of subrogation. Provisions for one may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

EFFECTIVE DATE. Parts 2742.0100 to 2742.0400 are effective 60 days after the publication of their notice of adoption in the *State Register*.

Parts 2742.0100 to 2742.0400 apply to every group contract which provides health care benefits and is issued on or after that date.

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PROPOSED RULES

A group contract which provides health care benefits and was issued before that date shall be brought into compliance with parts 2742.0100 to 2742.0400 by the later of the next anniversary date or renewal date of the group contract; or the expiration of any applicable collectively bargained contract pursuant to which it was written.

Department of Health

Proposed Rules Relating to Services for Children with Handicaps

Notice of Intent to Amend Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the Commissioner of Health (hereinafter "Commissioner") proposes to amend Minnesota Rules, chapter 4705, governing eligibility, cost sharing and reimbursement for services for children with handicaps and adults with cystic fibrosis and hemophilia. A copy of the proposed amendments follows this notice.

The Commissioner has determined that the proposed amendments will be noncontroversial in nature and has elected to follow the provisions of Minnesota Statutes, section 14.22 to 14.28 (1984). Sections 14.22 to 14.28 provide for an expedited process for the adoption of administrative rule changes without the holding of a public hearing.

The implementation of these amendments will not require the expenditure of public money by local public bodies of greater than \$100,000 in either of the two years following their adoption, nor do the amendments have any impact on agricultural land. Further, the small business considerations in rulemaking do not apply to these rules pursuant to Minnesota Statutes, section 14.115, subdivision 7(c) (1984).

THE PUBLIC IS HEREBY ADVISED that:

1. They have 30 days in which to submit comment in support of or in opposition to the proposed amendments, and comment is encouraged;
2. Each comment should identify the portion of the proposed amendment addressed, the reason for the comment, and any change proposed;
3. If twenty-five or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held;
4. All comments and any written requests for a public hearing shall be submitted to Nancy Okinow, Services for Children with Handicaps, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440;
5. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendment addressed, the reason for the request, and any change proposed;
6. The proposed amendments may be modified if the modifications are supported by the data and views submitted and do not result in a substantial change in the proposed language;
7. Under this expedited procedure, if a hearing is not required, the department must submit any action on its rules to the Attorney General for review of the form and legality of the rule change. Notice of the date of submission of the proposed amendment to the attorney general for review will be mailed to any person who requests to receive the notice. Requests to receive notice must be submitted to Ms. Okinow at the above address;
8. Authority to amend Minn. Rules ch. 4705 is contained in Minnesota Statutes, sections 144.05 through 144.07 and 144.09 through 144.12 (1984). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments has been prepared and is now available. Anyone wishing to receive a copy of this document may contact Ms. Okinow at the above address;
9. If twenty-five or more persons request a public hearing on this matter, notice of any such hearing will be published in the *State Register*;
10. Any rule change made pursuant to this proceeding shall be effective five working days after publication in the *State Register* of notice of the adoption of the change.

September 4, 1985

Department of Health,
Sister Mary Madonna Ashton
Commissioner of Health

Rules as Proposed

4705.0100 DEFINITIONS.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Administrative review committee.** "Administrative review committee" means the committee, as identified by the commissioner of health, composed of administrative personnel from the ~~Division of Community Services~~ Maternal and Child Health Division and the SCH program and a representative from the SCH field staff who have responsibility for the review of SCH decisions relating to eligibility and cost sharing for those applicants who wish ~~such reconsideration~~ review.

Subp. 4. **Allowable deductions.** "Allowable deductions" means those expenses incurred by household members for the following items:

A. medical/dental expenses for treatment and other health-care-related expenses paid during the previous 12 months which were not reimbursed by a third-party payer such as insurance or title XIX (medical assistance); and

B. transportation costs in order to obtain medical/dental care and services during the previous 12 months. Travel expenses by car are calculated at ~~47~~ 27 cents a mile. Actual costs of train, airplane, bus, and taxi fares.

Subp. 5. to 10. [Unchanged.]

Subp. 11. **Cost-sharing schedule.** "Cost-sharing schedule" means the schedule ~~set out in part 4705.0600, subpart 3~~ which specifies income levels by number of members in the household and the corresponding percentage of that income level an applicant shall be required to share in the cost of treatment service(s), depending upon the level of their SCH adjusted income.

Subp. 12. to 26. [Unchanged.]

Subp. 27. **State gross median income.** "State gross median income" is ~~\$25,394 annually for a family of four as developed by the Bureau of the Census and released by the Social Security Administration (Information Memorandum 82-13, September 24, 1982).~~ "State gross median income" adjusted for households of different sizes in accordance with Federal Register, volume 45, page 56710 (Code of Federal Regulations, title 45, section 1396.60, removed) is: households of one, \$13,205; two, \$17,268; three, \$21,331; five, \$29,457; six, \$33,520; seven, \$34,282; eight, \$35,044; nine, \$35,806; ten, \$36,567; more than ten, 144 percent of \$25,394 plus three percent of \$25,394 for each household member in excess of ten means the income level at which 50 percent of the people in the state have incomes higher than the gross median income and 50 percent of the people in the state have incomes which are lower, as determined by the United States Secretary of Health and Human Services in accordance with procedures established in United States Code, title 42, section 2002 (a)(6), as amended through August 12, 1981, adjusted in accordance with regulations prescribed by the secretary to take into account the number of individuals in a household, at Code of Federal Regulations, title 45, section 96.85, as amended through November 16, 1983. State median income figures are published annually in the Federal Register.

Subp. 28. to 31. [Unchanged.]

4705.0300 APPLICANT ELIGIBILITY FOR DIAGNOSTIC EVALUATION.

An applicant shall complete an application provided by SCH as described in part 4705.0500. Any applicant, regardless of income, who meets all of the following criteria shall be eligible for a diagnostic evaluation authorized by SCH:

A. a resident of ~~the state of~~ Minnesota; and

B. a child under 21 years of age with a suspected handicap, or an adult 21 years of age or over with cystic fibrosis or hemophilia;

~~C. a child who is suspected to be a child with a handicap.~~

In addition to ~~the above criteria~~ items A and B, an applicant shall agree to participate in cost sharing if any is required, accord-sources for the examinations and tests necessary for a diagnostic evaluation. There shall be no out-of-pocket cost to the applicant for the actual examinations and tests. Prior written authorization shall be required for a diagnostic evaluation to be reimbursed in full or for that part not reimbursed by third-party payers by SCH.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language.

PROPOSED RULES

4705.0400 APPLICANT ELIGIBILITY FOR TREATMENT SERVICES.

An applicant shall complete an application provided by SCH and described in part 4705.0500. Any applicant who meets all of the following criteria shall be eligible for SCH reimbursement to service providers for the cost of treatment service(s):

A. a resident of the state of Minnesota; and

B. a child under 21 years of age who has a diagnosed handicapping condition as defined in parts 4705.0100 to 4705.1600, or an adult 21 years of age or older with cystic fibrosis or hemophilia;

~~C. a child who has a diagnosed handicapping condition as defined in parts 4705.0100 to 4705.1600.~~

In addition to ~~the above criteria~~ items A and B, an applicant shall agree to participate in cost sharing if any is required, according to the specifications ~~set out~~ in part 4705.0600. An applicant shall be required to make use of available third-party reimbursement sources for treatment service(s). Prior written authorization shall be required for treatment service(s) to be reimbursed in full or in part by SCH.

An applicant who meets all of the criteria and requirements for eligibility, but whose handicapping condition may not require extended or sequential care, shall be eligible for SCH reimbursement to service providers in those instances where the cost of treatment is anticipated to exceed 40 percent of the applicant's adjusted gross income as defined in parts 4705.0100 to 4705.1600.

4705.0500 APPLICATION FOR SERVICE(S).

Subpart 1. to 3. [Unchanged.]

Subp. 4. ~~Preparation of Financial responsibility under cost-sharing agreement schedule.~~ For applicants for treatment service(s), SCH shall ~~prepare~~ give a written explanation to the applicant detailing the applicant's financial responsibility under the cost-sharing agreement schedule, if cost-sharing is indicated under part 4705.0600. ~~An applicant shall not be eligible to have treatment service(s) authorized through SCH until the cost-sharing agreement is signed by the applicant and received in the SCH office.~~

Subp. 5. [Unchanged.]

Subp. 6. Period of eligibility. The period in which an applicant shall remain eligible for SCH authorization for reimbursement to service providers of treatment costs shall be as follows:

A. ~~one year from the date of receipt by SCH of the signed cost-sharing agreement, when cost-sharing is required;~~

~~B. One year from the date of the original eligibility determination, when no cost-sharing is required;~~

~~C. B.~~ SCH shall make an exception regarding the beginning date of eligibility in those instances where the child is in an unanticipated treatment situation and the applicant was unaware of the program before this time. Where the time required to process the application will cause delay in the provision of treatment service(s), ~~the a~~ documented, initial contact with SCH shall be considered the beginning of eligibility if the application and signed cost-sharing agreement are is received within 60 days of this the initial contact.

SCH shall send the applicant written notification of the date upon which eligibility begins. To maintain eligibility, an applicant must complete another application at the end of the eligibility period.

4705.0600 COST-SHARING.

Subpart 1. Applicants who must cost-share. Any applicant whose SCH adjusted income as defined and described in part 4705.0100, subpart 24 is above 60 percent of the state gross median income shall be required to share in the treatment costs of all service(s) authorized by SCH. SCH shall reimburse service providers for remaining expenses for authorized treatment service(s) which are not covered by the applicant's cost-sharing or third-party reimbursement sources. No cost sharing ~~shall be is~~ required of an applicant who is ~~currently eligible for medical assistance (title XIX)~~, a ward of the state or whose SCH adjusted income falls below 60 percent of the state gross median income.

Subp. 2. Adjusted gross income. The adjusted gross income used in any cost-sharing calculations shall be that of the applicant as applicant is defined in part ~~4705.1000~~ 4705.0100, subpart 5. The income of a stepparent who does not adopt a child is not considered in cost-sharing calculations.

Subp. 3. Amount of cost-sharing. The amount of cost-sharing required of an applicant is determined in the following manner:

A. Step No. 1: The includable assets are totalled. If applicable, the household member deduction is subtracted from this total.

B. Step No. 2: The amount derived in Step No. 1 is then added to the adjusted gross income.

C. Step No. 3: The total of the allowable deductions is subtracted from the amount derived in Step No. 2. This figure indicates the SCH adjusted income.

D. [See Repealer.]

E. Step No. 4: The percentage that the applicant must share in the cost of treatment is based on the applicant's SCH adjusted income level and on the number of members in the household. This percentage is calculated according to the SCH cost-sharing schedule which must be updated annually to reflect any change in the state median income. The SCH cost-sharing schedule is incorporated by reference. It is subject to frequent change. The SCH cost-sharing schedule shall be published annually in the State Register no later than 30 days prior to the effective date of the schedule. It is available at the Ford Law Library, 117 University Avenue, Saint Paul, Minnesota 55155.

Subp. 4. to 6. [Unchanged.]

4705.0900 LIMITATIONS ON AUTHORIZATION OF REIMBURSEMENT FOR TREATMENT SERVICE(S).

SCH shall authorize reimbursement to a service provider only for treatment that is part of the treatment plan for an individual's handicapping condition. SCH shall not authorize reimbursement for the treatment of conditions determined by SCH to be primarily cosmetic in nature. SCH shall not authorize reimbursement for costs of equipment such as hospital beds or wheelchairs unless no other resource is available. Within any 12-month period, SCH shall pay no more than \$10,000 for the care of an individual. SCH shall not authorize reimbursement for treatment service(s) not associated with an individual's eligible condition. An exception shall be made and ~~routine care shall be authorized by the SCH medical director when, as the result of the eligible condition, it is more probable than not that a life-threatening situation or irrevocable damage or injury might occur during what otherwise would be routine care~~ treatment services not associated with an individual's eligible condition shall be authorized, subject to the \$10,000 per 12-month period limit, when the SCH medical director has determined that medical conditions exist which, if left untreated, could have a deleterious impact upon the applicant's health status.

SCH shall not authorize reimbursement for treatment services for individuals 21 years of age or over with hemophilia except as specified in part 4705.1000.

4705.1400 RESPONSIBILITIES BETWEEN SCH AND SERVICE PROVIDERS.

Subpart 1. [Unchanged.]

Subp. 2. **Payment of service providers.** SCH shall pay service providers at the same rates for medical, dental, and hospital care up to the maximum allowable charges as set forth in the most current Medical Assistance Rates Schedule (revised September 7, 1978) established by the Minnesota Department of ~~Public Welfare (title XIX)~~ Human Services pursuant to its authority found in parts 9500.0750 to 9500.1080. A copy of the most current Medical Assistance Rates Schedule is incorporated by reference, and is available at the Ford Law Library, 117 University Avenue, Saint Paul, Minnesota 55155. It is subject to frequent change. In instances where there are not established rates, SCH shall reimburse service providers at rates based upon the following criteria:

- A. complexity of service;
- B. time involved in completing the service;
- C. training and skills of the service provider; and
- D. reasonableness of fees in the context of the community.

SCH is the payer of last resort. SCH reimbursement of treatment costs to service providers shall be made only after arrangements have been made by the service provider to collect third-party and cost-sharing payments.

Subp. 3. to 6. [Unchanged.]

REPEALER. Minnesota Rules, part 4705.0600, subpart 3, item D; and 4705.1600 are repealed.

Pollution Control Agency

Proposed Emergency Rules Relating to Waste Tire Dump Abatement

Notice of Intent to Adopt Emergency Rules

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt, in accordance with the provisions of Minn. Stat. §§ 14.29 to 14.36 (1984), emergency rules governing the abatement of waste tire dumps.

<p>KEY: PROPOSED RULES SECTION — <u>Underlining</u> indicates additions to existing rule language. Strike outs indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — <u>Underlining</u> indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.</p>
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PROPOSED RULES

The proposed emergency rules, if adopted, will provide for the administration of the Agency's waste tire dump abatement program. The proposed emergency rules provide a procedure by which the Agency will take action to abate waste tire dumps in the State. These emergency rules are being proposed pursuant to the Agency's authority under Minn. Stat. § 115A.914, subd. 1 (1984), as amended by Minn. Laws 1985, First Special Session, ch. 13 § 232. The proposed emergency rules are published below. One free copy of the proposed emergency rules is available on request from the Agency and may be obtained by contacting:

Patrick F. Carey
Minnesota Pollution Control Agency
Solid and Hazardous Waste Division
1935 West County Road B2
Roseville, Minnesota 55113
612/296-7321

All interested parties have 25 days from the date of publication of this notice in the *State Register* to submit written comments to the Agency on the proposed emergency rules. With publication of this notice in the September 23, 1985 *State Register*, written comments must be received by the Agency no later than 4:30 p.m. on October 18, 1985. Each comment should identify the portion of the proposed emergency rules addressed by the comment, the reason for the comment, and any change that is proposed. Written comments should be submitted to Patrick F. Carey at the address stated above.

Please be advised that the proposed emergency rules may be modified as a result of the comments received. Any written material received by the Agency will become part of the record in this matter.

The proposed emergency rules, with any modifications, will be adopted by the Agency and submitted to the Attorney General for review as to form and legality after close of the comment period. Persons wishing to be informed of the date of submission of the proposed emergency rules as adopted to the Attorney General should submit a written statement of such request to Patrick F. Carey at the address previously stated. The Attorney General has 10 working days to approve or disapprove the proposed emergency rules.

The emergency rules will be effective five working days following approval of the emergency rules by the Attorney General. It is the Agency's intent to keep the emergency rules in effect for a period of 180 days, although the emergency rules may be continued in effect for an additional 180 days if the Agency publishes a separate notice of such continuation in the *State Register* and mails the same notice to all persons on the Agency's list to receive notice of rulemaking proceedings.

September 9, 1985

Michael Robertson
for
Thomas J. Kalitowski
Executive Director

Rules as Proposed, Emergency (all new material)

7035.8000 [Emergency] SCOPE.

Parts 7035.8000 to 7035.8160 [Emergency] govern the abatement of waste tire dumps. A tire collector who owns or operates a tire dump is subject to agency abatement action under parts 7035.8000 to 7035.8160 [Emergency].

7035.8010 [Emergency] DEFINITIONS.

Subpart 1. **Applicability.** For the purposes of parts 7035.8000 to 7035.8160 [Emergency], the following definitions apply.

Subp. 2. **Abate or abatement.** "Abate" or "abatement" means the processing and removing of waste tires in an agency-accepted manner.

Subp. 3. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 4. **Director.** "Director" means the executive director of the Minnesota Pollution Control Agency.

Subp. 5. **100-year flood.** "100-year flood" means a flood that has a one percent chance of being equaled or exceeded in any given year.

Subp. 6. **100-year floodplain.** "100-year floodplain" means any land area that is subject to a one percent or greater chance of flooding in any given year from any source.

Subp. 7. **Operator.** "Operator" means any person responsible for the overall operation of the tire dump.

Subp. 8. **Owner.** "Owner" means any person who owns a tire dump, part of a tire dump, or the land on which the tire dump is located.

Subp. 9. **Person.** "Person" has the meaning given in Minnesota Statutes, section 116.06, subdivision 8.

Subp. 10. **Processing.** "Processing" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 6.

Subp. 11. **Ravine.** "Ravine" means any manmade or naturally occurring depression in the land area capable of allowing water to flow at or above the surface of the land.

Subp. 12. **Shoreland.** "Shoreland" means land located within the following distances from the ordinary high water elevation of public waters:

A. land within 1,000 feet from the normal high water mark of a lake, pond, or flowage; and

B. land within 300 feet of a river or stream or the landward side of a floodplain delineated by ordinance on such a river or stream, whichever is greater.

Subp. 13. **Sinkhole.** "Sinkhole" means a closed depression in an area of karst topography that is formed either by solution of surficial limestone or by collapse of underlying caves.

Subp. 14. **Tire.** "Tire" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 7.

Subp. 15. **Tire collector.** "Tire collector" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 8.

Subp. 16. **Tire dump.** "Tire dump" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 9.

Subp. 17. **Waste tire.** "Waste tire" has the meaning given in Minnesota Statutes, section 115A.90, subdivision 11.

Subp. 18. **Waste tire chip.** "Waste tire chip" means a small piece of a waste tire produced as a result of volume reduction techniques.

Subp. 19. **Wetland.** "Wetland" means any land area that can be classified as a wetland according to the publication, Classification of Wetlands and Deep Water Habitats of the United States. This publication was prepared by Lewis M. Cowardin, Virginia Carter, Francis C. Golet, and Edward T. LaRoe for the United States Department of the Interior, Fish and Wildlife Service, Washington, D.C., Government Printing Office, 1979 and is incorporated by reference. It is not subject to frequent change.

7035.8020 [Emergency] AVAILABILITY OF REFERENCES.

The documents referred to in parts 7035.8000 to 7035.8160 [Emergency] may be obtained by contacting the appropriate offices as listed below.

A. Classification of Wetlands and Deep Water Habitats of the United States, 1979, issued by the United States Department of the Interior, Fish and Wildlife Service, Washington, D.C. 20402, is available at the Minnesota State Government Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota.

B. The Standard for Storage of Rubber Tires, NFPA 231D-1980 edition, adopted by the National Fire Protection Association, San Diego, California, is available at the Minnesota State Government Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota; the Office of Public Safety, Fire Marshal Division; or any local fire department.

7035.8030 [Emergency] NOTIFICATION OF TIRE DUMP.

Within 60 days of the effective date of parts 7035.8000 to 7035.8160 [Emergency], a tire collector who owns or operates a tire dump must submit a written notification to the director. The notification must contain:

A. the address of the tire dump;

B. the name, address, and telephone number of the owner of the tire dump for which the notification is submitted;

C. if the operator of the tire dump for which the notification is submitted is different from the owner, the name, address, and telephone number of the operator;

D. an estimation of the number of tires currently located at the tire dump; and

E. a general description of the tire dump, including a topographic map or other map if a topographic map is unavailable. The map must show the tire dump and the area surrounding the tire dump for a distance of at least one-half mile in all directions of the tire dump, and all structures that are located in this area.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language.

PROPOSED RULES

7035.8040 [Emergency] REQUEST FOR ABATEMENT ACTION.

Subpart 1. **Issuance of request for abatement action.** If a tire collector is subject to agency abatement action pursuant to part 7035.8000 [Emergency], the agency may issue a request for abatement action to the tire collector responsible for the tire dump. The agency's decision whether to issue a request for abatement action shall be based upon the priorities established under subpart 2, the availability of waste tire collection funds, and the agency's administrative ability to take action.

Subp. 2. **Priorities for issuing a request for abatement action.** The agency shall issue requests for abatement action based on the criteria established in Minnesota Statutes, section 115A.912, subdivision 2. The agency shall issue requests for abatement action in the following order of priority:

A. First priority; the agency shall issue requests for abatement action to tire dumps with over one million tires. Tire dumps with over one million tires shall be ranked based on the criteria established in items B and C.

B. Second priority; the agency shall issue requests for abatement action to tire dumps posing fire hazards. For the purpose of ranking fire hazards at tire dumps, the agency shall consider the number of tires located at a tire dump as determined by the director, the size of the population affected, which includes the proximity and density of the population in relation to the tire dump, and the threat to natural resources.

C. Third priority; the agency shall issue requests for abatement action to tire dumps in densely populated areas. For the purpose of ranking these tire dumps, the agency shall consider the number of tires located at a tire dump as determined by the director, and the size of the population affected, which includes the proximity and density of the population in relation to the tire dump.

D. Fourth priority; the agency shall issue requests for abatement action to tire dumps that are not item A, B, or C priorities. For the purpose of ranking these tire dumps, the agency shall take into consideration the number of tires located at a site as determined by the director and the size of the population affected which includes the proximity and density of the population in relation to the tire dump.

7035.8050 [Emergency] CONTENTS OF REQUEST FOR ABATEMENT ACTION.

Subpart 1. **Contents.** A request for abatement action shall be in writing, shall specify the action that must be taken, shall state the reasons for requesting the action, shall specify a time frame within which to respond to the request, and shall state the intention of the agency to take action if the requested action is not taken within the specified time.

Subp. 2. **Request.** The request for abatement action will request the tire collector responsible for the tire dump to pursue either option specified in items A and B within the specified time. Item A (option A) shall be an acceptable option only for tire dumps existing on the effective date of parts 7035.8000 to 7035.8160 and only for tire collectors who have notified the director in accordance with part 7035.8030 [Emergency].

A. The tire collector must voluntarily surrender to the agency all of the waste tires that constitute the tire dump by signing an agreement with the agency, in which case the agency will provide for the processing and removal of the waste tires; or

B. The tire collector must submit an abatement plan to the director within the time specified in the request for abatement action stating a proposal for cleaning up the tire dump. In the plan, the tire collector shall:

(1) specify the manner proposed for cleaning up the tire dump, including:

(a) an explanation of all of the processing techniques proposed to be used to clean up the tire dump; and

(b) a description of the equipment proposed to be used to clean up the tire dump and the manner in which each piece of equipment will be used;

(2) provide for compliance with the technical standards specified in parts 7035.8090 to 7035.8150 [Emergency] and describe how compliance with these standards will be achieved; and

(3) propose an incremental time frame for the removal of all waste tires constituting the tire dump with the proposed date of completion of the cleanup not to exceed five years past the date of cleanup is proposed to begin. The tire collector shall indicate the work to be completed during each time increment.

7035.8060 [Emergency] RESPONSE TO A REQUEST FOR ABATEMENT ACTION.

A response by a tire collector to a request for abatement action must be incorporated into a stipulation agreement signed by the tire collector and the agency before it will be considered an adequate response.

7035.8070 [Emergency] INADEQUATE RESPONSE TO A REQUEST FOR ABATEMENT ACTION.

If after a tire collector has been issued a request for abatement action the agency determines that the tire collector has failed to take the requested action within the time specified, the agency may make a determination of inadequate response. The following items constitute justification for the agency to make a determination of inadequate response:

- A. the tire collector has not responded to the request for abatement action within the specified time period;
- B. the tire collector submits a response which fails to meet the requirements specified in the request for abatement action;
- C. the tire collector has failed to sign a stipulation agreement incorporating the response; or
- D. the tire collector is in violation of, or in noncompliance with, any of the provisions of the stipulation agreement.

7035.8080 [Emergency] TIRE DUMP ABATEMENT ORDER.

When the agency makes a determination of inadequate response or revokes without reissuance an agency waste tire facility permit, the agency may issue a tire dump abatement order to the responsible tire collector. A tire dump abatement order may provide for entering the property where the tire dump is located, taking tires into public custody, and arranging for their processing and removal.

7035.8090 [Emergency] STANDARDS.

Parts 7035.8090 to 7035.9140 [Emergency] are standards and provisions which govern the storage, operational, and reporting requirements a tire collector must comply with during abatement.

7035.8100 [Emergency] INDOOR STORAGE STANDARDS.

The Standard for Storage of Rubber Tires, NFPA 231D-1980 edition, governs the indoor storage of tires and is incorporated by reference into parts 7035.8090 to 7035.8140 [Emergency]. This standard was prepared by the Technical Committee on Storage of Rubber Tires and adopted by the National Fire Protection Association on November 18, 1980, in San Diego, California. It was released for publication by the Standards Council on December 18, 1980, and is not subject to frequent change.

7035.8110 [Emergency] REQUIRED STANDARDS DURING ABATEMENT.

Subpart 1. **Location standards during the first time increment.** During the first increment of an abatement plan, the tire collector must provide for the removal of all waste tires from the following areas:

- A. floodplains;
- B. wetlands;
- C. shorelands; and
- D. sinkholes and ravines.

Subp. 2. **Fire hazard standards during the first time increment.** During the first increment of an abatement plan, the tire collector shall reduce fire hazards at the tire dump by:

- A. complying with the standards referenced in part 7035.8100 [Emergency], if the tire dump is located indoors; and
- B. constructing fire lanes at tire dumps located outdoors in such a manner that each individual waste tire stockpile:
 - (1) has an area not greater than 10,000 square feet;
 - (2) has a vertical height not greater than 20 feet; and
 - (3) has a minimum 50-foot fire lane between the stockpiles free of rubbish, equipment, and other materials at all times.

Subp. 3. **Additional required standards during abatement.** Any tire collector abating a tire dump must operate and maintain the tire dump in conformance with items A to E unless otherwise allowed by the agency.

- A. No material other than waste tires, which includes waste tire chips, may be stored in the designated tire dump area.
- B. Open burning is prohibited as required in parts 7005.0700 to 7005.0750.
- C. Tires, which include waste tire chips, must not be deposited in and must be prevented from entering surface or ground waters.
- D. Communication facilities must be provided for emergency purposes.
- E. Equipment must be provided and kept at the tire dump to control accidental fires, and arrangements must be made with the local fire protection agency to immediately acquire their services when needed.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

PROPOSED RULES

7035.8120 [Emergency] CONSIDERATIONS DURING ABATEMENT.

Any tire collector abating a tire dump must comply with the following:

- A. surface water drainage must be diverted around and away from the tire dump;
- B. adequate equipment must be available for abatement of the tire dump in accordance with the abatement plan;
- C. the approach road to the tire dump and the access road within the tire dump must be of all-weather construction and maintained in good condition so that they will be passable at all times for any vehicle using the roads;
- D. the tire dump must be free of unwanted vegetation and other growth at all times; and
- E. access to the tire dump must be controlled to prevent unauthorized use. A gate must be provided at the entrance to the tire dump and kept locked when an attendant is not on duty.

7035.8130 [Emergency] EMERGENCY PROCEDURES AND CONTINGENCY PLAN.

Subpart 1. **Emergency procedures and contingency plan manual.** The owner or operator of the tire dump must prepare and maintain a manual outlining the procedures and contingency plan that will be followed by the owner or operator in the event of an emergency at the tire dump. The emergency procedures and contingency plan must contain the provisions outlined in subparts 2 and 3.

Subp. 2. **Emergency procedures.** The manual must contain:

- A. a list of names and telephone numbers of local fire and police departments to contact;
- B. a list of the equipment available at the site such as fire extinguishers, communication and alarm systems, and a brief description as to when and how the equipment is to be used;
- C. the procedures to be followed during the emergency, including measures that will be taken by the owner or operator to ensure that fires do not spread in the event of a fire;
- D. a description of prior arrangements made with local police and fire departments; and
- E. the locations of known water supplies.

Subp. 3. **Contingency plan.** The manual must contain a contingency plan to address the problem of oily run-off collection and storage in case of fire, including:

- A. how and where the run-off will be confined and collected;
- B. where the run-off will be stored;
- C. what will be done with the run-off;
- D. the equipment to implement the contingency plan; and
- E. any prior arrangements with police and fire departments.

Subp. 4. **Implementation of emergency procedures and contingency plan.** The provisions of the manual must be carried out immediately when necessary to minimize the adverse effects of fires.

Subp. 5. **Notification.** The owner or operator of the tire dump must immediately notify the director in the event of a fire at the tire dump.

Subp. 6. **Report.** The owner or operator of the tire dump shall submit to the agency within two weeks of an emergency a report discussing the type of emergency and the procedures followed to minimize potential hazards to human health and the environment.

Subp. 7. **Amendment of manual.** The manual must be reviewed, and immediately amended if necessary, whenever:

- A. the emergency procedures and contingency plan fail; or
- B. the tire dump changes in its design, construction, operation, or maintenance, and such changes require revised emergency procedures.

Subp. 8. **Copies of emergency procedures and contingency plan manual.** A copy of the manual and all amendments to the manual must be:

- A. maintained at the tire dump; and
- B. submitted to the director with the abatement plan, pursuant to part 7035.8050 [Emergency], subpart 2, item B, and after modification or approval, will become a condition of any approved abatement plan.

7035.8140 [Emergency] OPERATIONAL RECORD.

Subpart 1. **Record information.** The following information must be recorded and maintained in the operating record of the tire dump by the owner or operator:

- A. the approximate amount and type of waste tires currently in stockpiles at the tire dump, and the approximate tonnage of tire chips currently in stockpiles at the tire dump;
- B. the approximate amount of tires coming in and shipped from the tire dump during the past time increment and the form in which the tires were shipped; if the tires shipped from the tire dump are in the form of tire chips, the number of tons shipped from the tire dump during the past time increment;
- C. the destination of waste tires or tire-derived materials shipped from the tire dump, the projected date for shipping, and the quantity shipped;
- D. a description of tire handling techniques, including any equipment used at the tire dump; and
- E. summary reports and details of all incidents that required implementing the emergency procedures and contingency plan as specified in part 7035.8130 [Emergency], subpart 4.

Subp. 2. **Incremental report.** Upon completion of each time increment in the approved abatement plan incorporated into the stipulation agreement pursuant to part 7035.8060 [Emergency], the owner or operator must prepare and submit to the director within 30 days a single copy of the operational record for the preceding time increment. The report must contain:

- A. the information required by subpart 1;
- B. the dates covered by the report; and
- C. the name of the tire collector and the address of the tire dump.

7035.8150 [Emergency] CERTIFICATION OF COMPLETION.

Upon completion of the cleanup in accordance with the contents of the stipulation agreement, the tire collector must submit a certification to the agency signed by the tire collector indicating that the cleanup of the tire dump is completed. Upon receiving the certification, the director shall inspect the area to ensure that the cleanup has been completed.

7035.8160 [Emergency] REIMBURSEMENT.

Subpart 1. **Criteria.** The agency shall reimburse a tire collector for abatement action only if all of the following criteria are met:

- A. the tire collector was issued a request for abatement action by the agency and chose to abate the tire dump by pursuing item B (option B) of part 7035.8050 [Emergency], subpart 2;
- B. the response by a tire collector to a request for abatement action was incorporated into a stipulation agreement pursuant to part 7035.8060 [Emergency];
- C. the tire dump for which reimbursement is sought was existing on the effective date of parts 7035.8000 to 7035.8160 [Emergency], and the tire collector notified the director in accordance with part 7035.8030 [Emergency]; and
- D. the owner or operator is in compliance with the abatement plan incorporated into the stipulation agreement pursuant to part 7035.8060 [Emergency].

Subp. 2. **Waste tires eligible for reimbursement.** The agency shall reimburse tire collectors meeting the criteria established in subpart 1 for each ton of waste tires abated meeting all of the following criteria:

- A. the waste tires in each ton must be taken from the tire dump for which the request for abatement action was issued;
- B. the waste tires in each ton must be processed as defined in Minnesota Statutes, section 115A.90, subdivision 6; and
- C. the usable materials produced after processing, pursuant to item B, must be given or sold to a market utilizing the materials in a manner acceptable to the agency.

Subp. 3. **Reimbursement rate.** For a tire collector seeking reimbursement, the agency shall establish a reimbursement rate of up to \$10 for each ton of waste tires abated meeting the criteria established in subpart 2. The reimbursement rate will be established based on the costs to be incurred by the tire collector for processing tires at the tire dump minus the revenues to be received by the tire collector for tire-derived materials. The reimbursement rate shall be incorporated into the stipulation agreement established in part

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PROPOSED RULES

7035.8060 [Emergency]. This reimbursement rate may be revised by amending the stipulation agreement. Such revisions shall be based on the information submitted pursuant to subparts 7 and 8 and the actual reimbursement rates established pursuant to subpart 9.

Subp. 4. **End-use consideration.** A tire collector seeking reimbursement shall abate the tire dump by choosing a processing technique which provides for the best end-use of the waste tires available. In the abatement plan submitted pursuant to part 7035.8050 [Emergency], subpart 2, item B, a tire collector seeking reimbursement shall specify and discuss the reasons for choosing the proposed processing technique for cleaning up the tire dump and the consideration the tire collector will give to processing techniques that promote a better end-use for the waste tires, such as recapping.

Subp. 5. **Cost and revenue analysis.** In the abatement plan submitted pursuant to part 7035.8050 [Emergency], subpart 2, item B, a tire collector seeking reimbursement shall analyze the costs inherent to the processing techniques proposed to be used to clean up the tire dump and the revenues from the tire derived materials produced as a result of the proposed processing techniques.

Subp. 6. **Total amount of money available.** Before a tire collector commences cleanup of the tire dump, the director shall determine the total amount of money available for all reimbursement requests submitted during the cleanup of the tire dump. For the purpose of determining the total amount of money available for all reimbursement requests submitted during the cleanup of the tire dump, the director shall consider the tonnage of waste tires located at the tire dump as determined by the director and the reimbursement rate established in subpart 3, and the availability of waste tire abatement funds. The total amount of money available for reimbursement shall be incorporated into the stipulation agreement established pursuant to part 7035.8060 [Emergency].

Subp. 7. **Submittal and contents of reimbursement request.** Requests for reimbursement shall be included with the incremental report submitted to the director pursuant to part 7035.8140 [Emergency], subpart 3. A reimbursement request shall contain the following information:

- A. the name of the tire collector and the address of the tire dump;
- B. the dates covered by the reimbursement request;
- C. documentation specifying the tonnage of tires processed at the tire dump over the past time increment;
- D. documentation specifying the total cost to process the amount claimed in item C;
- E. documentation specifying the amounts of tire-derived material shipped over the past time increment from the tire dump for which the request for abatement action was issued, and the form of the shipped tire-derived material;
- F. the names and addresses of all markets utilizing the processed waste tires over the past time increment; the form of the processed waste tires and the amount supplied to each of the markets utilizing the processed waste tires; the amount of money received for the processed waste tires from each of the markets utilizing the processed waste tires; and any documentation supporting the claims of this item;
- G. the amount of money the tire collector is requesting for reimbursement, specifying the data on which this amount is based;
- H. documentation specifying the tonnage of tires processed, but not originating from the tire dump over the past time increment; and
- I. any other documentation or data that may support the information submitted in items A to H.

Subp. 8. **Additional information.** If the director determines that the information submitted pursuant to subpart 7 is not sufficient to determine actual costs, actual revenues, and an amount to be reimbursed pursuant to subpart 9, then the director shall request additional information of the tire collector.

Subp. 9. **Amount to be reimbursed.** The director shall determine the total amount to be reimbursed to a tire collector for reimbursement requests submitted pursuant to subpart 7. The director will determine the amount to be reimbursed based on the actual costs incurred by the tire collector for processing waste tires from the tire dump, the actual revenues received by the tire collector for tire-derived materials, and an actual reimbursement rate based on the actual costs and actual revenues. The director will determine the actual costs and actual revenues based on the information submitted pursuant to subparts 7 and 8. The actual reimbursement rate may be less than the reimbursement rate established or revised in subpart 3. However, the actual reimbursement rate cannot exceed the reimbursement rate established or revised in subpart 3 by more than ten percent. In no event shall the actual reimbursement rate exceed \$10 per ton.

Subp. 10. **Reimbursement.** Based on the priorities established in Minnesota Statutes, section 115A.912, subdivision 2, the availability of waste tire collection funds, and the director's determination of the total amount to be reimbursed pursuant to subpart 9, the agency shall partially reimburse the tire collector for the costs of abatement.

Transportation Regulation Board

Withdrawal of Rules Relating to Collective Ratemaking

Proposed Minnesota Rules, parts 8900.0100-8900.0900 published at *State Register*, vol. 9, no. 27, Dec. 31, 1984, pp. 1510-1513 (9 S.R. 1510) are withdrawn. The withdrawn proposed rule addressed collective ratemaking by motor carriers subject to rate regulation under Minnesota Statutes, ch. 221. Questions about the withdrawn proposed rule should be directed to: Jerome E. Pedersen, Rate Director, Transportation Regulation Board, 795 American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, Telephone: (612) 296-2349.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Human Services

Adopted Emergency Rules Governing General Assistance

The rules proposed and published at *State Register*, Volume 10, Number 3, pages 92-96, July 15, 1985 (10 S.R. 92) are adopted with the following modifications:

Rules as Adopted, Emergency

9500.1101 [Emergency] DEFINITIONS.

Subp. 10. **Functionally illiterate.** "Functionally illiterate" means the person ~~has been certified by a licensed consulting psychologist or a person licensed under parts 8700.3800, 8700.5300, 8700.5406, 8700.5500, 8700.5800, 8700.6300, or 8700.6310 as being~~ is unable to read or write at or above the fourth eighth grade level.

Subp. 11. **Learning disabled.** "Learning disabled" means the individual ~~has been medically certified as having any of the disorders listed under code 315 of the International Classification of Diseases, 9th revision, Clinical Modification, (ICD 9 CM) as published by the Commission on Professional and Hospital Activities, 1968 Green Road, Ann Arbor, Michigan (1978). This publication is incorporated by reference. It is available from the minitex interlibrary loan system. It is not subject to frequent change. a disorder in one or more of the psychological processes involved in perceiving, understanding, or using concepts through verbal language or nonverbal means. It does not include learning problems which are primarily the result of visual, hearing, or motor handicaps; of mental retardation; of emotional disturbance; or of environmental, cultural, or economic disadvantage, and the condition must severely limit~~ limits the person in obtaining, performing, or maintaining suitable employment.

Subp. 13. **Medical certification.** "Medical certification" means a statement about a person's illness, injury, or incapacity that is signed by a licensed physician or a licensed consulting psychologist ~~about a person's illness, injury, or incapacity, or licensed psychologist whose professional training and experience qualifies him or her to diagnose or certify the person's condition.~~

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ADOPTED RULES

Subp. 14. **Mentally ill.** "Mentally ill" means the condition of a person who has a ~~medically certified~~ psychological disorder resulting in behavior that severely limits the person ~~from in~~ obtaining, performing, or maintaining suitable employment.

Subp. 15. **Mentally retarded.** "Mentally retarded" means the condition of a person who is ~~medically certified as having~~ has demonstrated deficits in adaptive behavior and intellectual functioning which is two or more standard deviations below the mean of a professionally recognized standardized test and the condition severely limits the person in obtaining, performing, or maintaining suitable employment.

Subp. 19. **Suitable employment.** "Suitable employment" means a job that:

- A. meets existing health and safety standards set by federal, state, or local regulations;
- B. is within the physical and mental ability of a person ~~as determined by the local agency;~~ and
- C. pays at least the minimum wage prescribed by state or federal law and provides more than 60 hours of work per month; and
- D. does not include temporary day labor.

Subp. 20. **Vocational specialist.** "Vocational specialist" means a counselor of the Department of ~~Economic Security Jobs and Training~~ or Division of Vocational Rehabilitation, or another similarly qualified person who advises persons about occupational goals and employment.

9500.1102 [Emergency] CATEGORIES OF ELIGIBILITY.

A member of an assistance unit which meets the conditions listed in part 9500.0530, items A to D, shall be eligible for general assistance if the member meets the conditions of one or more of the following items:

B. The person suffers from a temporary illness, injury, or incapacity which is medically certified and prevents the person from obtaining or retaining suitable employment for a period of at least 15 days, and ~~for which if a rehabilitation plan is specified in the medical certification, the person is following the rehabilitation plan specified in the medical certification.~~ An applicant or recipient shall be eligible under this item only for the period of the illness, injury, or incapacity.

D. The person ~~has been placed is~~ residing in a facility licensed under Minnesota Statutes, sections 245.781 to 245.812 and certified under Minnesota Statutes, chapter 144 for purposes of physical or mental health or rehabilitation, or in a chemical dependency domiciliary facility licensed under parts 9530.2600 to 9530.4000 or 4625.0100 to 4625.2300. ~~The placement Residence in the facility~~ must be due to illness or incapacity and based on a plan developed or approved by the director of the local agency.

G. The person is unable to communicate in the English language as assessed by an English as a second language specialist ~~and the inability to communicate prevents the person from retaining or obtaining suitable employment, a vocational specialist, or the local agency.~~

H. The person does not meet the condition in item A, B, or D but is ~~mentally retarded~~ medically certified as having mental retardation or mentally ill mental illness.

M. The person, ~~prior to February 1, 1986, meets the conditions of part 9555.3415 [Emergency] or after February 1, 1986~~ meets one or more of the following:

- (5) is evaluated by a vocational specialist and is found to be unable to obtain or retain suitable employment; or
- (6) is exhibiting severe symptoms of a mental or emotional disability or chemical dependency for which the recipient refuses evaluation or treatment; and for purposes of this subitem, a condition may be severe whether it is of short- or long-term duration; or
- (7) is exhibiting evidence of severely diminished functioning in areas of daily living such as social skills or personal relations; or
- (8) shows circumstances, at the time of application for general assistance, that indicate that the need for general assistance will not exceed 30 days because of impending employment, an impending move to another state, or anticipated receipt of income; or
- (9) is having an individual or family crisis.

O. The person is medically certified as being learning disabled.

P. The person has provided the local agency with verification that he or she is functionally illiterate or learning disabled. A person shall be determined functionally illiterate according to subitems (1) to (3):

(1) The local agency may determine that the person is obviously functionally illiterate based on personal observations and information in the person's case file.

(2) If an applicant or recipient is not determined to be functionally illiterate as provided in subitem (1), the local agency

believes that the applicant or recipient may be functionally illiterate, or if the applicant or recipient asserts or presents evidence that he or she may be functionally illiterate, the local agency shall offer the applicant or recipient the opportunity to take a standardized test which measures literacy and which is approved by the commissioner. The test must be offered in the county at no expense to the applicant or recipient and within such time as to allow a timely determination of eligibility, taking into account the results of the test. The local agency shall either administer the test or offer to make the arrangements for the administration of the test. If the person attains a score lower than the eighth grade, the person shall be considered functionally illiterate unless the local agency determines, through compelling evidence documented in the person's case file, that there is a substantial likelihood that the test result is inaccurately low.

(3) If, in accordance with subitem (2), the local agency determines that an applicant's or recipient's standardized test score is inaccurately low, the local agency shall inform the applicant or recipient that he or she may seek certification of the functional illiteracy from a licensed psychologist, or a person licensed under parts 8700.3800, 8700.5300, 8700.5406, 8700.5500, 8700.5800, 8700.6300, or 8700.6310, or a person with the equivalent or higher qualifications. The local agency shall provide the applicant or recipient with a list of persons or agencies in the county who are qualified to make the certification. The applicant or recipient shall be considered functionally illiterate if the certification specifies that the applicant or recipient cannot read or write at or above the eighth grade level.

9500.1103 [Emergency] ~~ELIGIBILITY DETERMINATION~~ GENERAL ASSISTANCE INELIGIBILITY; WORK READINESS NOTICE.

Upon determining that a person meets the conditions in part 9500.0530 but that the person is not eligible for general assistance under part 9500.1102, the local agency shall inform the person of the availability of its work readiness program and shall determine the person's eligibility for services and payments under that program. The person shall be informed that eligibility for work readiness services and payments is time limited and shall be offered the opportunity to register for the work readiness program.

Subpart 1. Determination of ineligibility and right to appeal. Upon determining that an applicant or recipient is ineligible for general assistance, the local agency shall inform the applicant or recipient of the determination and of the applicant's or recipient's right to appeal the determination under Minnesota Statutes, section 256.045.

Subp. 2. Work readiness notice. Upon determining that an applicant or recipient meets the conditions in part 9500.0530, items A to D, but that the applicant or recipient is not eligible for general assistance under part 9500.1102 [Emergency], the local agency shall inform the person of the availability of its work readiness program and shall determine the person's eligibility for services and payments under that program. An applicant shall be informed that, if he or she is eligible for work readiness services and payments, he or she may receive those services and payments and appeal the general assistance determination of ineligibility under Minnesota Statutes, section 256.045 at the same time. If the applicant subsequently wins the appeal, the assistance received under the work readiness program pending appeal must be considered general assistance. The local agency shall also inform the person that eligibility for work readiness services and payments is time limited and shall offer the opportunity to register for the work readiness program.

9500.1104 [Emergency] REQUIREMENTS FOR CONTINUED ELIGIBILITY.

A recipient of general assistance whose eligibility is based on part 9500.1102 [Emergency], items G and L must comply with the following requirements as conditions for continued eligibility.

A. ~~Persons~~ Recipients who are eligible under part 9500.1102 [Emergency], item G shall participate in an English language skills program if assigned to a program by the local agency. If the local agency determines that the ~~person~~ recipient has not participated in the assigned English language skills program, the ~~person~~ recipient must be disqualified from receiving general assistance as prescribed in part 9500.1105 [Emergency].

9500.1105 [Emergency] DISQUALIFICATION.

A person recipient who ~~did not~~ fails, without good cause, to comply with the requirements of part 9500.1104 [Emergency] item A or B, shall be disqualified from receiving general assistance as provided in items A to F D. For purposes of this part, good cause means a reason for taking an action or failing to take an action that is reasonable and justified when viewed in the context of the surrounding circumstances, including illness of the person, illness of another family member that requires the person's presence, a family emergency, or inability to obtain transportation.

A. The period of disqualification is 30 ~~60~~ days for the first each occurrence.

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ADOPTED RULES

~~B.~~ The period of disqualification is 90 days for an occurrence that is within 12 months from the end of any prior disqualification period.

~~C.~~ A subsequent finding of disqualification that occurs more than 12 months from the end of any prior disqualification period is the same as for a first occurrence.

~~D.~~ The disqualification period begins on the first calendar day of the month following the month in which the person recipient is finally determined to have failed to comply. If the determination is made so late in a month that prior notice under part 9500.1106 [Emergency] cannot be given, the disqualification period begins on the first calendar day of the second month following the finding of noncompliance.

If the recipient appeals on or before the proposed disqualification date, the disqualification process must stop and assistance will continue under part 9500.1107 [Emergency] until a final decision is rendered. If there is a decision that the recipient must be disqualified, the disqualification period begins on the first day of the following month.

~~E C.~~ If a person who is disqualified applies for general assistance during the period of disqualification, the person shall be considered a recipient and the application shall be denied.

~~F D.~~ If a recipient who receives a notice of disqualification complies with the requirements of part 9500.1104 [Emergency], items A and B on or before the effective date of the disqualification, assistance must be continued without a period of disqualification.

Workers' Compensation Court of Appeals

Adopted Rules of Procedure; Workers' Compensation Court of Appeals

The rules proposed and published at *State Register*, Volume 10, Number 3, pages 109-112, July 15, 1985 (10 S.R. 109) are adopted as proposed.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Commerce Board of Architecture, Engineering, Land Surveying and Landscape Architecture

Special Board Meeting

The Board of Architecture, Engineering, Land Surveying and Landscape Architecture will meet Monday, October 21, 1985, at 9:30 a.m. in Room 156 Metro Square Building, St. Paul (Metropolitan State University Conference Room). The purpose of the meeting is to act on proposed changes to MSA 326.11 to add citation authority and to Board Rules governing fees and examinations of architect and engineer applicants.

Department of Health

Emergency Medical Services Licensure Application — Air Med

As of September 23, 1985 a complete application for a license to operate a scheduled advanced life support transportation service was submitted by Air Med (United Hospital), 1200 South Columbia Road, P.O. Box 6002, Grand Forks, North Dakota 58206 to provide interfacility transfers by air in a portion of the State of Minnesota.

This notice is given pursuant to Minnesota Statutes 1979, Section 144.802, which requires in part that the Commissioner of Health publish the notice at the applicant's expense in the *State Register*.

Each municipality, county, community health services agency, and any other interested person wishing to comment on this application may submit comments to the Agassiz Health Systems Agency, Box 129, 32 South Third Street, Grand Forks, North Dakota 58201, Attn: Bonnie Barsness. The comments must reach the Health Systems Agency before October 23, 1985 or be submitted at the public hearing.

After a public hearing has been held, the Health Systems Agency shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of receipt of the recommendation to the Commissioner of Health, the Commissioner shall grant or deny the license to the applicant.

Board of Investment Investment Advisory Council

Notice of Regular Meeting

The State Board of Investment will meet on Wednesday, October 2, 1985, at 8:30 a.m., in Room 112, State Capitol, St. Paul, MN.

The Investment Advisory Council will meet at 2:30 p.m. on Tuesday, October 1, 1985, in Conference Room "A", MEA Building, 41 Sherburne Avenue, St. Paul, MN.

Board of Medical Examiners

Outside Opinion Sought Concerning a Proposed Rule Regarding the Practice of Physical Therapy

Notice is hereby given that the Minnesota Board of Medical Examiners is considering the adoption of a rule for the regulation and the practice of physical therapy regarding the treatment without referral and medically pre-diagnosed conditions, and fee splitting.

This proposed rule is authorized by Minnesota Statute § 148.70, which established the authority for the Board of Medical Examiners with the advice and assistance of the Physical Therapy Council to regulate the practice of physical therapy in the interest and protection of the public.

All interested or affected persons or groups may submit information on this subject. The rule may be revised on the basis of comments received. Any written material received will become part of the record of any rule hearings held on this subject. Written or oral information and comments should be addressed to:

David Ziegenhagen, Acting Executive Director
Board of Medical Examiners
717 S.E. Delaware Street, Suite 352
Minneapolis, MN 55414

Metropolitan Council

Public Hearing:

Reuter Inc. Refuse Derived Fuel Environmental Assessment Worksheet

The Metropolitan Council will hold a public hearing on Thursday, Sept. 26, 1985, at 7 p.m. at the Eden Prairie School administration building, 2100 School Rd., Eden Prairie for the purpose of receiving public comments on Reuter Inc. refuse derived fuel environmental assessment worksheet (EAW).

Reuter Inc. has proposed a 400 ton per day densified refuse derived fuel facility in the city of Eden Prairie. The site is in an area zoned for industrial land use along the northern edge of the city on County Rd. 67. Reuter Inc. has been granted a waste flow designation exclusion from the Council from Hennepin County's waste designation.

All interested persons are encouraged to attend the hearing and offer comments. Persons wishing to speak should register in advance by contacting Lucy Thompson at 291-6521 by Wednesday, Sept. 25. Written comments may be sent to the Metropolitan

OFFICIAL NOTICES

Council, 300 Metro Square Bldg., St. Paul, MN 55101, Attention: John Rafferty. The Council will accept written comments until Oct. 12. Questions on the Reuter Inc. EAW should be directed to John Rafferty of the Council's Solid Waste staff at 291-6459.

Copies of the public hearing draft are available free of charge from the Council's Communications Department at 291-6464. Copies are also available for public inspection beginning Sept. 12 at the following locations:

Metropolitan Council Library
300 Metro Square Bldg.
St. Paul, MN 55101

Minneapolis Public Library
Government Documents Room
300 Nicollet Mall
Minneapolis, MN 55401

St. Paul Public Library
Science and Industry Room
90 W. Fourth St.
St. Paul, MN 55102

Anoka County Library — Blaine Branch
707 Hwy. 10
Blaine, MN 55434

Carver County Library — Chaska Branch
314 Walnut St.
Chaska, MN 55318

Dakota County Library — Burnsville Branch
1101 W. County Rd. 42
Burnsville, MN 55337

Hennepin County Library — Southdale Branch
7001 York Av. S.
Edina, MN 55435

Ramsey County Library — Roseville Branch
2180 N. Hamline Av.
Roseville, MN 55113

Scott County Library — Shakopee Branch
235 S. Lewis St.
Shakopee, MN 55379

Washington County Library — Park Grove Branch
7510 - 80th St. S.
Cottage Grove, MN 55106

Sandra S. Gardebring, Chair

Metropolitan Council

Public Meeting: Aggregate Resources Advisory Committee Draft Report and Recommendations

The 1984 legislature established an Aggregate Resources Advisory Committee for the seven-county Metropolitan Area for determining the need to protect aggregates as part of local comprehensive plans and land use controls. The committee is to prepare a report to the legislature by Dec. 31, 1985.

The Aggregate Resources Advisory Committee will hold a public meeting to receive public comments on the draft report and recommendations. The meeting will be held on Tuesday, Oct. 15, 1985, at 7 p.m. in the Metropolitan Council Chambers, 300 Metro Square Bldg., 7th and Robert Streets, St. Paul, Minn.

All interested persons are encouraged to attend the public meeting and offer their comments on the report and recommendations.

If you will be attending and would like to speak, please contact Lucy Thompson at 291-6521. Questions on the report should be directed to Carl Schenk, Parks and Environmental Planning Department, Metropolitan Council, at 291-6410. Copies of the report are available free of charge from the Metropolitan Council Communications Department at 291-6464.

Copies are also available for public inspection at the following locations:

Metropolitan Council Library
300 Metro Square Bldg.
St. Paul, MN 55101

Minneapolis Public Library
Government Documents Room
300 Nicollet Mall
Minneapolis, MN 55401

St. Paul Public Library
Science and Industry Room
90 W. Fourth St.
St. Paul, MN 55102

Anoka County Library — Blaine Branch
701 Hwy. 10
Blaine, MN 55434

Carver County Library — Chaska Branch
314 Walnut St.
Chaska, MN 55318

Dakota County Library — Burnsville Branch
1101 W. County Rd. 42
Burnsville, MN 55337

Hennepin County Library — Southdale Branch
7001 York Av. S.
Edina, MN 55435

Hennepin County Library — Brookdale Branch
6125 Shingle Creek Parkway
Brooklyn Center, MN 55430

Ramsey County Library — Roseville Branch
2180 N. Hamline Av.
Roseville, MN 55113

Scott County Library — Shakopee Branch
235 S. Lewis St.
Shakopee, MN 55379

Washington County Library — Park Grove Branch
7510 - 80th St. S.
Cottage Grove, MN 55106

Dottie Rietow, Chair
Aggregate Resources Advisory Committee

Metropolitan Council

Review Schedule:

Environmental Assessment Worksheet for Reuter, Inc. Refuse Derived Fuel Facility

The Metropolitan Council has completed a draft EAW for Reuter, Inc. for a proposed 400-ton-per-day densified refuse-derived fuel facility in the City of Eden Prairie. The site is in an area zoned for industrial land use along the northern edge of the city on County Road 67. Reuter, Inc. has been granted a flow designation exclusion by the Council from Hennepin County's waste designation.

The following is a tentative schedule for review of the EAW.

September 12, 1985	Metropolitan Council sets public meeting date.
September 26, 1985	Public meeting.
October 12, 1985	Comment period ends.
October 22, 1985	Metropolitan Solid Waste Advisory Committee determines need for Environmental Impact Statement (EIS).
November 6, 1985	Environmental Resources Committee determines need for EIS.
November 21, 1985	Metropolitan Council determines need for EIS.

A notice of public hearing is also being published. If you have questions regarding the schedule or EAW, call John Rafferty at 291-6459.

Department of Public Safety Liquor Control Division

Outside Opinion Sought Regarding Proposed Rules Governing Liquor Control

Notice is hereby given that the State Department of Public Safety is seeking information or opinions from sources outside the agency in preparing to draft amendments to rules governing liquor and beer wholesalers and importers, retail licenses, advertising, brand labels, permits, and other trade practices covered in Minnesota Rules Chapter 7515 and statute.

The promulgation of these rules is authorized by Minnesota Statutes section Chapter 340A, which permits and requires the agency to promulgate rules to implement and enforce statutory requirements.

The State Department of Public Safety requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Department of Public Safety
Liquor Control Division
440 Nalpak Building
333 Sibley
St. Paul, MN 55101

OFFICIAL NOTICES

Oral statements will be received during regular business hours over the telephone at 612-296-6577 and in person at the above address.

All statements of information and comment shall be accepted until March 1, 1986. Any written material received by the State Department of Public Safety shall become part of the rulemaking record in the event that the rules are promulgated.

Paul J. Tschida
Commissioner of Public Safety

Office of the Secretary of State

Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is October 15, 1985.

ADVISORY TASK FORCE ON THE WOMAN OFFENDER IN CORRECTIONS has 2 vacancies open immediately for members. The task force consults with the Commissioner of Corrections regarding choice of model programs to receive funding. Review and make recommendations to the Commissioner on matters affecting women offenders. Identify problem areas and make recommendations for problem resolution. Assist the Commissioner when and where possible in seeking improved programming for women offenders. Members shall reflect a statewide geographical representation and are appointed by the Commissioner of Corrections. Members receive expenses in the same manner and amount as state employees. Meetings are held the 1st Wednesday of each month at the Dept. of Corrections. For specific information contact the Advisory Task Force on the Woman Offender in Corrections, Dept. of Corrections, 300 Bigelow Bldg., 450 North Syndicate Ave., St. Paul 55104; (612) 642-0340.

DEPARTMENT OF ECONOMIC SECURITY ADVISORY COUNCIL has 3 vacancies open immediately for labor members. The council aids the Commissioner in formulating policies and discussing problems relating to the administration of the Minnesota Employment Services law. Members are appointed by the Commissioner of the Department of Economic Security. The terms for two of these appointments will end on the first Monday of January, 1987. The other will end on the first Monday of January, 1988. Monthly meetings are held; members receive \$35 per diem plus expenses.

Minorities and women are encouraged to apply. For specific information contact the Department of Economic Security Advisory Council, James L. Haynes, 320 Bremer Tower, 7th Place and Minnesota Street, St. Paul 55101; (612) 297-2809.

ARCHITECTURE, ENGINEERING, LAND SURVEYING AND LANDSCAPE ARCHITECTURE BOARD has 2 vacancies open for: one chemical engineer member and one public member. The board licenses and regulates architects, engineers, land surveyors and landscape architects. Members are appointed by the Governor. Members must file with Ethical Practices Board; not more than one member may be from the same branch of the engineering profession. Each professional member must have 10 years experience in their profession and have been in responsible charge of work for at least 5 years. Meetings four times a year; members receive \$35 per diem plus authorized expenses. For specific information contact the Architecture, Engineering, Land Surveying and Landscape Architecture Board, 162 Metro Square Bldg., St. Paul 55101; (612) 296-2388.

ADVISORY COUNCIL ON WORKERS' COMPENSATION has 1 vacancy open for an employee member. The council studies workers compensation law and its administration and recommends changes where appropriate. Members are appointed by the Commissioner of Labor and Industry. Monthly meetings at the Space Center. Members receive \$35 per diem plus expenses. For specific information contact the Advisory Council on Workers' Compensation, Cynthia Thompson, Dept. of Labor and Industry, Space Center, 444 Lafayette Road, St. Paul 55101; (612) 297-4373.

RESOURCE CENTER ADVISORY COUNCIL has vacancies for up to 15 members open immediately for elementary and secondary art educators, representatives from post-secondary educational institutions, Department of Education, State Arts Board, Regional Arts Councils, educational cooperative service units, school district administrators, parents, and other organizations involved in arts education. The council shall include representatives from a variety of arts disciplines and from various areas of the state. The council shall advise the Board of the Minnesota School of the Arts and Resource Center about the activities of the center. Members are appointed by the Board of the Minnesota School of the Arts and Resource Center. For specific information contact the Resource Center Advisory Council, Daniel Loritz, 709 Capitol Square Bldg., St. Paul 55101; (612) 296-3271.

PUBLIC UTILITIES COMMISSION has 1 vacancy open for a non DFL member. The commission regulates the rates and operations of electric, natural gas, and telephone utilities. Acts through adjudicatory hearings, rulemaking hearings, and informal complaint resolutions. Members are appointed by the Governor and confirmed by the Senate. Members must file with Ethical Practices Board; no more than three members from the same political party. Consideration given to persons learned in the law or persons who have engaged in engineering, public accounting or property and utility valuation as well as being representatives of the general

public. Full-time position; members receive \$40,000 per year. For specific information contact the Public Utilities Commission, 780 American Center Bldg., 160 E. Kellogg Blvd., St. Paul 55101; (612) 296-7124.

WORKERS' COMPENSATION COURT OF APPEALS has 1 vacancy open for a member. Must be learned in the law. Must be selected on the basis of experience with and knowledge of workers' compensation and workers' compensation law of Minnesota. The court of appeals has appellate jurisdiction on all workers compensation claims, and original jurisdiction on peace officers dependent claims. Members are appointed by the Governor and confirmed by the Senate; serve 6 year terms. Members must file with Ethical Practices Board. Full time position; members receive \$54,450 per year. For specific information contact the Workers' Compensation Court of Appeals, M.E.A. Bldg., 55 Sherburne Ave., St. Paul 55103; (612) 296-6562.

MINNESOTA COUNCIL FOR THE HEARING IMPAIRED has 7 vacancies open immediately for members. At least 4 of the members must be hearing impaired. Members are appointed by the Commissioner of Human Services. Terms are staggered. Members receive \$35 per diem except for full time state employees or full time employees of political subdivisions of the state shall not receive the \$35 per diem. Quarterly meetings. The council shall advise the Commissioner on policies, programs, services affecting hearing impaired citizens; create public awareness of needs and potential of hearing impaired people; and to provide the Commissioner with a review of programs. For specific information contact the Minnesota Council for the Hearing Impaired, Mark Prowtzke, Deaf Services Division, Dept. of Human Services, 4th Floor Centennial Bldg., 658 Cedar St., St. Paul 55155; (612) 297-1872 V/TDD.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-6152. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration Procurement Division

Commodities Contracts and Requisitions Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
Contract	Seed	Transportation	Various	Contact buyer
79-000-49403	Weather Radar System	Transportation	Various	Contact buyer
07-700-35550	Janitorial Services	Public Safety	Minneapolis	Contact buyer
29-000-38384	Drilling Observation Wells	Natural Resources	Various	Contact buyer
26-073-18826-2647	1985-87 Viewbook	St. Cloud State University	St. Cloud	Contact buyer
21-200-2374, 2463, 2465, 0794-10800-2526	Recon Letter, Narrative Report, Hospital Report, Application	Economic Security	St. Paul	Contact buyer
79-000-49552	Theodolites	Transportation	St. Paul	Contact buyer
02-509-46272	Purchase of Photocopy Machine	Administration— Printing & Mailing	St. Paul	Contact buyer
Rebid				
Contract	Tools, Pipe	Various	Various	\$8,000-10,000
79-000-49094	Traffic Signal Cabinets	Transportation— Electrical Services Division	St. Paul	Contact buyer

STATE CONTRACTS

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
Contract	Rubbish Disposal	MN Correctional Facility	St. Cloud	Contact buyer
43-000-06429	St. James Mine Repairs	Iron Range Resources & Rehabilitation Board—Mineland Reclamation	Calumet	Contact buyer
26-071-15768 Rebid	Purchase of Photocopy Machine	Mankato State University	Mankato	Contact buyer
Sch. 92-BG Rebid	Super Unleaded with 10% Ethanol (Gasohol)	Various	Various	Contact buyer
39-000-03950	Lease of Automobile	Governor's Office	St. Paul	Contact buyer
26-071-16030, etc.	Ellipsoidal Spotlights & Stage Lamps	Mankato State University	Mankato	Contact buyer
79-000-49513	Purchase of Personal Modular Computer System	Transportation	St. Paul	Contact buyer
Contract	Office & Stationery Supplies	Administration—Central Stores	Same	Contact buyer
26-175-06307	Resurface Tennis Courts	Southwest State University	Marshall	Contact buyer
26-074-12002	Elevator Maint.	Winona State University	Winona, Mn.	Contact buyer
Contract	Auto Car Wash Service	Various	Various	Contact buyer
02-410-46710 Rebid	Purchase of 3081 Computer Memory	Administration—Information Management Bureau	St. Paul	Contact buyer
55-000-92897	Store Fixtures	Human Services—Services for the Blind	Minneapolis	Contact buyer
27-147-4406-1791	College Catalogue 86-88	Vermilion Community College	Ely	Contact buyer
37-080-2303, 2681 11134, 02515, 46348	Mn Educational Directory	Education & Administration—MN State Documents Center	St. Paul	Contact buyer
27-152-46225-2265	College Catalog 86-88	Anoka-Ramsey Community College	Coon Rapids	Contact buyer
55-103-08632	Used Aerial Lift	Human Services—Moose Lake State Hospital	Moose Lake	Contact buyer
07-200-34690	Satellite Earth Station.	Public Safety	St. Paul	Contact buyer
26-074-10474	Purchase of Tape Drive	Winona State University	Winona	Contact buyer
26-071-15954	Hand Held Portable Transceivers	Mankato State University	Mankato	Contact buyer
Contract	Truck Lamps & Lenses	Transportation	Various	\$7,000-8,000
27-156-47327	Rubbish Disposal Normandale	Normandale Community College	Minneapolis	Contact buyer
27-000-46512	Furnish & Install Window Blinds	Lakewood Community College	White Bear Lake	Contact buyer
79-000-49583	Telephone System	Transportation	Mankato	Contact buyer
26-071-15588, etc.	Riding Lawn Tractor Mowers	Various	Various	Contact buyer
07-700-36492-2595	MN License Plate Envelope	MN Correctional Facility	St. Cloud	Contact buyer

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
78-620-25430	Building Materials	MN Correctional Facility	Stillwater	Contact buyer
37-001-10174	Demolition of Houses	Human Services—State Academy for Blind	Faribault	Contact buyer
26-071-15913	Supply and Install Aluminum Seat Planks	Mankato State University	Mankato	Contact buyer
27-156-47324	Concrete Repair Contract	Normandale Community College	Bloomington	Contact buyer
29-000-38466	Wood Posts	Natural Resources	St. Paul	Contact buyer
79-000-49488	Standard Mast Arms	Transportation	St. Paul	Contact buyer
55-103-03257 Rebid	Deaireator	Human Services—Moose Lake State Hospital	Moose Lake	Contact buyer
78-760-02023	Rubbish Disposal	MN Correctional Facility	Red Wing	Contact buyer

Contact 296-6152 for referral to specific buyers.

Department of Corrections

Request for Proposals to Purchase Computer Assisted Instruction Micro-Computer Software and Hardware

The Department of Corrections has issued a Request for Proposals (RFP) for the purpose of furnishing micro-computer based "Computer Assisted Instruction" (CAI) software and hardware to be utilized in the Academic and Vocational Education Program at the Minnesota Correctional Facility in Stillwater, Minnesota, an adult male maximum security institution.

It is presently anticipated that a total of 30 computer stations will be purchased and deployed according to the following general specifications of the CAI needs of selected inmate students:

- | | |
|---|------------|
| 1) Adult Basic Educ—Grades 1-4 Academic & Living Skills | 5 Stations |
| 2) Adult Basic Educ—Grades 4-8 Academic & Living Skills | 8 Stations |
| 3) General Educ Development—Grades 8-12 Read, Math, Lang | 4 Stations |
| 4) Vocational—Careers, Read/Math, Welding, Building Trade | 4 Stations |
| 5) Individual Study—Academic, Health, Music, Computer Pgm | 4 Stations |
| 6) Minimum Security Unit—Academic, Coping Skills, Careers | 3 Stations |
| 7) Protective Custody Unit—Academic, GED, Careers, Typing | 2 Stations |

A total of \$57,143.00 in funding is available for the acquisition of software and hardware through a one-time Federal grant awarded to corrections from the National Institute of Corrections. An objective of this grant project is that of surveying currently marketed software—and corresponding compatible hardware—intended to address the needs of the above defined student clientele. The DOC anticipates that differing brands of software and varying makes/models of hardware will be proposed; consequently, there eventually may be several purchase orders awarded by the State.

Proposals may be offered for software only, hardware only, or as combination software and hardware packages. Primary consideration will be that of software applicability, comprehensiveness, and utility. Secondary consideration will be that of hardware reliability/servicing, expansion/upgrading, and compatibility with the software.

The deadline for the receipt by corrections of submitted proposals is 2:00 p.m. Tuesday, October 15, 1985. It is expected that the selection of proposals would be made by Thursday, October 31, 1985. Proposers should be available during the period of October 16-31, 1985, to respond to questions or requests for demonstrations or information.

Copies of the RFP and further information can be obtained from Dennis C. Anderson, Grants Administrator, Minnesota Department of Corrections, 300 Bigelow Building, 450 North Syndicate Street, St. Paul, Minnesota 55104. Telephone inquiries may be made by calling (612) 642-0218 during the hours of 7:30 a.m. through 4:00 p.m. weekdays.

STATE GRANTS

Department of Energy and Economic Development

Technical Assistance Program Applications Sought

The Development Resources Division of the Minnesota Department of Energy and Economic Development (MNDEED) is soliciting applications for direct technical assistance from Minnesota cities and counties. The purpose of this program is to increase local economic development skills and create permanent jobs. Delivery of technical assistance will begin October 1, 1985, with completion of approximately 76 projects by June 30, 1986. MNDEED will not underwrite any specific project costs, but will provide 25-40 hours of staff assistance. Project activities could include, but need not be limited to, the following:

1. Leadership development
2. Community needs assessment
3. Initiation of a local development corporation
4. Assistance completing a Star City requirement
5. Retail Market or Labor Market Studies
6. Other projects of importance to the locality

Application packets are available upon request from Harry Rosefelt, Director of Development Resources at the Minnesota Department of Energy and Economic Development. Technical assistance request forms must be returned by 4:00 p.m. October 15, 1985, to MNDEED; please use the address listed below:

Harry Rosefelt
Technical Assistance Program
Development Resource Division
Minnesota Department of Energy
and Economic Development
900 American Center
150 East Kellogg Blvd.
St. Paul, MN 55101

Minnesota Department of Health Maternal and Child Health Division

Request for Proposals to Provide Continuing Education

Services for Children with Handicaps (SCH), the Crippled Children's Services agency in Minnesota, seeks to improve the health of children with diabetes by assuring the availability of up-to-date health care services for these children in the State of Minnesota.

Therefore, SCH is requesting a proposal from a health care and education organization or facility to assist SCH in providing continuing education programs to accomplish its goal by means of a technical services contract.

The contractor's duties shall be to provide a nurse practitioner, nutritionist and pediatrician skilled in the understanding and clinical management of juvenile diabetes mellitus. This team will provide diabetes continuing education programs for physicians/hospital staffs in six (6) regions of the State. These programs shall include the following, at minimum:

1. An update on diabetes management and research.
2. The definition of optimal health care plans for management of diabetes in children.
3. A discussion of resources available to assist primary care physicians with the health care of children with diabetes.
4. The provision of appropriate written educational materials to participants in the programs.
5. The provision of a report to the State listing the number of participants at each program session and summarizing participant's evaluation of the sessions.

The total obligation of the State for all compensation and reimbursements to contractor shall not exceed \$14,525.

Proposals shall be submitted to Alpha Adkins, Section Chief, Services for Children with Handicaps, 717 Delaware Street S.E., P.O. Box 9441, Minneapolis, Minnesota, 55440, by October 14, 1985. The contract period will extend from November 1, 1985 through June 30, 1986.

Department of Jobs and Training Division of Vocational Rehabilitation

Request for Proposals to Establish Two Independent Living Centers

The Division of Vocational Rehabilitation is requesting proposals to establish two new "Centers for Independent Living" at approximately \$75,000 as authorized by the Rehabilitation Act of 1978, Public Law 95-602, Title VII, Section 711, Part B and Minnesota Statutes 129A.01 (h) and 129A.10, Section 2, Subdivision 1.

Centers for Independent Living are private non-profit organizations governed by a board of directors having a majority of persons who are disabled. Also, 50 percent of the staff of the centers must be disabled persons.

The Centers for Independent Living must provide intake counseling, peer counseling, information and referral on attendant care, advocacy, and housing and transportation assistance. The Centers may also provide other services to promote Independent Living.

For more information, contact Scott Rostron, Acting Coordinator, Independent Living Program at 612-296-5085. All proposals must be submitted by November 8, 1985.

Department of Labor and Industry

Request for Qualifications for Management Training Contract

The Department of Labor and Industry requests statements of qualifications from established business management programs to assist the agency in general management training.

The proposed program would be offered "in-house" and provide an overview of general management functions and processes such as operations management, managerial economics, forecasting, finance, personnel management, marketing, training and development.

Institutions desiring consideration should submit a letter of intent and descriptive materials by 4:00 p.m., Friday, September 27, 1985, to:

Dr. John Mirocha
Manager, Organizational Development
Minnesota Department of Labor and Industry
444 Lafayette Road
St. Paul, Minnesota 55101

Department of Transportation

Goals for Disadvantaged and Women's Business Enterprises for Federal Fiscal Year 1986

The Minnesota Department of Transportation (Mn/DOT) has established a goal of 10% for disadvantaged business enterprises (DBE) and a goal of 2% for women business enterprises (WBE) for all modes of transportation for federal fiscal year 1986 (October 1, 1985, through September 30, 1986).

The Surface Transportation Assistance Act of 1982 required a 10% DBE goal. WBE goals were not required by the act; however, Mn/DOT has established a WBE goal of 2% and is committed to provide opportunities for both disadvantaged business enterprises and women business enterprises.

The department's DBE/WBE Plan is available for public inspection during normal business hours (8:00 a.m. to 4:00 p.m.) at Mn/Dot Central Office, Room B20N, Transportation Building, John Ireland Boulevard, St. Paul, Minnesota 55155, for 30 days following the date of this notice. Mn/DOT is open for public comment regarding the DBE and WBE goals for 45 days from the date of this notice. The comments are for informational purposes only. Please respond to:

The Minnesota Department of Transportation
EEO Contract Management Office
Room B20N
St. Paul, Minnesota 55155

STATE GRANTS

In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grant funds available through any agency or branch of state government. Although some grant programs specifically require printing in a statewide publication such as the *State Register*, there is requirement for publication in the *State Register* itself.

Agencies are encouraged to publish grant notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

Department of Energy and Economic Development Community Development Division

Application Deadline for 1986 Competitive Small Cities Grants

The Department announces that the application deadline for 1986 competitive grants under the Small Cities Development Program is January 31, 1986. As defined by the administrative rules of 10 MCAR § 1.505, competitive applications include single-purpose housing or public facilities and comprehensive grant applications. For further information, contact:

Robert F. Benner
DEED/Community Development Division
9th Floor American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
(612) 297-2515

Department of Energy and Economic Development Community Development Division

Juvenile Justice Grants Available

The Minnesota Juvenile Justice Advisory Committee and the Department of Energy and Economic Development announce the availability of \$150,000 for Youth Intervention Projects to begin January 1, 1986, and end December 31, 1986. Priority will be given to programs currently funded by the Youth Intervention Bill. Applications must be submitted before November 1, 1985.

Program information may be obtained by contacting:

Steve Gustafson
Justice Grant Program
Community Development Division
Department of Energy and Economic Development
8th floor
American Center Building
150 E. Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-8243

NON-STATE PUBLIC CONTRACTS

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector.

It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of project and tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact the editor for further details.

City of Richfield

Request for Proposals to Obtain Computer Software and Equipment

NOTICE IS HEREBY GIVEN that sealed bids will be received by the City of Richfield until 11:30 a.m. CDT on Monday, October 7, 1985, and then will be publicly opened and read aloud.

Proposals are being requested on computer software and equipment in accordance with specifications on file in the Office of the City Desk at 6700 Portland Avenue South, Richfield, Minnesota, 55423. All bids shall be on forms on file in the Office of the City Clerk, 6700 Portland Avenue South, Richfield, Minnesota, which will be furnished free to each bidder upon their request. Requests for specifications and proposal forms should be directed to the Data Processing Division, City of Richfield, 6700 Portland Avenue South, Richfield, Minnesota, 55423.

All bids must be sealed and marked "Proposal Form: Computer Software and Equipment" and addressed to the City of Richfield. Each bid shall be accompanied by a certified check, cashier's check or bid bond in the amount of five percent (5%) of the total bid price and made payable to the City of Richfield.

The right is reserved to reject any or all bids or parts of bids and to waive informalities therein. Bids may be rejected for any alterations or erasures.

Thomas P. Ferber, City Clerk

SUPREME COURT CALENDAR

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning dates, locations, cases, etc., should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 612-296-2581.

OCTOBER, 1985

MONDAY, SEPTEMBER 30, 1985

84-463 HOFFMAN, WILLIAM CHARLES, In Re: Petition for the Discipline of (Attorney: Wernz, Wm. J., Dir. of Lawyers Prof's Responsibility) (Opposing Counsel: Hoffman, William Charles). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Petition for Disciplinary Action.

Do the referee's findings and conclusion warrant his recommendation that Respondent be suspended for at least one year? [As in Reply Brief of Dir. of Lawyers Prof'l Responsibility]

84-1890 STATE OF MINNESOTA (Attorney: Foley, Thomas, County Attorney and Steven C. DeCoster, Ass't) vs. GUSTAFSON, HAROLD ALLAN (Attorney: Russett, Steven P.). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Judgement Ramsey County.

Did the trial court, in its discretion, properly order a joint trial of the two defendants?

Were the prosecution's certificates properly filed because of genuine fear that witnesses were threatened and in danger?

Was evidence of collateral acts by State's witnesses properly excluded?

Were the identification procedures properly found not to be suggestive or conducive to misidentification of the defendants (Appellant)?

Were the Appellants afforded a fair trial?

Did the evidence support the verdicts of guilt? [All issues as in Respondent's brief]

SUPREME COURT CALENDAR

85-1 STATE OF MINNESOTA (Attorney: Foley, Thomas, County Attorney and Steven C. DeCoster, Ass't) vs. HATH-AWAY, GUY JAMES (Attorney: Cromett, Michael F.) 9:00 a.m. State Capitol, St. Paul. ORIGIN: Judgement Ramsey County.

Did the trial court, in its discretion, properly order a joint trial of the two defendants?

Were the prosecution's certificates properly filed because of genuine fear that witnesses were threatened and in danger?

Did the trial court properly exclude evidence of collateral acts by State's witnesses?

Were the identification procedures properly found not to be suggestive or conducive to misidentification of the Appellants?

Were the defendants (Appellants) afforded a fair trial?

Did the evidence support the verdicts of guilt? [All issues as in Respondent's brief]

TUESDAY, OCTOBER 1, 1985

84-1065 LEWIS, CAROLE, ET AL, Respondents (Attorney: Geraghty, O'Loughlin, et al, and Timothy R. Murphy) vs. EQUITABLE LIFE ASSURANCE SOC. OF THE UNITED STATES (Attorney: Briggs & Morgan and John R. Kenefick). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Is an employer who terminates an employee liable for "publication" of a defamatory statement when the employee tells a prospective employer the reason for the termination?

To prove the truth of an employee's statement of the reasons for termination, must an employer show not only that the statement accurately sets forth the reasons for termination, but also that the employer was justified in terminating the employee?

Did the trial court properly instruct the jury regarding the "qualified privilege" applicable to communications in the employee-employer setting?

Did the trial court properly define "malice" for the jury and was there sufficient clear and convincing evidence to support the jury's finding that Appellant acted with malice and willful indifference with respect to the publication of a defamatory statement?

With respect to plaintiffs' claim for punitive damages, did the trial court correctly exclude reports submitted by other Equitable employees, submit the claim to the jury after it was dismissed by Judge Godfrey, and instruct the jury on the criteria to be considered in awarding punitive damages?

Did the provisions of Equitable's employee handbook create a contract of employment with plaintiffs, preventing discharge "at-will"? [Issues as in brief of Appellant, Equitable Life]

84-1329 & 84-1433 RUSTHOVEN, ANDREW JR. (Attorney: Kallestad, John) vs. COMMERCIAL STANDARD INSURANCE CO. (Attorney: Arthur, Chapman, et al, and Theodore J. Smetak). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Should the uninsured motorist coverages available under a policy of automobile insurance issues by Commercial Standard Insurance be stacked to provide coverage for each vehicle insured under the policy at the time of the accident? [As in Appellant's brief]

84-440 ROCKNE, DONALD, In Re: the Application for the Discipline of (Attorney: Wernz, Wm. J., Dir. of Lawyers Professional Responsibility) (Opposing Counsel: Rockne, Donald). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Order to Show Cause.

Application for Discipline.

WEDNESDAY, OCTOBER 2, 1985

84-1452 HOME INSURANCE CO. (Attorney: Chadwick, Johnson & Condon and George C. Hottinger) vs. AMERICAN TRAILER SERVICE, INC. (Attorney: Wiese and Cox, Ltd. and Paul G. Neimann). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Does the exclusion for claims arising out of the named insured's products unambiguously exclude coverage for property damage which a third party alleges was caused by Appellant's negligent failure to provide installation instructions for a product which it sold? [As in brief of Respondent, American Trailer]

Does the completed operations exclusion unambiguously exclude coverage for property damage which a third party alleges was caused by Appellant's negligent failure to provide installation instructions for a product which it sold? [As in brief of Respondent, American Trailer]

Does the insurance policy issued by Respondent to Appellant impose a duty upon the Respondent to provide Appellant with a defense in a separate proceeding? [As in brief of Respondent, American Trailer]

SUPREME COURT CALENDAR

85-251 NORTHWESTERN TERRITORIES GOLD AND SILVER EXCHANGE, INC. (Attorney: Hertogs, Fluegel, et al, and George L. May) vs. COMMISSIONER OF REVENUE (Attorney: Neher, James W., Special Assistant Attorney General, Dept. of Revenue). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Order Tax Court.

Did the Tax Court correctly construe the language "taken in good faith" in its consideration of relator's acceptance of over 200 resale exemption certificates pursuant to Minn. Stat. 297A.09 and .10?

Did Respondent, Commissioner of Revenue, meet his burden of proof of showing that the resale exemption certificates in question were not "taken in good faith" by relator?

Did members of Dept. of Revenue engage in improper and illegal rule-making and in later adopting the criteria upon which the department based its determination that the resale exemption certificates taken by relator were invalid?

Was the Tax Court's decision clearly erroneous?

Is the relator the proper party upon which to impose liability for payment of the disputed amount of sales tax? [Issues as in brief of Relator, Northwest Territories]

THURSDAY, OCTOBER 3, 1985

84-1443 BALLANGER, RICHARD, Trustee for Heirs of Richard M. Ballanger (Attorney: Carson & Clelland and William G. Clelland) vs. TOENJES, ROBERT M. (Attorney: Mahoney, Dougherty & Mahoney and Patrick J. Saurer). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Is the question of stacking, which involves the interpretation of an insurance policy's terms and exclusions, a question of coverage upon which a hearing de novo must be granted? [As in brief of Appellant, Toenjes]

Is the exclusion in the uninsured motorist endorsement in Respondent's parents' policy valid when it denies benefits and prohibits stacking?

When there exist multiple claims against a tortfeasor, and the insured chooses to settle with the tortfeasor for less than the available policy limits, is the insured precluded from recouping the "gap" from the underinsurance carrier? [As in brief of Appellant, Toenjes]

85-1007 HENNING NELSON CONSTRUCTION CO. (Attorney: Meyer, Nelson & Miller and Gary J. Meyer) vs. FIREMAN'S FUND AMERICAN LIFE INSURANCE CO. (Attorney: Cosgrove & Hanson and Hugh J. Cosgrove). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Was Respondent's claim barred by the 12-month limitation in Appellant's insurance policy?

MONDAY, OCTOBER 7, 1985

84-1234 E.T.O., Inc., d.b.a. "Fergie's Bar" (Attorney: O'Brien, Ehrick, et al and Terence L. Maus) vs. TOWN OF MARION, et al (Attorney: Dingle, Suk, et al and Charles J. Suk). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Is the sale of intoxicating liquor prohibited at Appellant's business location by Minn. Stat. 340.14, subd. 3(7)?

Is the locational sale restriction contained in Minn. Stat. 340.14, subd. 3(7) by its terms inapplicable to the Appellant's place of business?

Should the locational sale restriction contained in Minn. Stat. 340.14 subd. 3(7) be construed as inapplicable to the Appellant's place of business, which was improved, licensed, opened and in operation for over one year prior to the opening of the Burr Oak school building to house Rochester Area Vocational Technical Institute Programs?

Is the locational sale restriction contained in Minn. Stat. 340.14, subd. 3(7), as construed by the Respondents, unconstitutionally vague?

Does that restriction, as construed by the Respondents, violate the Fourteenth Amendment requirement of equal protection of the law?

Should Respondent Kuehn have participated in the Marion Town Board's decision on whether to approve or oppose the issuance of an intoxicating liquor license for 1984 to the Appellant's place of business? [All issues as stated in Appellant's and Respondent's briefs]

84-1060 ROHLING, MABEL M. (Attorney: Schmitt, Johnson & Marso and Thomas A. Janson) vs. ROHLING, CARL B. (Attorney: Hoolihan & Neils and James W. Hoolihan). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Can pension and profit sharing retirement funds, received and spent for ordinary living purposes four years prior to the dissolution of marriage, be recaptured and treated as a currently existing marital asset?

SUPREME COURT CALENDAR

Can the money used to purchase personal property, and the purchased personal property, both be treated as a currently existing marital asset?

Was it an abuse of the Trial Court's discretion to defer Appellant's receipt of his share of the marital assets from sale of the homestead for fifteen years? [Issues as in brief of Appellant]

TUESDAY, OCTOBER 8, 1985

85-1161 STATE OF MINNESOTA (Attorney: Foley, Thomas, County Attorney and Steven C. DeCoster, Assistant) vs. SOTO, JOHN (NMN) (Attorney: Cooper, Steven W. and Salvador M. Rosas). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Order Ramsey County.

Is causing the death of an unborn child, who is 36-38 weeks in gestational age and clearly viable (capable of surviving outside the mother's womb), by driving in a negligent manner while intoxicated—or with over .10 of alcohol—constitutes the crime of criminal vehicular operation resulting in death as defined by Minn. Stat. 609.21, subd. 1?

Should the jury be allowed to decide whether the elements of the crime of criminal vehicular operation resulting in death have been proved beyond a reasonable doubt?

WEDNESDAY, OCTOBER 9, 1985

84-1684 SHAPIRO, LEONARD U., in the Matter of the Estate of (Attorney: Oppenheimer, et al, and Lehan J. Ryan for Appellant, Trustee) (Opposing Counsel: Faegre & Benson and Robert W. Oelke, for Respondent, Estate). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Is the United States estate tax a deduction to be taken against the estate as a whole before determination of the statutory share of a surviving spouse under Minn. Stat. 525.16? [As in brief of Appellant]

Should the surviving spouse's share of Decedent's estate be reduced on account of the payment of U.S. estate taxes when the surviving spouse renounced and refused to accept the provisions of Decedent's Last Will and Testament and when Decedent's Co-Personal Representatives have claimed a full marital deduction when calculating and paying the U.S. estate tax due on the value of Decedent's estate? [As in brief of Respondent]

84-863 THELEN, MARGARET (Attorney: Oppenheimer, et al, and Robert E. Cattnach) vs. BRAINERD NATIONAL BANK (Attorney: Breen & Person and John W. Person). 9:00 a.m. State Capitol, St. Paul. ORIGIN: Court of Appeals.

Did Appellant, Brainerd National Bank, comply with the requirements of statutory redemption?

Did the trial court have any jurisdictional basis to vacate an Order issued pursuant to a proceeding subsequent to original Torrens registration on the grounds of excusable neglect? [Issues as in brief of Appellant, Brainerd National Bank]

SUPREME COURT DECISIONS

Decisions Filed Friday, September 13, 1985

Compiled by Wayne O. Tschimperle, Clerk

C9-85-422 Vern Bagstad v. Old Peoria Company, Inc., Relator and American Mutual Insurance Companies, Relator, and Bankers Life Company. Worker's Compensation Court of Appeals.

Affirmed. Per Curiam.

Orders

C1-85-1368 In Re: the Application for the Discipline of John J. Flanagan. Supreme Court.

Suspended. Amdahl, C.J.

C6-85-1544 In Re: the Application for the Discipline of Marlon O. Haugen. Supreme Court.

Publicly Reprimanded. Amdahl, C.J.

C1-85-1550 In Re: the Application for the Discipline of Ronald O. Ylitalo. Supreme Court.

Publicly Reprimanded. Amdahl, C.J.

C9-82-1491 In Re: the Application for the Discipline of Thomas E. Bauer. Supreme Court.

Publicly Reprimanded. Amdahl, C.J.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota Tax Court Regular Division

Richard H. Thom, Appellant, vs. Commissioner of Revenue, Appellee, Docket No. 4141

Findings of Fact, Conclusions of Law and Order for Judgment Dated September 13, 1985

The above matter was heard by the Minnesota Tax Court, Judge Earl B. Gustafson presiding, on August 29, 1985 at the McLeod County Courthouse in Glencoe, Minnesota.

Richard H. Thom, appellant, appeared pro se.

Amy Eisenstadt, Special Assistant Attorney General, appeared for appellee.

The Court, having heard and considered the evidence adduced at trial, having reviewed the files and records herein and being fully advised, now makes the following:

Findings of Fact

1. Appellant timely filed his 1978 federal and state income tax returns.
2. In 1981 the Internal Revenue Service issued a notice of deficiency assessing additional tax and appellant appealed to the U.S. Tax Court.
3. Appellant's case was tried in U.S. Tax Court in 1982, but was settled between appellant and the IRS before judgment.
4. Based upon the report of settlement reached by the parties the appellee, Commissioner of Revenue, issued an Order dated February 2, 1984 pursuant to Minn. Stat. § 290.56, which made similar adjustments to appellant's 1978 Minnesota income tax return.
5. Deductions claimed by appellant on his 1978 return of \$450.00 for charitable contributions and \$879.00 for travel expenses were disallowed by appellee, resulting in the assessment of additional tax against appellant in the amount of \$159.00 plus interest. Appellant appealed to this Court.
6. Appellee subsequently mailed to appellant a "Proposed Change" in appellant's 1978 tax, allowing appellant's charitable contribution deduction.
7. The only issue remaining is whether appellant is entitled to a deduction of \$879.00 for travel expenses.
8. The Court finds that the disputed \$879.00 for travel expenses is a business related expense and appellant is entitled to this deduction.

Conclusions of Law

1. The Order of the Commissioner dated February 2, 1984 relating to appellant's individual income tax for the year 1978 is hereby reversed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

September 13, 1985

By the Court,
Earl B. Gustafson, Judge
Minnesota Tax Court

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