

36. MARCH 3

STATE REGISTER

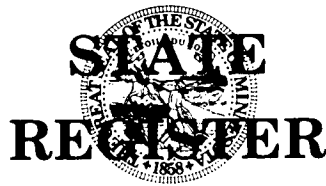
STATE OF MINNESOTA



VOLUME 10, NUMBER 36

March 3, 1986

Pages 1769-1832



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			
37	Monday February 24	Monday March 3	Monday March 10
38	Monday March 3	Monday March 10	Monday March 17
39	Monday March 10	Monday March 17	Monday March 24
40	Friday March 14	Friday March 21	Monday March 31

*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, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

The *State Register* is published by the State of Minnesota, Minnesota Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 14.46. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$3.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

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 April 8, 1985 are published in the Minnesota Rules 1985. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after April 8, 1985 will be included in a supplement scheduled for publication in Spring, 1986. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the State Register but are generally not published in the Minnesota Rules 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:

Table with 2 columns: Issue numbers and cumulative listings. Includes: Issues 1-13, inclusive; Issues 14-25, inclusive; Issue 26, cumulative for 1-26; Issues 27-38, inclusive; Issue 39, cumulative for 1-39; Issues 40-51, inclusive; Issue 52, cumulative for 1-52.

The listings are arranged in the same order as the table of contents of the Minnesota Rules 1985.

MINNESOTA RULES AMENDMENTS AND ADDITIONS

NOTE: This listing includes all proposed and adopted rules printed in this issue except emergency rules and errata for this issue. Please see those sections for the appropriate rule numbers.

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MINNESOTA RULES AMENDMENTS AND ADDITIONS

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PROPOSED RULES

Pursuant to Minn. Stat. of 1984, §§ 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 Rule Governing Authorization to Issue Medical Malpractice Insurance

Notice of Hearing

Notice is given that a public hearing will be held pursuant to Minnesota Statute Section 14.14, subdivision 1 (1984), in the above-entitled matter in the Large Hearing Room, 500 Metro Square Building, St. Paul, Minnesota 55101, on April 8, 1986, at 9:00 a.m. and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of these proposed rules by submitting either oral or written data, statements, or arguments. Statements, briefs or written material may be submitted within the comment period described in this notice without appearing at the hearing by sending them to Administrative Law Judge, Peter Erickson, 4th Floor, Summit Bank Building, 310 4th Avenue South, Minneapolis, Minnesota 55415, telephone (612) 341-7606. The rule hearing procedure is governed by Minnesota Statute Section 14.14-14.20 and by Minnesota Rules Parts 1400.0200-1400.1200, as amended (Amended Rules published at 9.SR.2276). Questions regarding procedure may be directed to the Administrative Law Judge at the above-listed address.

The Commissioner is seeking to determine if there is medical malpractice insurance available in the voluntary market for either physicians, hospitals or other types of health care providers. Availability of coverage for hospitals, nursing homes and perfusionists as well as any other groups or persons unable to obtain this type of coverage will be dealt with at the hearing. If it is determined that such insurance is not available, the Commissioner will issue a rule authorizing the Joint Underwriting Association, established by Minnesota Statutes Chapter 62F, to issue medical malpractice insurance on a primary basis to hospitals, nursing homes, perfusionists and such others as are unable to obtain the coverage.

The Department has elected to consider the authorization to issue medical malpractice insurance by the Joint Underwriting Association to be a rule and is accordingly proceeding pursuant to Chapter 14 of Minnesota Statutes in regard to the rule.

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Department of Commerce and is available at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all of the evidence and arguments which the Department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Department of Commerce or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Pursuant to Minnesota Statute Section 14.155, subdivision 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 greater detail in the Statement of Need and Reasonableness.

PROPOSED RULES

All interested or affected persons will have an opportunity to participate by presenting oral and/or written evidence at the hearing. Questioning of agency representatives or witnesses, and of interested persons making oral statements will be allowed in order to explain the purpose or intended operation of the proposed rules, or a suggested modification, or for other purposes material to the evaluation or formulation of the proposed rules. As a result of the hearing process, the proposed rule may be modified.

Written material may be submitted to the Administrative Law Judge and recorded in the hearing record for five working days after the public hearing ends. The comment period may be extended for a longer period not to extend 20 calendar days if ordered by the Administrative Law Judge at the hearing. Comments received during the comment period will be available for review at the Office of Administrative Hearings. Following the five to twenty day comment period, there will be a three day period in which the Commissioner and interested persons may respond in writing to any new information submitted. During the three day period, the agency may indicate in writing whether there are any amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during the three day period. The written responses will be added to the record of the proceeding.

Notice: Any person may request notification of the date on which the Administrative Law Judge's report will be available after which date the Department of Commerce may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of the State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Department of Commerce at any time prior to the filling of the rules with the Secretary of State.

Minnesota Statutes chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statute Section 10A.01, subdivision 11 as an individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155 telephone (612) 296-5615.

One free copy of this notice and the proposed rules may be obtained by contacting Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 296-5689. Additional copies will be available at the door on the date of the hearing.

February 10, 1986

Michael A. Hatch
Commissioner of Commerce

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

Rule as Proposed

2791.0100 AUTHORIZATION TO ISSUE MEDICAL MALPRACTICE INSURANCE.

Pursuant to Minnesota Statutes, section 62F.04, the joint underwriting association is hereby authorized to issue medical malpractice insurance on a primary basis to physicians, hospitals, and other health care providers who are unable to obtain medical malpractice insurance coverage in the voluntary market. Those classes of physicians, hospitals, and other health care providers who are unable to obtain medical malpractice insurance and whom the joint underwriting association is authorized to issue medical malpractice insurance are:

- A. physicians;
- B. certified nurse-midwives;
- C. licensed psychologists and licensed consulting psychologists; ~~and~~
- D. licensed chemical dependency treatment organizations and licensed half-way houses;
- E. hospitals;
- F. nursing homes; and
- G. perfusionists.

Department of Health Department of Environmental Health

Proposed Rules Relating to the Medication Delivery Program

Notice of Proposed Adoption of Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Health proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is contained in Minnesota Statutes, section 144.05(b) and (c) (1984).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Pauline M. Bouchard, Assistant Director
Division of Environmental Health
Minnesota Department of Health
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
(612) 623-5320

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Ms. Bouchard upon request.

The adoption of this rule will require the expenditure of public moneys by local public bodies. The Department's reasonable estimate of the total cost to all local bodies in the state to implement the rule for the two years immediately following adoption of the rule is contained in the Department's Statement of Need and Reasonableness.

The proposed rule will have an impact on small businesses. The Department's description of the probable quantitative and qualitative impact of the proposed rule upon affected small businesses, as well as the methods for reducing the impact of the rule considered by the Department, are contained in the Department's Statement of Need and Reasonableness.

The Commissioner of Finance has approved the fees set by these rules. The document containing the Commissioner's approval is attached to the Department's Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Ms. Bouchard at the above address.

February 14, 1986

Sister Mary Madonna Ashton
Commissioner of Health

Rules as Proposed (all new material)

LODGING HOUSE FACILITIES WITH MEDICATION DELIVERY PROGRAM

4625.5101 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 4625.5101 to 4625.5160, the terms in subparts 2 to 11 have the meanings given them.

Subp. 2. **Controlled substance.** "Controlled substance" means a drug that is classified and regulated by the United States Drug Enforcement Agency in one of five schedules based on its perceived abuse potential.

Subp. 3. **Delivery.** "Delivery" means providing assistance with medications and includes reading the label, opening and closing a medication container, putting a pill or capsule in the resident's hand, measuring a prescribed amount of an oral medication, instilling eye, ear, or nose drops, and applying topical medication.

Subp. 4. **Facility.** "Facility" means a lodging house as defined in Minnesota Statutes, section 157.01 which is licensed to operate as a lodging house either by the state or a local health agency.

Subp. 5. **Legend drug.** "Legend drug" means a drug that is required by federal law to bear the following statement, "Caution: Federal law prohibits dispensing without prescription."

Subp. 6. **Health care professional.** "Health care professional" means a person licensed by the state as a physician or registered as a nurse or physician's assistant.

Subp. 7. **Local health agency.** "Local health agency" means a local health agency to which the commissioner of health has delegated the responsibility to license and regulate lodging houses in accordance with Minnesota Statutes, chapter 145.

Subp. 8. **Medication.** "Medication" means any substance used internally or externally in the care, treatment, lessening, or prevention of disease in humans. Medication includes both over-the-counter drugs if prescribed by a physician and legend drugs.

Subp. 9. **Medication delivery program or MDP.** "Medication delivery program" or "MDP" means the delivery of prescribed medications to one or more residents of a facility by staff of the facility.

Subp. 10. **Operator.** "Operator" means a person at a facility who is designated by the facility owner to be responsible for and in charge of the MDP program at a facility.

Subp. 11. **Over-the-counter drug.** "Over-the-counter drug" means medication that may be obtained without a prescription.

4625.5110 APPLICABILITY.

Subpart 1. **Licensing.** A facility must be specially licensed in accordance with parts 4625.5101 to 4625.5160 by the commissioner of health or a local health agency before the MDP service can be provided.

Subp. 2. **Staff assistance allowed.** Parts 4625.5101 to 4625.5160 allow for selected staff of a facility to assist a resident of the facility in taking medications that have been prescribed by a physician.

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

Subp. 3. **Staff assistance not required.** Parts 4625.5101 to 4625.5160 apply to facilities that provide staff assistance in the delivery of prescribed medications, except when:

- A. all residents self-medicate and do not need assistance;
- B. the drugs being taken by a resident have not been prescribed;
- C. the residents are assisted by persons other than staff at the facility, such as a relative, friend, or health care professional.

Subp. 4. **Request for staff assistance.** Medication assistance provided by facility staff shall be provided either at the request of the resident or a licensed health care professional.

4625.5111 LICENSE AND FEES.

Subpart 1. **Application.** Application for the MDP license shall be made on forms provided by the commissioner and a license shall be granted if the commissioner determines, based upon a facility inspection, a review of the applicant's qualifications and the residents' medication needs, that the facility complies with parts 4625.5101 to 4625.5160. The application shall include a copy of the MDP plan prepared in accordance with part 4625.5120, a list containing the names of staff persons who have met the conditions prescribed in part 4625.5150, and an application fee of \$50. All other provisions regarding license application and payment of fees prescribed in parts 4625.2300 and 4625.5000 for lodging houses shall apply with regard to the MDP license fee. The license of a facility with an approved MDP must have the letters MDP plainly written on the face of the license.

Subp. 2. **Fees.** A facility with a MDP shall pay annually, in addition to the fee prescribed in part 4625.5000, a \$50 fee to cover the cost of administering the MDP licensing activity. A local health agency to which licensing authority has been delegated by the commissioner of health may set its own license application and renewal fees.

4625.5115 OPERATOR RESPONSIBILITY AND AUTHORITY.

Subpart 1. **Review.** Upon registration and every three months thereafter, the operator shall review the condition of every resident to determine if the resident needs or continues to need assistance with medications. If the resident's condition has changed, the operator shall contact the prescribing physician or other health care professional who shall determine the proper course of action on behalf of the resident.

Subp. 2. **Consultation services.** The operator of a facility that does not have a health care professional on its staff may contract with such a person to provide consultation services that are needed in conjunction with the MDP.

Subp. 3. **Facility review.** The operator of a facility shall review the administration of the program at least once every three months to assure that all the provisions of parts 4625.5101 to 4625.5160 and the MDP plan are met. This review shall not be announced to the staff in advance and must include a comparison of the medication record with the amount of the prescription remaining in the container. Particular care must be taken to assure that prescriptions for controlled substances are not misused or diverted to persons for whom they were not prescribed. A written record of this quarterly review along with any steps required to correct an unauthorized practice must be kept at the facility and be available for review by the licensing inspector for two years after the review.

Subp. 4. **Compliance.** The operator of a facility is responsible for assuring compliance with all other provisions of parts 4625.5101 to 4625.5160.

4625.5120 DELIVERY OF MEDICATIONS.

Subpart 1. **Written plan.** As a condition of licensure, the operator of a facility shall develop and adhere to a written medication delivery plan acceptable to the commissioner. The plan shall be updated annually and must be on file and available for inspection. At a minimum, the plan must address each of the following provisions:

A. identification of staff who will deliver medications, methods the staff will use to supervise and monitor self-administration of medications, the self-administration of over-the-counter medications or legend drugs, or the facility's use of a combination of these medication delivery methods;

B. the requirement that the resident's physician must be consulted as to whether the resident can or cannot self-administer medications;

C. the method of storage and delivery of medications to be used by the facility;

D. control of access to the keys for locked storage;

E. procedures for recording medications that residents are taking to assure that physician's orders are met;

F. the method of refrigeration of biologicals;

G. maintenance of resident medication records; and

H. the method of monitoring delivery to assure that medications are only delivered to residents and that the residents receive the medications prescribed for them.

Subp. 2. **Prohibitions.** Except for insulin prescribed in a premeasured single dose injectible form, the delivery of vaginal or rectal suppositories or injectible medications is not allowed.

Subp. 3. **Qualification of staff.** Only a person who meets the qualifications prescribed in part 4625.5150 and who has read and is familiar with the medication delivery plan at the facility may deliver medications to residents.

4625.5121 STORAGE AND HANDLING OF MEDICATIONS.

Subpart 1. **Stock supplies.** Stock supplies of medications for delivery to residents must not be maintained in any lodging house facility.

Subp. 2. **Self-administered medications.** Residents who are capable of self-administration may keep in their rooms medications that they have obtained for their own use.

Subp. 3. **Storage.** Medications shall be kept in a locked cabinet with separate compartments or boxes for each resident's medications. Medications requiring refrigeration shall be kept in a locked container permanently attached to the inside of the refrigerator.

Subp. 4. **Delivery.** Staff may deliver medications that can be safely self-administered only to residents for whom the medication is prescribed by a physician.

Subp. 5. **Labels.** Medications shall not be maintained, delivered, or administered from containers other than individual prescription containers bearing appropriate prescription labels.

Subp. 6. **Original containers.** All medications must be kept in their original container bearing the original label with legible information stating the prescription number, name of drug, strength and quantity of drug, expiration dates of time-dated drugs, directions for use, resident's name, physician's name, date of original issue or the most recent date of a refill, and name and address of the licensed pharmacy that issued the medications.

Subp. 7. **Label information.** The facility operator shall obtain a new label containing the prescription number and name of the medication if this information is not on the prescription label or if the prescription or directions for use are changed.

Subp. 8. **Damaged labels.** Any prescription label that has been detached, is excessively soiled, or is damaged must be returned to the issuing pharmacy for relabeling. The operator shall return the prescription for relabeling if the resident is unable or unwilling to return it.

Subp. 9. **Destruction.** The operator shall immediately destroy according to part 4625.5140 the contents of any medication container that does not have an appropriate prescription label or has an illegible label.

Subp. 10. **Expiration.** Medications that have a specific expiration date must not be used after the date of expiration and must be destroyed in the manner prescribed in part 4625.5140.

Subp. 11. **Refills.** The operator shall refill a prescription if the resident is unable or unwilling to get it refilled.

4625.5130 RECORD OF MEDICATIONS.

Subpart 1. **Record.** A medication record must be maintained for each resident. All prescribed medications used by each resident must be recorded on the resident's medication record. This record must include all the information on the prescription label. Special notations must be made whenever medications are started, changed, or discontinued. A legible entry must be made on the resident's record whenever medications are delivered and must indicate whether or not they were taken. The person who delivers the medications shall initial each entry at the time of delivery. Adverse reaction to a medication, a resident's refusal to take medication, and the report to the physician required in part 4625.5160 must also be recorded and initialed. Each resident's medication record must contain a key of staff persons' names that corresponds to the staff initials used to document record entries.

Subp. 2. **Record upon leaving facility.** The operator shall give the medication record to the resident or, if applicable, to the guardian, when the resident transfers or is discharged or evicted from the facility.

Subp. 3. **Record retention.** The operator shall retain a copy of the medication record at the facility for two years after the resident has left the facility. All residents' medication records must be available for inspection by state or local health and social services department staff.

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PROPOSED RULES

4625.5140 DISPOSITION OF MEDICATIONS.

Subpart 1. **Given to resident.** If authorized by the resident's physician, medications belonging to a resident shall be given to the resident when discharged, evicted, or transferred. This must be recorded in the resident's medication record.

Subp. 2. **Destruction of unused portions.** Unused portions of any medications remaining in the facility after the death, discharge, eviction or transfer of the resident for whom they were prescribed, or any medications discontinued permanently, must be destroyed by the operator either by incineration or by flushing them into the sewer system and removing and destroying the labels from the containers. A notation of the destruction listing the date, quantity, name of medication, and prescription number must be recorded on the resident's medication record. The destruction must be witnessed and the notation signed by both persons. Whenever a controlled substance is destroyed, a copy of the certificate in part 4625.5170 must be completed and mailed in accordance with the instructions on the form. Incineration is an acceptable method of destruction if done in accordance with the rules of the Pollution Control Agency, parts 7005.0600 to 7005.0650.

4625.5150 QUALIFICATIONS AND STAFFING REQUIREMENTS.

Subpart 1. **Staff on duty.** A facility with a MDP shall have on duty at times based on the resident's medication needs, a person who meets one of the following requirements:

A. is a health care professional;

B. has a Trained Medications Administration (TMA) certificate from a Minnesota post-secondary educational institution issued jointly with the Department of Health, verifying successful completion of the medication administration program for unlicensed personnel in Minnesota; or

C. has a certificate from a Minnesota post-secondary educational institution indicating successful completion of a medication delivery course. The course curriculum must be approved by the Department of Health and must include coverage of all the following areas:

- (1) purpose and legal requirements;
- (2) general information about medications;
- (3) medical vocabulary and reading of a prescription label;
- (4) use of a standard reference manual; and
- (5) recordkeeping.

Subp. 2. **Knowledge of plan.** Every person who delivers medication shall read and be familiar with the facility's medication delivery plan.

4625.5160 ADDITIONAL LICENSEE DUTIES AND RESPONSIBILITIES.

Subpart 1. **Resident refuses medication.** When a resident refuses to take medication according to the physician's prescription, the staff person attempting to deliver the medication shall notify the physician prior to the time when the medication should again be taken.

Subp. 2. **Report of adverse reaction or medication error.** The staff person shall immediately telephone an area emergency service, for example 911, or the prescribing physician or another health care professional to report any adverse reaction to medication or any medication error, and the operator shall document and initial the adverse reaction or medication error and notification in the resident's medication record.

Subp. 3. **As needed (PRN) medications.** The staff person shall first consult with a health care professional or the prescribing physician when a resident requests a PRN medication or when the operator believes that the taking of such a medication on a particular occasion is appropriate. If the prescribing physician or health care professional approves delivery of the PRN medication, that medication may be delivered to the resident, in accordance with the facility's plan.

4625.5170 CERTIFICATE OF THE INVENTORY AND DESTRUCTION OF CONTROLLED SUBSTANCES (FORM 8-1).

We, the undersigned, certify that we have inventoried the following Schedule II through V Controlled Substances which are excess or obsolete stock and they have been destroyed in our presence this date.

RX NUMBER	DRUG	NAME	STRENGTH	QUANTITY	DATE	ADMINISTRATOR OR NURSE	PHARMACIST

Method of destruction: _____ Flushing into sewer system
_____ Incineration

Facility: _____
Address: _____

DISPOSITION OF CONTROLLED SUBSTANCES

The Drug Enforcement Administration has allowed an optional method for the disposition of Controlled Substances in long-term care facilities in Minnesota employing a consultant pharmacist. Drugs in Schedules II through V may now either be inventoried and surrendered to the D.E.A. Minneapolis Office or they may be destroyed in the facility in accordance with the following conditions.

1. All controlled substances destroyed must be destroyed in the presence of the operator or designee and either the consulting or vendor pharmacist.
2. An inventory of all controlled substances destroyed and the date and method of destruction must be submitted to the D.E.A. on a monthly basis.
3. The certificate of destruction must be furnished to the D.E.A. within 30 days from the time that the drugs were actually destroyed.
4. Mail original copy to:
Drug Enforcement Administration
219 S. Dearborn St., #1800
Chicago, IL 60604
5. A copy of the certificate of destruction with signatures shall be retained in the facility for 2 years.

NOTE: Controlled drugs should not be returned to the pharmacy for destruction or for reuse.

Department of Human Services

Proposed Rules Relating to Case Management Services to Persons with Mental Retardation

Notice of Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room D, 5th Floor, Veteran's Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota 55155 on April 3, 1986 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Bruce D. Campbell, Administrative Law Judge, Office of Administrative

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PROPOSED RULES

Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone 612/341-7602, either before the hearing or within five working days after the public hearing ends.

The Administrative Law Judge, may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings.

Following the close of the comment period, the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record.

Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, section 14.50. The rule hearing is governed by Minnesota Statutes, section 14.01 to 14.56 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedures may be directed to the Administrative Law Judge.

Minnesota Rules, parts 9525.0015 to 9525.0165 set forth the responsibilities of county boards for providing case management services to persons with or who may have mental retardation and governs the planning, development and provision of other services to persons with mental retardation.

Proposed Minnesota Rules, parts 9525.0015 to 9525.0165 apply to county boards expending money for case management or other services for persons with or who might have mental retardation.

Proposed Minnesota Rules, parts 9525.0015 to 9525.0165 include sections on county board responsibilities, diagnosis of mental retardation, standards for the assessment of individual needs, screening team responsibilities, standards for the development of individual service plans, arrangement and authorization of services, service contracts, standards for the development of individual habilitation plans, standards for monitoring of services, quality assurance, appeals of case management and related services, service development and need determination, standards for qualifications and training of case managers, and rule enforcement.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, section 256B.503 and 256B.092.

The cost to local public bodies of implementing the proposed rule changes is estimated to be \$2,960,108 for the first two years following passage of the rule. See the methodology used in estimating this cost, attached to this notice of hearing.

A fiscal note explaining the costs to local agencies of complying with the rule has been prepared according to the requirements of Minnesota Statutes, section 3.982. A free copy of the fiscal note may be obtained by contacting Sarah Koppe, Mental Retardation Division, Department of Human Services, 4th Floor, Centennial Office Building, St. Paul, Minnesota, 55155, telephone 612/297-1241.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Sarah Koppe.

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Shirley Patterson-Schue, Mental Retardation Division, Department of Human Services, 4th Floor, Centennial Office Building, St. Paul, Minnesota, 55155, telephone 612/297-4984.

NOTICE: Any person may request notification of the date on which the Administration Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than \$250, not including traveling expenses and membership dues, in any year, for the purpose of

attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone 612/296-5148.

February 13, 1986

Leonard W. Levine, Commissioner
Department of Human Services

Fiscal Note: Costs to Local Agencies

	<u>F.Y. 86</u>	<u>F.Y. 87</u>	<u>Total</u>
1. Additional Case Managers			
FTE Required	55 by 7/1/86	110 by 7/1/87	
2. Annual Cost Per Case			
Manager	\$ 29,509	\$ 30,896	
3. Total Costs	\$811,497	\$2,548,920	\$3,360,417
—Funded under waiver	\$101,437	\$ 318,615	\$ 420,052
—Funded under social services	710,060	2,230,205	2,940,365

The total costs by government source are projected as follows:

	<u>F.Y. 86</u>	<u>F.Y. 87</u>	<u>Total</u>
1. Federal	\$ 53,964	\$ 169,503	\$ 223,467
2. State	\$ 42,705	\$ 134,137	\$ 176,842
3. County/CSSA	\$714,828	\$2,245,280	\$2,960,108

The federal and state shares are the costs for case management projected to be paid under the home and community-based waiver, which are included in the Governor's 86-87 Biennial Budget Request. The county share includes 4.7 percent of the cost of case management services funded under the waiver and 100 percent of the costs of case management services funded under social service funds. (Combination of state and county dollars.)

To assist the county boards in financing these additional costs, the Department of Human Services has submitted to the Department of Health and Human Services (HHS) a medical assistance cost allocation claim, which, if approved, would provide county boards additional federal reimbursement for the provision of social services, including case management for persons with mental retardation who receive services funded under the medical assistance program. If approved, counties will receive federal reimbursement for their costs of providing case management services for an estimated 8000 persons with mental retardation who are receiving services reimbursed under the medical assistance program (including persons with mental retardation residing in nursing homes, community ICF/MR's or nursing homes). It is estimated that counties will receive an additional 3.5 million dollars each year of federal administrative reimbursement under the medical assistance program for the arrangement and provision of social services to all medicaid recipients. These dollars could be used by counties to offset the additional costs of compliance with these rule parts.

Rules as Proposed (all new material)

9525.0015 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.0015 to 9525.0165 have the meanings given them in this part.

Subp. 2. **Assessment.** "Assessment" means the act of determining, under part 9525.0055, a person's need for services by identifying and describing the person's skills and behaviors, and the environmental, physical, medical, and health factors that affect development or remediation of the person's skills and behaviors.

Subp. 3. **Advocate.** "Advocate" means an individual who has been authorized, in a written statement by the person with or who might have mental retardation or by the person's legal representative, to help the person with or who might have mental retardation understand and make choices in matters related to identification of needs and choice of services in parts 9525.0015 to 9525.0165.

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PROPOSED RULES

Subp. 4. **Case management services.** "Case management services" means identifying the need for, planning, seeking out, acquiring, authorizing, and coordinating services to persons with mental retardation. Case management services include monitoring and evaluating the delivery of the services to, and protecting the rights of, the persons with mental retardation. These services are provided by an individual designated by the county board under part 9525.0035.

Subp. 5. **Case manager.** "Case manager" means the person designated by the county board under part 9525.0035 to provide case management services. The case manager must meet the requirements in part 9525.0155.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 7. **Contract.** "Contract" means a legally enforceable agreement entered into by a county board or its designated representative and a provider, or by a provider and a subcontractor, that sets forth the rights and responsibilities of the parties.

Subp. 8. **County board.** "County board" means the county board of commissioners for the county of financial responsibility or its designated representative.

Subp. 9. **County of financial responsibility.** "County of financial responsibility" has the meaning given it in Minnesota Statutes, sections 256B.02, subdivision 3 and 256E.08, subdivision 7.

Subp. 10. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 11. **Home and community-based services.** "Home and community-based services" means the following services as defined in part 9525.1860 which are provided to persons with mental retardation if the services are authorized under United States Code, title 42, sections 1396, et seq. and authorized in the waiver granted by the United States Department of Health and Human Services:

- A. case management;
- B. respite care;
- C. homemaker services;
- D. in-home family support services;
- E. supported living arrangements for children;
- F. supported living arrangements for adults;
- G. day habilitation;
- H. minor physical adaptations to the home; and

I. other home and community-based services authorized under United States Code, title 42, section 1396 et seq. if approved for Minnesota by the United States Department of Health and Human Services.

These services are reimbursable under the medical assistance program for as long as the waiver from the United States Department of Health and Human Services is in effect in Minnesota.

Subp. 12. **Host county.** "Host county" means the county in which the services set forth in a person's individual service plan are provided.

Subp. 13. **Individual habilitation plan.** "Individual habilitation plan" means the written plan developed under part 9525.0105.

Subp. 14. **Individual service plan.** "Individual service plan" means the written plan developed under part 9525.0075.

Subp. 15. **Interdisciplinary team.** "Interdisciplinary team" means a team composed of the case manager, the person with mental retardation, the person's legal representative and advocate, if any, and representatives of all providers providing services set forth in the individual service plan.

Subp. 16. **Intermediate care facility for the mentally retarded or ICF/MR.** "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to provide services to persons with mental retardation under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded. Unless otherwise stated, this definition includes state-operated and community-based facilities.

Subp. 17. **Least restrictive environment.** "Least restrictive environment" means an environment where:

A. The provider or employees or subcontractors of the provider are available to provide the type, quantity, and frequency of services necessary to achieve the results set forth in a person's individual service plan.

B. The physical plant and the scheduling of the provider and employees or subcontractors of the provider are designed or modified to promote the independence of the person with mental retardation and to limit physical assistance by the provider or

employees or subcontractors to the tasks or parts of tasks that the person with mental retardation cannot accomplish without physical assistance or verbal instructions.

C. The amount of supervision, physical control, and limits on decision making imposed by the provider and employees or subcontractors of the provider is limited to the level required to ensure that persons with mental retardation are not subject to unnecessary risks to their health or safety and do not subject others to unnecessary risks.

D. Services are designed to increase interactions between persons with mental retardation and persons within the general public who do not have disabilities by using facilities, services, and conveyances used by the general public.

E. The daily, monthly, and annual schedule of the person receiving services closely approximates that of the general public.

F. The physical surroundings, methods of interaction between the person and the provider and employees or subcontractors of the provider, and the materials used in training are appropriate for the person's chronological age and adaptive behavior level.

Subp. 18. **Legal representative.** "Legal representative" means the parent or parents of a person with, or who might have, mental retardation and who is under 18 years of age; or a guardian or conservator who is authorized by the court to make decisions about services for a person with or who might have mental retardation.

Subp. 19. **Need determination.** "Need determination" means the determination under part 9525.0145 of the need for and the program, type, location, and size of licensed services, except foster care, for persons with mental retardation.

Subp. 20. **Person with mental retardation.** "Person with mental retardation" means:

A. A person who has been diagnosed under part 9525.0045 as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and who manifests these conditions before the person's 22nd birthday.

B. A person under the age of five who demonstrates significantly subaverage intellectual functioning concurrently with severe deficits in adaptive behavior, but for whom a licensed psychologist or licensed consulting psychologist determines that a diagnosis may not be advisable because of the person's age.

Subp. 21. **Person who might have mental retardation.** "Person who might have mental retardation" means a person who the case manager has reason to believe has mental retardation and who is undergoing diagnosis to determine if he or she is a person with mental retardation.

Subp. 22. **Physical plant.** "Physical plant" means the building or buildings where a service is provided to a person with mental retardation and includes all equipment affixed to the building and not easily subject to transfer.

Subp. 23. **Provider.** "Provider" means a corporation, governmental unit, partnership, individual, or individuals licensed by the state, if a license is required, or approved by the county board, if a license is not required, to provide one or more services to persons with mental retardation.

Subp. 24. **Provider implementation plan.** "Provider implementation plan" means a detailed internal plan developed by the provider in order to direct the daily activities of staff in carrying out the objectives established within the individual habilitation plan developed under part 9525.0105. The provider implementation plan is frequently referred to as an individual program plan and is usually supervised by an internal program coordinator, staff supervisor, unit director, or team leader.

Subp. 25. **Public agency.** "Public agency" means a public health nursing service established under Minnesota Statutes, section 145.12, a human services board established under Minnesota Statutes, section 402.04, a local board of health established under Minnesota Statutes, section 145.01, or a county board.

Subp. 26. **Qualified mental retardation professional.** "Qualified mental retardation professional" means a person who meets the qualifications in Code of Federal Regulations, title 42, section 442.401.

Subp. 27. **Quarterly evaluation.** "Quarterly evaluation" means a written report prepared by the provider every three months containing a summary of data, an analysis of the data, and an evaluation of services actually provided, including the extent to which services have resulted in achieving the goals and objectives of a person's individual habilitation plan, and whether services are being provided in accordance with the individual habilitation plan. The report must also state whether any changes are needed in the person's individual service plan or individual habilitation plan.

Subp. 28. **Redetermination of need.** "Redetermination of need" means the biennial redetermination under part 9525.0145 of the

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need for and the program, type, location, and size of licensed services, except foster care, for persons with mental retardation.

Subp. 29. **Regional service specialist.** "Regional service specialist" means an individual, designated by the commissioner, who at the direction of the commissioner:

- A. authorizes medical assistance payments for ICF/MR and home and community-based services for eligible persons with mental retardation;
- B. serves on screening teams as a qualified mental retardation professional at the request of the county board;
- C. provides training and assistance to county boards, case managers, and providers in technical matters related to the development and provision of services for persons with mental retardation; and
- D. assists case managers in developing and planning services for persons with mental retardation.

Subp. 30. **Residential service.** "Residential service" means shelter, food, and training in one or more of the following: self-care, communication, community living skills, social skills, leisure and recreation skills, and behavior management, which are provided by a provider licensed by the state, if a license is required, or approved by the county board if a license is not required, to provide these services.

Subp. 31. **Screening team.** "Screening team" means the team established under Minnesota Statutes, section 256B.092, subdivision 7 to evaluate a person's need for home and community-based services. The screening team shall consist of the case manager, the person with mental retardation, a parent or guardian as appropriate to the person with mental retardation's legal status, and a qualified mental retardation professional.

Subp. 32. **Service.** "Service" means a planned activity designed to achieve the results specified in an individual service plan.

Subp. 33. **Training and habilitation services.** "Training and habilitation services" means health and social services provided to a person with mental retardation by a licensed provider at a site other than the person's place of residence unless medically contraindicated and documented as such in the individual service plan. The services must be designed to result in the development and maintenance of life skills, including:

- A. self-care, communication, socialization, community orientation, emotional development, cognitive development, or motor development; and
- B. therapeutic work or learning activities that are appropriate for the person's chronological age.

Training and habilitation services are provided on a scheduled basis for periods of less than 24 hours per day.

9525.0025 APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** Parts 9525.0015 to 9525.0165 set forth the standards to be met by county boards in providing case management services to persons with or who might have mental retardation, and govern the planning, development, and provision of other services to persons with mental retardation.

Subp. 2. **Purpose.** The purpose of parts 9525.0015 to 9525.0165 is to ensure that each person with mental retardation who applies for services or whose legal representative applies for services, receives a diagnosis and assessment of current condition, and that, based on the information gathered, services are designed, arranged, provided, and monitored so that the services meet the level of the person's need in the least restrictive environment and in a cost-effective manner.

County boards are authorized and required to determine the adequacy and quality of services provided to meet the person's needs based on the cost and effectiveness of the services. Only services identified as needed in the individual service plan should be provided or paid for.

Parts 9525.0015 to 9525.0165 shall not be construed as requiring expenditure of money not available to county boards for case management and other services for persons with or who might have mental retardation. Money expended for case management and other services for persons with or who might have mental retardation must be expended in accordance with parts 9525.0015 to 9525.0165.

9525.0035 COUNTY BOARD RESPONSIBILITIES.

Subpart 1. **Provision of case management services.** The county board shall provide case management services in accordance with parts 9525.0015 to 9525.0165 to all persons with or who might have mental retardation who reside in the county at the time they apply for services. Case management services may be provided directly by the county board or under a contract between the county board and another county board or between the county board and a provider of case management services.

Subp. 2. **Designation of case manager.** Within ten working days after receiving an application for service, the county board shall designate a case manager who meets the requirements in part 9525.0155. A written notice that includes the name, telephone number, and location of the designated case manager must be sent to the person requesting services, and to the person's legal representative and advocate, if any.

Subp. 3. **Purchase of case management services.** The county board shall not purchase case management services for a person with or who might have mental retardation from a provider of other services for that person. This subpart does not apply when the county board provides the services or when the services are provided by another public agency, if the county board or other public agency providing case management and other services ensures that administration of the case management services is separate from the administration of any other service for the person with mental retardation. The county board may apply to the commissioner in writing for a variance of this subpart. The commissioner shall grant the variance if the county board can demonstrate that:

- A. separating the administration of case management and other services would result in an undue hardship for the county board;
- B. an alternative method of preventing any conflict of interest has been established; and
- C. the person providing case management services for the person with mental retardation will not be involved in the provision of other services for the person with mental retardation.

Subp. 4. **Provision of services.** The case manager, upon designation by the county board, shall immediately begin to provide case management services to the person who applied for services or for whom the legal representative applied for services, and shall continue to provide case management services until case management services are terminated under subpart 7. The county board shall not provide or arrange for services to be provided to a person with or who might have mental retardation until a case manager has been designated, and services must not continue after case management services have been terminated under subpart 7.

Subp. 5. **Procedures governing minimum standards for case management services.** The county board shall establish written procedures to ensure that the delivery of case management services to persons who have been diagnosed as mentally retarded meets the standards established in items A to J.

- A. Individual needs must be assessed in accordance with part 9525.0055, subpart 1.
- B. Service needs must be reassessed in accordance with part 9525.0055, subparts 2 to 4.
- C. A screening team meeting must be convened and held in accordance with part 9525.0065.
- D. An individual service plan must be developed and reviewed in accordance with part 9525.0075.
- E. An individual habilitation plan must be developed in accordance with part 9525.0105.
- F. Services must be monitored in accordance with part 9525.0115.
- G. Services must be authorized in accordance with subpart 6 and part 9525.0085, subpart 2.
- H. Services must be terminated in accordance with subpart 7.
- I. Requests for reconsideration of the contents of the individual service plan are handled in accordance with part 9525.0075.
- J. Requests for reconsideration of the contents of the individual habilitation plan are handled in accordance with part 9525.0105.

Copies of these procedures must be maintained on file at the county offices and must be available to persons employed by the county who work with persons with mental retardation, persons with mental retardation who are receiving services from the county and their legal representatives or advocates, and providers.

Subp. 6. **Authorization of services.** Before a service may be provided under an individual service plan, the county board must authorize the service in accordance with part 9525.0085, subpart 2. Authorization of a service or services must be based on the recommendation of the case manager and the needs identified in the individual service plan. The county board must provide for authorization of services when an emergency occurs and for a review of the individual service plan within ten working days of the emergency to determine whether the individual service plan should be modified as a result of the emergency. Modifications to the individual service plan must be made in accordance with part 9525.0075, subpart 6.

Subp. 7. **Termination of case management duties.** A case manager retains responsibility for providing case management services to the person with mental retardation until the responsibility of the county board is terminated in accordance with items A to E, or until the county board designates another case manager under subpart 2. When another case manager is designated, the person with mental retardation, the legal representative, and the advocate, if any, and all providers providing services to the person must be notified, in writing, within five working days of the designation of the name, telephone number, and location of the new case manager.

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The county board may terminate case management services when:

- A. the person with mental retardation or the person's legal representative makes a written request that case management and other services designed for the person with mental retardation be terminated;
- B. the person with mental retardation dies;
- C. a licensed psychiatrist, licensed psychologist, or licensed consulting psychologist determines that the person is not a person with mental retardation in accordance with part 9525.0045;
- D. the person or the person's legal representative refuses the services offered in the individual service plan developed under part 9525.0075; or
- E. the case manager finds that case management services are no longer needed based on the review of the person's individual service plan.

9525.0045 DIAGNOSIS.

Subpart 1. **Initial diagnosis.** The case manager shall ensure that a diagnosis is completed and reviewed within 35 working days following receipt of the application for services. The case manager must refer applicants to professionals qualified under this subpart to complete a diagnosis. Items A to D are required to make a diagnosis of mental retardation.

A. A psychiatrist, licensed psychologist, or licensed consulting psychologist must determine that the person has significantly subaverage intellectual functioning. "Significantly subaverage" means performance which is two or more standard deviations from the mean or average on an individual standardized test that measures intellectual functioning.

B. A psychiatrist, licensed psychologist, or licensed consulting psychologist must determine that the person has deficits in adaptive behavior. Deficits in adaptive behavior must be determined through the use of scales of adaptive behavior or by a combination of test data, observations, and the use of all available sources of information regarding the person's behavior which indicate the effectiveness or degree with which the person meets the norm of personal independence and social responsibilities of the person's chronological age group and cultural peer group.

C. A social worker or a public health nurse who is experienced in working with persons with mental retardation must prepare a written report on any social, familial, physical, health, functional, adaptational, or environmental factors that might have contributed to the person's mental retardation.

D. A licensed physician must conduct a medical examination of the person including an examination of vision, hearing, seizure disorders, and physical disabilities.

The documentation for items A to C must be dated no more than 90 days before the date when the initial individual service plan is written. The documentation for item D must be dated no more than 12 months before the date when the individual service plan is written and must accurately reflect the current condition of the person.

Subp. 2. **Review of diagnosis.** Except as provided in subpart 3, the case manager shall conduct a review of the diagnosis at least every three years. The review must include a review of the documentation of the initial diagnosis required in subpart 1, and any components in subpart 1, items A to D, that the case manager determines need to be reevaluated. The case manager shall provide or obtain any assessments required to complete a review of the diagnosis.

Subp. 3. **Exception.** If a person with mental retardation has an initial diagnosis of mental retardation which has been confirmed twice in accordance with subparts 1 and 2 since the person's 18th birthday, the review of the diagnosis required in subpart 2 must be conducted at least once every six years.

9525.0055 STANDARDS FOR ASSESSMENT OF INDIVIDUAL SERVICE NEEDS.

Subpart 1. **Initial assessment of individual needs.** Each person determined by the diagnosis required in part 9525.0045 to be a person with mental retardation must be assessed to determine the person's individual needs. The assessment must include an analysis of: the person's current condition; the person's established support systems; the extent to which the person's skills or lack of skills enables or prevents the person's full integration into community settings of the general public; and the person's current status and need for assistance or supervision. The assessment must result in specific service recommendations. The county board shall ensure that each of the areas listed in items A to J are assessed and that the assessment is conducted under the supervision of a qualified mental retardation professional.

The assessment of individual service needs must address the following areas:

- A. medical status and ongoing health needs;
- B. physical development;
- C. intellectual functioning;

- D. social skills;
- E. self-care skills;
- F. communication skills;
- G. community living skills;
- H. vocational skills;
- I. physical and social environments; and
- J. legal representation.

Subp. 2. **Reassessment of medical status and ongoing health care needs.** The county board shall ensure that a reassessment of medical status and ongoing health care needs is conducted at least annually. This medical assessment must include an evaluation of the person's current condition and shall include recommendations for ongoing health care needs.

Subp. 3. **Reassessment of other individual needs.** An annual review of individual needs shall be conducted by the case manager in consultation with the person with mental retardation and the person's legal representative and advocate, if any.

Subp. 4. **Time line for reassessment.** Reassessment of items A to J shall be conducted within 90 days prior to the review of the individual service plan. This subpart does not prohibit more frequent reassessments.

9525.0065 SCREENING TEAMS.

Subpart 1. **Convening screening team.** The case manager shall convene a screening team whenever the assessment or reassessment conducted under part 9525.0055 indicates that the person with mental retardation might need the level of care provided by an ICF/MR within one year. The county board must ensure that:

A. The screening team is convened within 15 working days of the date that the assessment is completed under part 9525.0055 or within five working days of the date of an emergency admission to an ICF/MR.

B. The members of the screening team, the regional service specialist, and the person's advocate, if any, are notified of the meeting prior to the meeting. At the request of or with consent, under Minnesota Statutes, section 13.05, subdivision 4, of the person with mental retardation or the person's legal representative, the case manager may invite other persons to attend the screening team meeting.

C. The screening team meeting is convened at a time and place that allows for the participation by all members of the screening team.

D. A written record of the meeting, including the names of the team members.

E. A registered nurse is required to attend the screening meeting as the qualified mental retardation professional or to act as the case manager whenever the assessment conducted under part 9525.0055 indicates that the person with mental retardation has overriding health care needs. For the purposes of this item, "overriding health care needs" means a medical condition that limits the placement options available to the person with mental retardation because the condition interferes with the person's adaptation or learning skills and is potentially life threatening.

Subp. 2. **Screening team review.** The screening team shall review:

- A. the results of the diagnosis conducted under part 9525.0045;
- B. the results of the assessment conducted under part 9525.0055;
- C. the individual service plan, if any; and
- D. other data related to the person's eligibility and need for services.

Subp. 3. **Screening team findings.** Upon review under subpart 2 of the diagnostic and assessment data, the screening team shall:

A. determine whether the person with mental retardation is presently in need of the level of care provided by an ICF/MR, or whether the person will need the level of care provided by an ICF/MR within one year and can benefit from home and community-based services;

B. identify the other services required to prevent or delay the need for the level of care provided by an ICF/MR, skilled

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nursing facility, or intermediate care facility and the source of payments for the required assistance, health services, or social services; and

C. complete the waived services screening document on the form provided by the commissioner.

Subp. 4. **Consumer choice.** The person with mental retardation who is eligible for home and community-based services under parts 9525.1800 to 9525.1930 and the person's legal representative must be allowed to choose between the ICF/MR services and the home and community-based services recommended by the screening team.

Subp. 5. **Authorization of payment for ICF/MR and home and community-based services.** Upon completion of the waived services screening document, the case manager shall forward the completed document to the regional service specialist. The regional service specialist shall review the rates and shall authorize the payments for home and community-based services funded under the medical assistance program only if consistent with the criteria in parts 9525.1800 to 9525.1930. Payment for ICF/MR services shall not be made unless:

A. the person for which the payment is requested is determined to be a person with mental retardation;

B. an assessment of the person's individual service needs, conducted in accordance with part 9525.0065, documents that the person requires 24-hour supervision and treatment for medical, behavioral, or habilitation needs;

C. all less restrictive and less costly alternative services have been considered and discussed with the person with mental retardation and the person's legal representative and advocate, if any; and

D. payment for ICF/MR services has been approved by the commissioner through a regional service specialist.

Subp. 6. **Use of screening team recommendations in commitment proceedings.** When a person with mental retardation who has been referred to a screening team is the subject of commitment proceedings under Minnesota Statutes, chapter 253B, the screening team shall make its recommendations and report available to the pre-petition screening unit in accordance with the Data Practices Act, Minnesota Statutes, chapter 13.

9525.0075 STANDARDS FOR DEVELOPMENT OF INDIVIDUAL SERVICE PLAN.

Subpart 1. **Individual service plan development.** An individual service plan must be developed and implemented for each person with mental retardation who applies for services or for whom the legal representative applies for services. The individual service plan must be developed by the case manager with the person with mental retardation, the person's legal representative, and the person's advocate, if any. If the case manager is not a qualified mental retardation professional, the individual service plan must be reviewed by a qualified mental retardation professional.

Subp. 2. **Screening team involvement.** If the results of the assessment completed under part 9525.0055 indicate that the person with mental retardation might need the level of care provided by an ICF/MR, the case manager shall convene and chair a meeting of the screening team in accordance with this part to assist the case manager in the development of the individual service plan.

Subp. 3. **Required review.** The development of an individual service plan must include a review of:

A. the results of the diagnosis under part 9525.0045 to verify that the person is a person with mental retardation;

B. the results of the assessment conducted under part 9525.0055 to identify individual needs;

C. any past individual service plan to determine if changes are needed;

D. other data related to the person's need for services;

E. delivery of services to assure that the services are or will be delivered in the least restrictive environment;

F. provisions for providing food and shelter for the person with mental retardation to assure the person's health and safety will be maintained;

G. training and habilitation services to ensure that the services are, or will be, appropriate to the person's chronological age, employment, and increased financial independence;

H. the method of delivering services to ensure that the delivery of services will result in increased participation in the community and interactions with the general public through use of support services and existing agencies; and

I. involvement of family, neighbors, and friends in providing services to ensure that family, neighbors, and friends are involved to the extent possible.

Subp. 4. **Content standards for individual service plans.** The county board shall develop a format for completing an individual service plan that ensures compliance with items A to G. The individual service plan must:

A. Contain a written review of the results of the diagnosis conducted under part 9525.0045, including a summary of significant information and specific recommendations.

B. Contain a written summary of the assessment information and recommendations obtained under 9525.0055, subpart 1.

C. Contain a written summary of the needs identified in the information obtained from the diagnosis and assessment. The summary must result in the identification of all service needs, including the type, amount, and frequency of the services needed including services to be provided by the case manager.

D. State the actions that will be taken to develop or obtain the services identified in item C including those services not currently available. This item shall not be construed as requiring actions other than actions stated under this item.

E. State long-range goals for the person with mental retardation and an anticipated date for attainment of the goals.

F. State annual goals for the person with mental retardation related to the attainment of the long-range goals under item E.

G. Identify any information that providers or subcontractors must submit to the case manager and the frequency with which the information must be provided.

H. Contain the signature or signatures of the person with mental retardation and the person's legal representative, if any, to document that the person with mental retardation and the person's legal representative, if any, have reviewed the individual service plan and agree that the goals and services specified in the individual service plan meet the needs of the person with mental retardation.

Subp. 5. **Request for reconsideration.** If the person with mental retardation or the person's legal representative, if any, disagrees with the contents of the individual service plan, the person with mental retardation or the person's legal representative, if any, may request a reconsideration of the contents of the plan by applying to the county board and requesting reconsideration. The county board shall establish written procedures for handling requests for reconsideration of the individual service plan contents.

Subp. 6. **Annual review of individual service plan.** The county board shall ensure that:

A. individual service plans are reviewed at least annually;

B. a written record of the meeting is maintained;

C. the case manager, the person with mental retardation, the person's legal guardian, the person's advocate, and others who participated in the development of the individual service plans are involved in the annual review meeting;

D. the services provided since the initial service plan or last service plan review are summarized and reviewed;

E. the results of the reassessment, if any, are summarized and reviewed;

F. the quarterly evaluations and other provider reports as they relate to the attainment of annual and long-range goals are summarized and reviewed;

G. the annual and long-range goals are reviewed;

H. modifications to the individual service plans are based on the results of the reviews required under this subpart; and

I. a new screening document is completed and submitted if the person is receiving services provided under parts 9525.1800 to 9525.1930 or resides in an ICF/MR. This item is not to be construed as requiring a meeting of the screening team.

Subp. 7. **Standards for state hospital discharge planning.** When an individual service plan calls for the discharge of a person with mental retardation from a state hospital, the individual service plan must conform to the standards for state hospital discharge planning established by the commissioner in Instructional Bulletins #84-55 (August 6, 1984) and 84-55A (November 8, 1984), published by the department, which are incorporated by reference.

These documents are available for inspection at the Minnesota State Law Library, 117 University Avenue, Saint Paul, MN 55155 and are available through the minitex interlibrary loan system. The bulletins are not subject to frequent change. The documents have also been distributed to all county boards and human service boards.

9525.0085 PROVISION OF SERVICES.

Subpart 1. **Arrangement of services.** When residential, training and habilitation services, or home and community-based services are required by an individual service plan, the case manager shall arrange for the services by surveying existing providers to determine which providers, if any, are available to provide the services specified in the individual service plan, or the county board may develop a request for proposals for any or all of the specified services.

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Subp. 2. **Authorization of services.** The case manager shall only authorize a service if:

- A. the case manager has determined that the provider is able to provide the service or services in accordance with the individual service plan;
- B. the provider agrees, as a condition of the contract, to participate in the interdisciplinary team;
- C. the provider agrees, as a condition of the contract, to provide the service in accordance with the individual service plan;
- D. the provider agrees, as a condition of the contract, to send quarterly evaluations to the case manager and the person with mental retardation or the person's legal representative;
- E. the person with mental retardation to be provided a training and habilitation service or a residential service has met with the provider and visited the site where the services are to be provided or if a visit to the site is medically contraindicated for the person with mental retardation, the person's legal representative, if any, has visited the site;
- F. the case manager has informed the person's legal representative and advocate of the name of each proposed provider and has encouraged them to visit each site where the services will be provided;
- G. there is a contract between each provider and the host county; and
- H. if services are to be provided in a county other than the county of financial responsibility, the case manager has consulted with the host county and has received a letter demonstrating the concurrence from the host county regarding provision of services.

9525.0095 CONTRACTS AND PROVIDER AGREEMENTS

Subpart 1. **Contracts for services.** A provider must have a contract developed in accordance with parts 9550.0010 to 9550.0092 with the host county before the provider can receive payment for services. The county board of the county where the provider is located shall negotiate and administer host county purchase of service contracts in accordance with parts 9550.0010 to 9550.0092 on behalf of other county boards requesting to purchase services from the provider.

The department is a third party beneficiary of any contract entered into by a county board and a provider, or a provider and a subcontractor, to provide services under this part. Each contract and subcontract must contain the following provision. If any contract does not contain the following provision, the provision shall be considered an implied provision of the contract.

"The provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as such is an affected party under this contract. The provider specifically acknowledges and agrees that the Minnesota Department of Human Services has standing to and may take any appropriate administrative action or sue the provider for any appropriate relief in law or equity, including, but not limited to, rescission, damages, or specific performance, of all or any part of the contract between the county and the provider. The provider specifically acknowledges that the county and the Minnesota Department of Human Services are entitled to and may recover from the provider reasonable attorney's fees and costs and disbursements associated with any action taken under this paragraph that is successfully maintained. This provision shall not be construed to limit the rights of any party to the contract or any other third party beneficiary, nor shall it be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity."

Subp. 2. **Provider agreements.** In addition to the requirements in subpart 1, a provider of services reimbursed under the medical assistance program must have an approved provider agreement with the department before the provider can receive payment for services from the department.

Subp. 3. **Subcontracts.** If the provider subcontracts with another contractor to provide services under parts 9525.0015 to 9525.0165, the provider shall:

- A. have written permission from the host county to subcontract;
- B. ensure that the subcontract meets all the requirements in subpart 1; and
- C. ensure that the subcontractor performs fully the terms of the subcontract.

Subp. 4. **Enforcement of contracts.** The county board is responsible for enforcing the contracts entered into under parts 9525.0015 to 9525.0165. The county board may delegate the responsibility for enforcement of contracts in accordance with established county board policies.

9525.0105 STANDARDS FOR DEVELOPMENT OF INDIVIDUAL HABILITATION PLANS.

Subpart 1. **Development of individual habilitation plan.** The county board shall ensure the development of an individual habilitation plan within 30 calendar days after services have been authorized by the county board. The case manager shall convene and chair a meeting of the interdisciplinary team to develop the individual habilitation plan. With the consent, under Minnesota Statutes, section 13.05, subdivision 4, of the person with mental retardation or the person's legal representative, the case manager may invite other persons to attend the interdisciplinary team meeting but these persons shall not be designated as members of the interdisciplinary team.

Subp. 2. **Interdisciplinary team review.** The interdisciplinary team shall review:

- A. all information obtained in the diagnosis and assessment of the person with mental retardation;
- B. the individual service plan;
- C. written documentation of the findings of the screening team, if any; and
- D. any other information that would assist the interdisciplinary team in writing a plan that will meet the needs of the person with mental retardation in the least restrictive manner, such as assessments completed by the provider or other consultants, recommendations from team members or others invited to attend the individual habilitation plan meeting, data collected by the provider, and program implementation plans.

Subp. 3. **Data privacy.** Private data, as defined in Minnesota Statutes, section 13.02, subdivision 12 regarding the person with or who might have mental retardation must not be disseminated, used, or discussed at a meeting unless the person with or who might have mental retardation or the legal representative has given consent for dissemination, use, or discussion in accordance with Minnesota Statutes, section 13.05, subdivision 4. Confidential data, as defined in Minnesota Statutes, section 13.02, subdivision 3 must not be disseminated, used, or discussed except as authorized by Minnesota statute or federal law.

Subp. 4. **Standards for contents of individual habilitation plan.** The interdisciplinary team shall develop a single individual habilitation plan. The individual habilitation plan must integrate the services provided by all providers and subcontractors to the person with mental retardation to ensure that the services provided and the methods used by each provider and subcontractor are coordinated and compatible with those of every other provider and subcontractor. The individual habilitation plan must be designed to achieve the expected outcomes specified in the individual service plan. The plan must include for each service:

- A. short-term objectives designed to result in the achievement of the annual goals of the individual service plan;
- B. the specific method of providing the service that is expected to result in the achievement of the short-term objectives of the individual habilitation plan;
- C. the name of the provider's employee responsible for ensuring that services are implemented as set forth in the individual habilitation plan and that the services result in achievement of the short-term objectives;
- D. the measurable behavioral criteria that will be used to determine whether the service has resulted in achievement of the short-term objectives;
- E. the frequency with which the service will be provided;
- F. the projected starting and completion dates for each short-term objective;
- G. the resources, such as special equipment, staff training, outside consultants, needed in order to implement the plan; and
- H. the frequency with which providers will submit reports regarding the service and progress of the person and the minimum frequency at which the case manager will monitor the service being provided.

Subp. 5. **Required signatures.** The individual habilitation plan must contain the signature or signatures of the person with mental retardation and the person's legal representative, if any, to document that the person with mental retardation and the person's legal representative, if any, have reviewed the individual habilitation plan and agree that the goals and objectives specified in the individual habilitation plan meet the needs of the person with mental retardation.

Subp. 6. **Request for reconsideration.** If the person with mental retardation or the person's legal representative, if any, disagrees with the contents of the individual habilitation plan, the person with mental retardation or the person's legal representative, if any, may request a reconsideration of the contents of the plan by applying to the county board and requesting reconsideration. The county board shall establish written procedures for handling requests for reconsideration of individual habilitation plan contents.

Subp. 7. **Provider implementation plan.** The provider may establish an internal provider implementation plan for accomplishing the objectives specified in the individual habilitation plan. The internal provider implementation plan must not result in a modification of the objectives or methodologies identified within the individual habilitation plan unless the modification is authorized by the case manager and is agreed to by the person with mental retardation or the person's legal representative, if any.

Subp. 8. **Interim services.** A person with mental retardation may receive the services set forth in the person's individual service plan for up to 30 days while an individual habilitation plan is being developed. The case manager shall terminate the services if an

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individual habilitation plan is not developed and implemented within 30 calendar days of the date that the person began receiving services specified the individual service plan.

Subp. 9. Annual review of individual habilitation plan. The case manager shall monitor implementation of the individual habilitation plan under the terms in part 9525.0115. At least annually, the interdisciplinary team must be convened and chaired by the case manager to review the data described in subpart 2, determine if the outcomes in the individual habilitation plan have been achieved, and to make any amendments or modifications of the individual habilitation plan based on the interdisciplinary team's review of the information.

9525.0115 STANDARDS FOR MONITORING SERVICES.

Subpart 1. Monitoring of individual service plan and individual habilitation plan. The case manager shall ensure that services are being provided in accordance with the individual service plan and individual habilitation plan, and that the services provided continue to meet the needs of the individual in the least restrictive environment. Monitoring must include:

- A. visiting the person with mental retardation;
- B. visiting the service site of the residential and training and habilitation service received by the person with mental retardation while services are being provided;
- C. reviewing the provider's records and reports;
- D. observing the implementation of the person's individual service plan and individual habilitation plan;
- E. compiling, reviewing, and analyzing quarterly evaluations and other reports submitted by the provider;
- F. modifying the individual service plan under part 9525.0075 and the individual habilitation plan under part 9525.0105 as needed; and
- G. reporting to the county board if a provider is not providing services as specified in the individual service plan and the individual habilitation plan.

Subp. 2. Frequency of monitoring. The case manager shall specify in the individual habilitation plan the frequency of monitoring to be done by the case manager. The frequency of monitoring must be determined based on the level of need of the person with mental retardation and other factors which might affect the type, amount, or frequency of service. Monitoring must occur at least on a semiannual basis for each person with mental retardation who is receiving services.

9525.0125 QUALITY ASSURANCE.

Subpart 1. Monitoring by case manager. The case manager is authorized and required to monitor the delivery of services by providers to determine if:

- A. services are provided in accordance with the person's individual service plan and individual habilitation plan;
- B. services are provided within the definition of least restrictive environment;
- C. only necessary services are provided;
- D. active treatment and habilitation services are provided;
- E. services provided result in attainment of the person's goals and objectives;
- F. the legal rights of the person with mental retardation are protected; and
- G. the person with mental retardation and the person's legal representative, if any, are satisfied with the services provided.

Subp. 2. County board procedures. The county board shall establish written procedures for reviewing complaints reported by the case manager under subpart 1 and enforcing the provisions of parts 9525.0015 to 9525.0165.

Subp. 3. Cooperation with commissioner. The county board must cooperate with the commissioner in the commissioner's evaluation of case management services and other services provided to persons with mental retardation by making available to the commissioner all information compiled under parts 9525.0015 to 9525.0165 requested by the commissioner.

9525.0135 APPEALS OF CASE MANAGEMENT AND RELATED SERVICES.

Subpart 1. Notification of right to appeal. The case manager must notify the person with mental retardation, the legal representative, and the advocate, if any, in writing, of the person's right to appeal. The notice must be written in language which can be understood by the person with mental retardation or the person's legal representative and the person's advocate, if any. If the case manager believes that the person with mental retardation is unable to read or understand such written notification, then the case manager shall make every attempt to explain the right of appeal to the individual.

Subp. 2. Appealable issues. A person with mental retardation or the person's legal representative may appeal a county board action or inaction inconsistent with parts 9525.0015 to 9525.0115 and 9525.0165 or with the county board's approved variance

request under part 9525.0145 [Emergency] which results in a denial of services, failure to act with reasonable promptness, a suspension, reduction, or termination of services.

Subp. 3. **Notice of action.** The county board shall notify the person and the person's legal representative, if any, of any denial, suspension, reduction, or termination of services. Except as provided in subpart 4, the county board shall mail the notice to the person and the person's legal representative at least ten days before the effective date of the denial, suspension, reduction, or termination. The notice shall clearly state the proposed action and the reason for the action. If the denial, suspension, reduction, or termination is appealable under subpart 2, the notice shall also state the person's right to appeal the proposed action.

Subp. 4. **Exceptions to period of notice.** The period of notice may be five days before the date of the proposed action if the county board has facts indicating probable fraud by the person or the person's legal representative in obtaining services and if the facts have been verified through secondary sources. The county board may mail a notice no later than the date of the action if:

A. the county board has factual information confirming the death of the person; or

B. the county board receives a written statement from the person or the person's legal representative indicating he or she no longer wishes to receive services through the county.

Subp. 5. **Submittal of appeals.** The person with mental retardation or the person's legal representative may appeal under subpart 2 to the commissioner. All appeals must be submitted in writing within 30 days of the date the notice is received or within 90 days if the person with mental retardation or the person's legal representative shows good cause why the appeal was not submitted within 30 days. The advocate for the person with mental retardation or the parent of an adult with mental retardation, if the adult does not have a legal representative, may assist the person with mental retardation in bringing an appeal under this part.

Subp. 6. **Appeal of action.** All appeals of issues meeting the criteria under subpart 2 shall be heard and decided in accordance with Minnesota Statutes, section 256.045.

9525.0145 SERVICE DEVELOPMENT AND NEED DETERMINATION.

Subpart 1. **Definition.** As used in this part, "county board" means the county board of commissioners, a human services board established under Minnesota Statutes, chapter 402, or the county welfare board as defined in Minnesota Statutes, chapter 393.

Subp. 2. **Information to be considered.** Development of a new service, or modification or expansion of an existing service, must be based on the county's community social services plan, community health plan, and the service needs identified in individual service plans of persons with mental retardation for whom the county board is financially responsible. The county board shall also consider the service needs of persons from other counties for whom the county board has agreed to be the host county.

Subp. 3. **Need determination by county board.** Based on the data referred to in subpart 2, the county board shall identify the need for new services, modification, expansion, or reduction of existing services, or services for which a change of ownership or location is proposed. Facilities licensed under parts 9525.0230 to 9525.0430 but not as an ICF/MR facility must file a new need determination if the facility desires to be reclassified as an ICF/MR. This subpart shall apply to any service licensed by the commissioner, except foster care.

If the county board identifies that a new service or a service for which a change in ownership or location is proposed, needed, or that the existing services need to be modified, expanded, or reduced, the county board shall submit an application for a need determination to the commissioner. Applications must include the following information:

A. the number, sex, and age of the persons to be served;

B. a description of the services needed by the persons to be served as identified in individual service plans;

C. a description of the proposed service;

D. if the proposal is for a residential service, a description of the day training and habilitation or educational services that are available outside of the residence for the persons to be served;

E. a description of the current residences of persons to be served and a statement of the number of persons to be served from each residential facility, foster home, or parental home;

F. the identity of other counties that will use the service;

G. a description of any financial limitations or funding restrictions that will affect the proposed service;

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- H. an explanation of how this application relates to service needs identified under subpart 2;
- I. the date of the county board action on the application; and
- J. the signature of the county board chairman.

Subp. 4. **Review of county need determination.** The county board shall establish written procedures for reviewing materials submitted by a provider under subpart 3.

Subp. 5. **Need determination by commissioner.** The commissioner shall make the determination of the need for and the location, program, type, and size of the service proposed in the county's application. The commissioner may determine need for the service on a local, regional, or statewide basis. In making a final need determination the commissioner shall consider the following factors:

- A. the need to protect persons with mental retardation from violations of their human and civil rights;
- B. the need to assure that persons with mental retardation receive the full range of social, financial, residential, and habilitative services specified as needed in their individual service plans;
- C. whether services will be carried out in the least restrictive environment, and whether the size of the service relates to the needs of the persons to be served;
- D. whether persons receiving the proposed service will use health, medical, psychological, therapeutic, and other support services that are used by the general public;
- E. whether cost projections for the service are within the fiscal limitations of the state;
- F. whether the application is consistent with the state's plans for service distribution and development; and
- G. the distribution of and access to the services throughout the state.

Subp. 6. **Notice of decision and right to appeal.** Within 30 days of receipt of the application for need determination from the county board, the commissioner shall notify the county board of the commissioner's decision. The notice of the commissioner's decision must include notification of the county board's right to appeal the decision under subpart 9.

Subp. 7. **Biennial redetermination of need.** Every two years the county board shall submit to the commissioner a recommendation on the redetermination of need for each service located in the county which is licensed by the commissioner, except foster care.

The county board's recommendations must state whether the county board recommends continuation, continuation with modifications, discontinuation of the service, or, if the service is certified, decertification of the service. The recommendations of the county board must be based on the service needs of persons with mental retardation for whom the county is financially responsible, and for the service needs of persons with mental retardation from other counties for whom the county board has agreed to serve as host county.

The commissioner shall make the redetermination of need for the service after considering the factors in subpart 3, and the recommendations of the county board. The decision of the commissioner is final and may be appealed in accordance with subparts 8 and 9. The commissioner shall notify the county board of the decision following receipt of the county board's recommendations.

Subp. 8. **Effect of need determination or redetermination.** If the county board or the commissioner determines that the service, modification, or expansion is not needed, the service, modification, or expansion shall not be paid for or reimbursed from federal or state money for services to persons with mental retardation. An application for licensure submitted to the department or submitted for approval by the county will not be considered complete unless the county board and the commissioner determine that the service modification or expansion is needed. If the determination or redetermination is appealed, the effect of this subpart may be stayed pending the outcome of the appeal.

Subp. 9. **Appeal of commissioner's determination.** The provider making the application may appeal:

- A. the commissioner's determination of the need for a modification, expansion, or reduction of existing services;
- B. the commissioner's determination of the need for services for which a change of ownership or location is proposed; or
- C. the commissioner's redetermination of need.

All appeals must be handled in accordance with Minnesota Statutes, chapter 14. Notice of appeal must be received by the commissioner within 30 days after the notification of the commissioner's decision was sent to the county.

9525.0155 STANDARDS FOR QUALIFICATIONS AND TRAINING OF CASE MANAGERS.

Subpart 1. **Staff qualifications.** Except as provided in item C, staff providing case management services to persons with mental retardation must meet the requirements in item A or B.

A. The designated case manager must have at least a bachelor's degree in social work, special education, psychology, nursing, human services, or other fields related to the education or treatment of persons with mental retardation and one year of experience in the education or treatment of persons with mental retardation or a related condition as defined in Minnesota Statutes, section 252.27, subdivision 1.

B. The county board may establish procedures permitting persons who do not meet the requirements in item A to assist in providing case management services, except those services under parts 9525.0063, 9525.0075, and 9525.0095, under the supervision of a case manager who meets the qualifications in item A if the person assisting the case manager has completed 40 hours of training in case management and the education and treatment of persons with mental retardation or a related condition as defined in Minnesota Statutes, section 252.27, subdivision 1.

C. Between the effective date of parts 9525.0015 to 9525.0155 and January 1, 1987, the county board may request a variance to the requirements in item A to hire a case manager who meets the education requirement but does not meet the experience requirement. The variance request must be submitted in writing to the commissioner and must include a description of 20 or more hours of training in case management and the education and treatment of persons with mental retardation that will be completed by the case manager within 12 months of the date of hiring. The commissioner shall grant the variance if the person for whom the variance is requested meets the educational requirements in item A and the variance request meets the requirements in this item.

Subp. 2. **Case management training.** The county board shall establish a plan for the training of case managers. The plan must include at least 20 hours annually in the area of case management, mental retardation, or related conditions as defined in Minnesota Statutes, section 252.27, subdivision 1. Training and development activities attended by case managers must be documented and kept on file with the county.

9525.0165 ENFORCEMENT.

A county board must fully comply with parts 9525.0015 to 9525.0165 unless the county board submitted a written variance request to the commissioner under parts 9525.0015 to 9525.0165 by February 1, 1985, and the variance request was subsequently approved in writing by the commissioner. If the commissioner has reasonable grounds to believe that a county board has not complied with or is failing to comply with parts 9525.0015 to 9525.0155, except as provided in the county's approved variance request, the commissioner may issue a written order requiring the county board to comply. The county board shall comply with the order.

If the county board disagrees with the commissioner's order, the county board may request a review of the decision to the commissioner and request reconsideration. To be reconsidered, the request for review must be filed in writing with the commissioner within 30 calendar days of the date that the county board received the order. The request for review must state the reasons why the county board is requesting a reconsideration of the commissioner's order and present evidence explaining why the county board disagrees with the commissioner's order. The commissioner shall review the evidence presented by the county board and send written notification to the county board of the decision on the reconsideration. The commissioner's decision on the reconsideration is final, unless a law suit is filed in district court.

REPEALER. Minnesota Rules, parts 9525.0010; 9525.0020; 9525.0030; 9525.0040; 9525.0050; 9525.0060; 9525.0070; 9525.0080; 9525.0090; and 9525.0100 are repealed.

Department of Human Services

Proposed Rules Relating to General Assistance Standards of Assistance and Reduced Standards of Assistance

Notice of Intent to Adopt a Rule without a Public Hearing and Notice of Intent to Adopt a Rule with a Public Hearing if Twenty-Five or More Persons Request a Hearing

Notice is hereby given that the State Department of Human Services proposes to adopt the above-mentioned rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, section 256D.01, subdivision 1a, and Minnesota Statutes, section 256D.01, subdivision 1b, also: Minnesota Statutes, section 256D.03, subdivision 1 and 2; Minnesota Statutes, section 256D.05, subdivision 3; Minnesota Statutes, section 256D.06, subdivision 1 and 3; Minnesota Statutes, section 256D.07, and Minnesota Statutes, section 256D.04.

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.

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Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON APRIL 11, 1986 IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between April 3, 1986 and April 10, 1986 at (612) 297-1489.

Persons who wish to submit comments or a written request for a public hearing must submit such comments or requests to:

Rae Bly
Rulemaking Division
Department of Human Services
444 Lafayette Road, 6th Floor
St. Paul, MN 55101
Telephone (612) 297-1489

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on April 2, 1986.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

General Assistance is a public assistance program authorized by Minnesota Statutes, chapter 256D. The purpose of the general assistance program is "to maximize the use of federal money for public assistance purposes for all persons in the state without adequate income or resources to maintain a subsistence reasonably compatible with decency and health". (Minnesota Statutes, section 256D.01, subdivision 1). The proposed rules govern eligibility determinations and establish standards of assistance. The standards of assistance established by these rules include both full standards of assistance and reduced standards of assistance for applicants or recipients who reside with a responsible relative. The rules also provide an increase in general assistance standards up to the level of AFDC standards. To insure uniform, statewide administration of the general assistance program, the rules also establish criteria the local agency must apply when they evaluate an applicant's income, resources, eligibility and monthly payments.

Rules include definition of terms; provisions governing filing unit composition, assistance unit composition, and eligibility determinations; provisions for verification of income, full standards of assistance; reduced standards of assistance, payment provisions; and state participation provisions. The rules also establish procedures for income evaluation; determination of earned income, unearned income, gross income, countable income, and prospective budgeting.

A copy of this rule is available upon request for your review from:

Mike Sirovy
Assistance Payments Division
Department of Human Services
444 Lafayette Road, 2nd Floor
St. Paul, MN 55101
Telephone (612) 297-2011

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mike Sirovy upon request.

The Department estimates that no additional spending will be required by local public bodies as a result of adoption of these rules. A fiscal note is not required for these rules according to Minnesota Statutes, section 3.983, subdivision 3(e).

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the

date of submission to the Attorney General. 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 adopted rule, must submit the written request to Rae Bly.

February 6, 1986

Leonard W. Levine, Commissioner
Department of Human Services

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer Than Twenty-Five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in the Veterans Service Building, 20 West 12th St., St. Paul, Minnesota 55155 in Room D, 5th floor on April 11, 1986 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between April 3, 1986 and April 10, 1986 at (612) 297-1489.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to George Beck, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone 612/341-7601, either before the hearing or within five working days after the public hearing ends.

The Administrative Law Judge, may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings.

Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record.

Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, section 14.50. The rule hearing is governed by Minnesota Statutes, section 14.01 to 14.56 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

General assistance is a public assistance program authorized by Minnesota Statutes, chapter 256D. The purpose of the general assistance program is "to maximize the use of federal money for public assistance purposes for all persons in the state without adequate income or resources to maintain a subsistence reasonably compatible with decency and health". (Minnesota Statutes, section 256D.01, subdivision 1.)

The proposed rules govern eligibility determinations and establish standards of assistance. The standards of assistance established by these rules include both full standards of assistance and reduced standards of assistance for applicants or recipients who reside with a responsible relative.

The rules also provide an increase in general assistance standards up to the level of AFDC standards. To insure uniform, state-wide administration of the general assistance program, the rules also establish criteria the local agency must apply when they evaluate an applicant's or recipient's income, resources, eligibility and monthly payments.

Rules include definition of terms; provisions governing filing unit composition, assistance unit composition, and eligibility determinations; provisions for verification of income; full standards of assistance; reduced standards of assistance; payment provisions; and state participation provisions. The rules also establish procedures for income evaluation; determination of earned income, unearned income, gross income, countable income, and prospective budgeting.

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PROPOSED RULES

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, section 256D.01, subdivision 1a, and Minnesota Statutes, section 256D.01, subdivision 1b, also: Minnesota Statutes, section 256D.03, subdivision 1 and 2; Minnesota Statutes, section 256D.05, subdivision 3; Minnesota Statutes, section 256D.06, subdivision 1 and 3; Minnesota Statutes, section 256D.07; and Minnesota Statutes, section 256D.04.

The Department estimates that no additional spending will be required by local public bodies as a result of adoption of these rules. A fiscal note is not required for these rules according to Minnesota Statutes, section 3.983, subdivision 3(e).

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Mike Sirovy, Assistance Payments Division, Department of Human Services, 444 Lafayette Road, 2nd floor, St. Paul, MN 55101, telephone 612/297-2011.

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Mike Sirovy.

NOTICE: Any person may request notification of the date on which the Administration Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10a, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as an individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than \$250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, MN 55101, telephone: 612/296-5148.

February 6, 1986

Leonard W. Levine, Commissioner
Department of Human Services

Rules as Proposed (all new material)

9500.1205 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9500.1200 to 9500.1256 have the meanings given them in this part.

Subp. 2. **Affidavit.** "Affidavit" means a written and signed declaration.

Subp. 3. **Allowable deductions.** "Allowable deductions" means income or expenses that are subtracted from gross income under part 9500.1228 when determining countable income. Allowable deductions include:

A. the first \$50 of monthly earned income for each individual who receives earned income;

B. the cost of transportation to and from employment, including transporting a minor child to and from child care services, based on actual cost or the amount allowed for use of a personal car in the United States Internal Revenue Code for a maximum of 100 miles per day;

C. a meal allowance of \$1 per day for each day that the individual eats a meal at work or has a break for a meal during work hours, unless the individual can establish that higher costs are both necessary and reasonable;

D. the cost of uniforms, tools, and equipment needed to retain a job;

- E. health insurance premiums and any other type of insurance required by the employer as a condition of employment;
- F. union dues;
- G. professional association dues if they are required to obtain or retain employment;
- H. public liability insurance premiums if they are required by the employer when an automobile is used in employment and the premiums are not paid by the employer;
- I. the amount withheld or paid from gross income for mandatory retirement fund contributions;
- J. the amount withheld or paid from gross income for FICA;
- K. child care costs for each child if both parents are absent from the home and at work, unless these costs are paid for or reimbursed to the individual by any other individual or entity;
- L. state and federal personal income tax payments and withholdings;
- M. other work expenses required for employment and approved by the local agency;
- N. a minor child's income, including support and maintenance payments received, that exceeds the standard of assistance applicable to that child;
- O. food stamps;
- P. payments made pursuant to litigation and subsequent appropriation by the United States Congress, of funds to compensate members of Indian tribes for the taking of tribal lands by the federal government;
- Q. cash payments to displaced persons who face relocation as a result of the Housing Act of 1965, the Housing and Urban Development Act of 1965, or the Uniform Relocation Act of 1970;
- R. AFDC payments received by women residing in facilities for battered women as described in Minnesota Statutes, section 256D.05, subdivision 3, for whom general assistance payments are made to pay for residence in the facility;
- S. stipends received from the displaced homemaker services program;
- T. payments for basic care, difficulty of care, and clothing allowances received for and used to provide family foster care to children or adults under parts 9545.0010 to 9545.0260 and 9555.5100 to 9555.6400;
- U. benefits under title IV and title VII of the Older Americans Act of 1965;
- V. a title I loan provided through the Minnesota Housing Finance Agency for the first nine months following the date of issuance of the loan;
- W. state and federal personal income tax refunds, including Minnesota property tax refunds;
- X. in-kind income, except for payments made for room, board, tuition, or fees by a parent on behalf of a child enrolled as a full-time student in a postsecondary institution;
- Y. reverse mortgage loan proceeds received by the applicant or recipient;
- Z. payments made for services provided by volunteers under title I, title II, and title III of the Domestic Service Act of 1973;
- AA. payments from VISTA to VISTA volunteers;
- BB. reimbursements for employment training received through the Job Training Partnership Act, except for payments for on-the-job training;
- CC. reimbursement for personal out-of-pocket expenses incurred while performing volunteer services, jury duty, or employment, except for expenses that have been or will be reimbursed;
- DD. loans, except for educational loans, whether from private, public, or governmental lending institutions, governmental agencies, and private individuals, if the individual and the lender provide written documentation to the local agency that the individual must repay the loan and that the loan is not a gift;
- EE. payments by the vocational rehabilitation program administered by the state under Minnesota Statutes, chapter 129A, except for payments that are for current living expenses;

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FF. general assistance payments to correct underpayments in a current or previous month;

GG. the first \$30 of each nonrecurring cash gift, such as a gift received for a holiday, birthday, or graduation;

HH. proceeds from the sale of real or personal property owned by a member of the individual's filing unit, if the property was excluded from consideration under part 9500.1209 because its equity value was less than the real and personal property limits;

II. funds received for reimbursement, replacement, or rebate of personal or real property when these payments are made from public agencies, issued by insurance companies, awarded by a court, solicited through public appeal, or made as a grant by a federal agency subsequent to a presidential declaration of disaster;

JJ. an energy assistance payment made by the Low Income Home Energy Assistance Program, payments made directly to energy providers by other public and private agencies, and a credit or rebate payment issued by energy providers;

KK. payments made for subsidized adoptions under United States Code, title 42, sections 670 to 676, and Minnesota Statutes, section 259.40; and

LL. income that is otherwise specifically excluded under Minnesota Statutes, section 256D.01 to 256D.21.

Subp. 4. **Application.** "Application" means the submission to the local agency of a signed and dated form prescribed by the commissioner that indicates the desire to receive general assistance.

Subp. 5. **Assistance unit.** "Assistance unit" means the individuals from a filing unit who are applying for or receiving general assistance, whose eligibility must be determined in accordance with part 9500.1209, subpart 4, and whose needs are included when determining the standard of assistance and the monthly general assistance payment.

Subp. 6. **Countable income.** "Countable income" means gross income calculated in accordance with part 9500.1227 minus allowable deductions.

Subp. 7. **Earned income.** "Earned income" means compensation from lawful employment or lawful self-employment, including salaries, wages, tips, gratuities, commissions, earnings from self-employment, earned income tax credits, incentive payments from work or training programs, payments made by an employer for regularly accrued vacation or sick leave, earnings under title I of the Elementary and Secondary Education Act, employee bonuses and profit sharing, jury duty pay, picket duty pay, and profit from other lawful activities earned by the individual's effort or labor. Earned income does not include returns from capital investment or benefits that accrue as compensation for lack of employment. Earned income must be calculated in accordance with part 9500.1225.

Subp. 8. **Earned income tax credit.** "Earned income tax credit" means the payment that can be obtained by a qualified low income person from an employer or from the United States Internal Revenue Service under United States Code, title 26, section 32.

Subp. 9. **Equity value.** "Equity value" means the amount of equity in real or personal property owned by an individual. Equity value is determined by subtracting any outstanding encumbrances from the fair market value of the real or personal property.

Subp. 10. **Federal Insurance Contributions Act or FICA.** "Federal Insurance Contributions Act" or "FICA" means the federal law under United States Code, title 26, section 3101 to 3126, that requires withholding or direct payment of income to the federal government.

Subp. 11. **Filing unit.** A "filing unit" is the individual or group of family members specified under part 9500.1209, subpart 2, who may elect to apply for general assistance together, and who, if eligible, must receive a single monthly payment.

Subp. 12. **Gross income.** "Gross income" means the total amount of cash or in-kind payment or benefit, whether earned or unearned, that is received by, actually available to, or paid for the benefit of an individual, including income specified in Minnesota Statutes, section 256D.02, subdivision 8. Gross income does not include personal property previously established as an asset, and subject to the limitations under Minnesota Statutes, section 256.73, subdivision 2. Gross income must be calculated in accordance with part 9500.1227.

Subp. 13. **In-kind income.** "In-kind income" means income, benefits, or payments that are provided in a form other than money or liquid asset, including goods, produce, services, privileges, or third-party payments made on behalf of a person for whom the income is intended.

Subp. 14. **Month.** "Month" means a calendar month.

Subp. 15. **Parent.** "Parent" means a child's natural or adoptive parent who is legally obligated to support that child.

Subp. 16. **Payment month.** "Payment month" means the month for which a local agency issues a general assistance payment.

Subp. 17. **Prospective budgeting.** "Prospective budgeting" means a method of determining the amount of a monthly general assistance payment in which the countable income that the local agency anticipates will be available to the assistance unit in the payment month is applied against the standard of assistance applicable to the assistance unit for the payment month.

Subp. 18. **Recipient.** "Recipient" means an individual currently receiving general assistance. The term "recipient" includes any person whose needs are included in the payment to an assistance unit.

Subp. 19. **Unearned income.** "Unearned income" means any form of gross income that does not meet the definition of earned income. Unearned income includes an annuity, retirement, or disability benefit, including veteran's or worker's compensation, social security disability, railroad retirement benefits, or unemployment compensation; benefits under a federally funded categorical assistance program including supplemental security income, or other assistance programs; gifts, rents, dividends, interest and royalties, support and maintenance payments, pension payments, return on capital investment, insurance payments or settlements; severance payments, employment benefits, and rewards for past employment; and educational grants, loans, and scholarships. Unearned income must be calculated in accordance with part 9500.1226.

Subp. 20. **Verification.** "Verification" means the process a local agency must use to establish the accuracy or completeness of information from an applicant, a recipient, a third party, or other source as that information relates to an assistance unit's eligibility for general assistance or the amount of a monthly general assistance payment.

9500.1209 ELIGIBILITY DETERMINATION.

Subpart 1. **Local agency duties.** The local agency must determine the composition of a filing unit, the composition of an assistance unit, and the eligibility of an assistance unit according to subparts 2 to 4. The local agency must determine the standard of assistance applicable to an assistance unit according to parts 9555.1216 to 9555.1222, the amount of the assistance unit's countable income in accordance with part 9500.1228, and the monthly payment to an assistance unit as prescribed in part 9500.1230.

Subp. 2. **Filing unit composition.** The local agency must permit an individual or family who requests general assistance to make application for general assistance as provided by Minnesota Statutes, section 256D.07. When an application for general assistance is made for an individual or family, and when the local agency redetermines the eligibility of a recipient, the local agency must determine the composition of the applicant's or recipient's filing unit. The local agency must require a separate application and conduct a separate eligibility determination for each filing unit. The composition of a filing unit shall be limited to the individuals specified in items A to D.

A. Except as provided in items C and D, if the applicant or recipient is an adult, the filing unit must include the applicant or recipient and the following individuals who reside with the applicant or recipient:

- (1) the applicant's or recipient's spouse; and
- (2) the minor children of the applicant or recipient and the minor children of the applicant's or recipient's spouse.

B. Except as provided in items C and D, if the applicant or recipient is a minor child, the filing unit must include the applicant or recipient and the following individuals who reside with the applicant or recipient:

- (1) the applicant's or recipient's parent or parents;
- (2) the spouse of the applicant's or recipient's parent; and

(3) the minor children of the applicant's or recipient's parent or parents and the minor children of the spouse of the applicant's or recipient's parent.

C. Individuals eligible for or receiving AFDC or AFDC-emergency assistance or who are sanctioned from receiving AFDC for failure to comply with AFDC program requirements are not eligible to be included in the general assistance filing unit.

D. An unmarried couple residing together with a common minor child whose paternity has been adjudicated or attested to through affidavit must comprise two separate filing units. The minor child shall be included in the filing unit of the parent who applies for general assistance first. If both parents apply for general assistance on the same date, the parents must choose the filing unit that shall contain the minor child.

Subp. 3. **Assistance unit composition.** The local agency must determine the composition of an applicant's or recipient's assistance unit as provided in items A and B.

A. The local agency must assess the categorical eligibility of each applicant or recipient under parts 9500.1102 [Emergency] and 9500.1220 [Emergency], unless the applicant or recipient informs the local agency of his or her election not to receive general assistance. If an applicant or recipient does not meet the conditions of a category of eligibility, under part 9500.1102 [Emergency] or 9500.1220 [Emergency], or the applicant or recipient is disqualified under parts 9500.1105 to 9500.1107 [Emergency], or 9500.1254, subpart 5, the local agency must inform the applicant or recipient of his or her ineligibility for general assistance. The local agency may use one form per filing unit to inform the ineligible members of a filing unit of their ineligibility for general assistance.

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B. The assistance unit shall be composed of applicants or recipients from a filing unit who are categorically eligible to receive general assistance as provided in item A. General assistance categorical eligibility under item A may exist for one or more members of the filing unit even though other members of the filing unit are ineligible.

Subp. 4. **Assistance unit eligibility.** The local agency must determine an assistance unit's eligibility to receive general assistance as provided in items A to E.

A. The local agency must determine the equity value of real and personal property available to the assistance unit. The equity value of real and personal property available to a member of the filing unit who is not included in the assistance unit, but who is a responsible relative of an assistance unit member must be considered real and personal property available to the assistance unit. If the local agency determines that the total equity value of real and personal property available to the assistance unit exceeds the maximum standards established under Minnesota Statutes, section 256.73, subdivision 2, the local agency must determine if the excess property must be excluded under part 9500.1210. If the excess property is not excluded from consideration, the local agency must inform the assistance unit of its ineligibility for general assistance.

B. If the local agency determines that the equity value of real and personal property available to the assistance unit is less than or equal to the maximum standards established under Minnesota Statutes, section 256.73, subdivision 2, or that property which exceeds those limits is excluded under part 9500.1210, the local agency must determine the standard of assistance applicable to the assistance unit as provided in parts 9500.1216 to 9500.1222, and the amount of countable income available to the assistance unit as provided in part 9500.1229, subpart 2.

C. Except as provided in item D, the local agency must compare the assistance unit's countable income to the standard of assistance applicable to the assistance unit as provided in part 9500.1229, subpart 3. If the local agency determines that the countable income of the assistance unit equals or exceeds the standard of assistance applicable to the assistance unit, the local agency must inform the assistance unit of its ineligibility for general assistance. If the local agency determines that the countable income of the assistance unit is less than the standard of assistance applicable to the assistance unit the local agency must inform the assistance unit of its eligibility for general assistance.

D. An applicant or recipient who resides in a nursing home or facility with a negotiated rate must have less countable income than the total of the reduced standard provided in part 9500.1218, subpart 2, and the facility's negotiated rate to be eligible for general assistance.

E. If a filing unit member elects not to apply for or receive general assistance or is determined ineligible for general assistance, or if a parent is not included in his or her minor child's filing unit under the provisions of subpart 2, item D, that individual's financial responsibility for and ability to provide income to the assistance unit must be determined as provided in part 9500.1226.

9500.1214 VERIFICATION OF INCOME.

Subpart 1. **Verification of an applicant's or recipient's income and circumstances.** An applicant or recipient shall provide verification of the assistance unit's income and circumstances relevant to its eligibility, standard of assistance, and monthly payment. If the applicant or recipient cannot verify income or circumstances, the local agency must help him or her to obtain verification. If the applicant or recipient, with the local agency's help, cannot provide the verification, the assistance unit's eligibility, standard of assistance, and monthly payment must be determined based on the income and circumstances that have been verified or sworn to through affidavit. If the applicant or recipient refuses to provide the required verification of income or circumstances, the assistance unit is ineligible for general assistance and general assistance must be denied or terminated.

Subp. 2. **Verification of responsible relative's income and circumstances.** When an assistance unit is subject to a reduced standard under part 9500.1220 or 9500.1222, or income allocation provisions under part 9500.1226 or 9500.1227, the responsible relative or individual not included in the assistance unit shall provide verification of his or her income and circumstances relevant to the reduced standard and income allocation provisions. If the responsible relative or the individual not included in the assistance unit cannot provide verification of his or her income or circumstances, the local agency must help him or her to obtain verification. If the responsible relative or the individual not included in the assistance unit cannot provide the verification with the local agency's help, the reduced standard and the allocations of income must be determined based on the income and circumstances that the responsible relative or individual has verified or sworn to through affidavit. If the assistance unit is subject to part 9500.1220, 9500.1222, or 9500.1226, subpart 3, items A to C, and the responsible relative refuses to provide the required verification of income or circumstances, the assistance unit is ineligible for general assistance and general assistance must be denied or terminated. If a responsible relative is not included in the assistance unit under part 9500.1209, subpart 2, item D, and the responsible relative refuses to provide the required verification of income or resources, only the common minor child who is a member of the assistance unit shall be ineligible for general assistance. If the assistance unit is subject to part 9500.1227, subpart 3, and the individual not included in the assistance unit refuses to provide the required verification of income or circumstances, the assistance unit shall not allocate income for the individual's needs until the required verification is provided.

9500.1216 FULL STANDARDS.

Except as provided by parts 9500.1218 to 9500.1222, the full standards of assistance must be used to determine the eligibility of an assistance unit under part 9500.1209, subpart 4, and the minimum monthly payment to an assistance unit under part 9500.1229, subpart 4. The full standard must be based on the number of individuals in the assistance unit and must be computed as follows:

A. The full standard for an assistance unit composed of one individual when that individual is an adult is the amount specified in part 9500.1217, subpart 1.

B. The full standard for an eligible adult in an assistance unit that contains more than one individual is:

(1) the first adult standard specified in part 9500.1217, subpart 2, if the adult is the first or only adult in the assistance unit;

or

(2) the second adult standard specified in part 9500.1217, subpart 2, if the adult is the second adult in the assistance unit.

C. the full standard for eligible minor children in an assistance unit that is composed of more than one individual must be determined based on the number of minor children in the assistance unit according to the table in part 9500.1217, subpart 3.

D. When an assistance unit contains no adult because a parent or parents are disqualified from receiving general assistance under parts 9500.1105 to 9500.1107 [Emergency] or 9500.1254, subpart 5, and the parent or parents do not have countable income in an amount equal to or in excess of their own needs, the full standard applicable to the assistance unit is the special child standard provided by this item. The parent's or parents' needs are equal to the full standard for adults as specified in item B. The special child standard must be determined as follows:

(1) The special child standard for an assistance unit composed only of one minor child is the special child only standard for one child, specified in part 9500.1217, subpart 4.

(2) When an assistance unit includes more than one minor child, the special child standard must be determined by substituting the first adult standard provided by item B, subitem (1), for the needs of the last minor child in the assistance unit and combining that amount with the full standard provided by item C that is applicable to the number of remaining minor children.

9500.1217 AMOUNT OF FULL STANDARDS.

Subpart 1. **Adult only standard.** The full standard for an assistance unit composed of one individual when that individual is an adult is \$203.

Subp. 2. **Adult standards.** The full standards for adults in an assistance unit that is composed of more than one individual are \$187 for the first or only adult in the assistance unit and \$73 for the second adult in the assistance unit.

Subp. 3. **Child standards.** The full standards for minor children in an assistance unit that is composed of more than one individual are specified in the following table:

Number of minor children in the assistance unit	Full state assistance standard for the minor children
1	\$250
2	345
3	434
4	510
5	586
6	663
7	729
8	793
9	848
10	902

If the assistance unit contains more than ten minor children, the full standard for each additional minor child is \$53.

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Subp. 4. **Child only standard.** The full standard for an assistance unit composed of one individual when that individual is a minor child is \$337.

Subp. 5. **Tie to AFDC standards.** The full standards of subparts 2 to 4 must increase or decrease to remain equal to the equivalent AFDC standards whenever AFDC standards are increased or decreased.

9500.1218 REDUCED STANDARD FOR AN APPLICANT OR RECIPIENT IN A NURSING HOME, FACILITY WITH A NEGOTIATED RATE, OR STATE HOSPITAL.

Subpart 1. **Applicability.** The reduced standard of this part must be used to determine the eligibility of an assistance unit under part 9500.1209, subpart 4, and the minimum monthly payment amount to an assistance unit under part 9500.1229, subpart 4, if the assistance unit is composed of one individual who resides in a nursing home, facility with a negotiated rate, or a state hospital.

Subp. 2. **Reduced standard.** The reduced standard for an assistance unit composed of one individual who resides in a nursing home, facility with a negotiated rate, or a state hospital is the amount established as the clothing and personal needs allowance for medical assistance recipients under Minnesota Statutes, section 256B.35, subdivision 1.

Subp. 3. **Battered women's shelters excluded.** This part does not apply to an applicant or recipient residing in a shelter facility provided for under Minnesota Statutes, section 256D.05, subdivision 3.

9500.1220 REDUCED STANDARD FOR AN ASSISTANCE UNIT SHARING A RESIDENCE WITH A RESPONSIBLE RELATIVE WHO RECEIVES OR HAS BEEN SANCTIONED OR DISQUALIFIED FROM RECEIVING GENERAL ASSISTANCE OR AFDC.

Subpart 1. **Applicability.** The reduced standards in this part must be applied to determine the eligibility of an assistance unit under part 9500.1209, subpart 4, and the minimum monthly payment to an assistance unit under part 9500.1229, subpart 4, if the assistance unit resides with an individual who is a responsible relative of one or more of the assistance unit members, and if one of the following conditions exists:

A. The applicant's or recipient's filing unit and assistance unit are composed of only one individual, the individual is an adult, and the individual shares a residence with a parent who receives general assistance or AFDC, or would be receiving general assistance or AFDC except for sanction or disqualification from either of those programs. If the one-person assistance unit shares a residence with both a parent and a spouse, the parent's income must not be considered and the standard of assistance applicable to the assistance unit must be based on the relationship to the spouse.

B. The assistance unit is composed of one or more individuals, the assistance unit members share a residence with a parent or spouse of one or more of the assistance unit members, and the parent or spouse would be included in the general assistance filing unit except that he or she receives AFDC or would be receiving AFDC but is sanctioned from that program for failure to comply with program requirements.

C. If an assistance unit that meets the conditions under item A or B resides with two parents who have income from both general assistance or AFDC and from another source, and the assistance unit is potentially subject to a reduced standard under both this part and part 9500.1222, the reduced standard applicable to the assistance unit must be determined based on this part.

Subp. 2. **Reduced standard.** The reduced standard applicable to an assistance unit provided for by subpart 1 must be determined according to items A to C.

A. The reduced standard applicable to the assistance unit must equal the amount the standard of assistance applicable to the responsible relative's assistance unit would increase if the assistance unit members were added to the responsible relative's general assistance or AFDC assistance unit.

B. When determining the amount the responsible relative's general assistance or AFDC standards would increase due to the addition of the assistance unit members, the following standards shall apply to the added members:

(1) The standard applicable to a minor child is the standard for another minor child added to the responsible relative's general assistance or AFDC grant.

(2) The standard applicable to an adult child who meets the conditions under subpart 1, item A, is the standard for another minor child, added to his or her parent's general assistance or AFDC grant.

(3) The standard of assistance applicable to a spouse is the standard for a second adult added to the responsible relative's general assistance or AFDC grant.

C. The reduced standard applicable to an assistance unit that shares a residence with a responsible relative must not exceed the standard of assistance that would apply to the assistance unit if the assistance unit did not share a residence with a responsible relative.

9500.1222 REDUCED STANDARD FOR AN ASSISTANCE UNIT SHARING A RESIDENCE WITH A RESPONSIBLE RELATIVE WHO HAS INCOME OTHER THAN GENERAL ASSISTANCE OR AFDC.

Subpart 1. **Applicability of reduced standards.** The reduced standards in this part must be applied to determine the eligibility of an assistance unit under part 9500.1209, subpart 4, and the minimum monthly payment to an assistance unit under part 9500.1229, subpart 4, when the conditions in items A to C apply to the assistance unit.

A. The applicant's or recipient's filing unit and assistance unit are composed of only one individual, the individual is an adult, and the individual does not meet an eligibility category under part 9500.1102, [Emergency] item A, B, H, I, J, O, or P.

B. The assistance unit member shares a residence with a parent who has income other than general assistance or AFDC.

C. The parent is not included in the filing unit according to part 9500.1209, subpart 2. If the one-person assistance unit shares a residence with both a parent and a spouse, the parent's income must not be considered and the standard applicable to the assistance unit must be based on part 9500.1220.

Subp. 2. **Reduced standard.** The reduced standard applicable to an assistance unit provided for in subpart 1 must be determined as follows:

A. Calculate the standard of assistance applicable to the household as provided in part 9500.1216. In this part, "household" means individuals with whom the applicant or recipient shares a residence, and includes only the applicant or recipient and the applicant's or recipient's parent or parents. The applicant or recipient must be considered the first child when determining the household standard.

B. Calculate the amount of the parent's or parents' countable income. In this part "parent's or parents' countable income" means the parent's or parents' monthly gross income minus the following deductions:

(1) income that is disregarded as an allowable deduction under part 9500.1205, subpart 3;

(2) income that has been counted in calculating the payment to an AFDC assistance unit;

(3) benefits received from the worker's compensation program, Minnesota supplemental aid program, supplemental security income program, or social security disability program;

(4) benefits received from the social security retirement program if the parent was receiving benefits under the social security disability or supplemental security income program at the time he or she became eligible for the social security retirement program or if the parent meets a category of eligibility under part 9500.1102 [Emergency], item A, B, H, or J;

(5) other benefits based on the parent's disability; and

(6) income allocated to meet the unmet needs of the parent's spouse who resides with the parent if the spouse is not a responsible relative of the applicant or recipient, and income allocated to meet the unmet needs of the parent's minor children who reside with the parent. The spouse's needs are equal to the standard of assistance for a second adult as provided by part 9500.1216, item B, subitem (2). To determine if the spouse's needs are unmet, the spouse's countable income must first be allocated to provide for the unmet needs of the parent's or spouse's minor children. The needs of a minor child are equal to the standard of assistance for an additional child as provided by part 9500.1216, item C, and are unmet to the extent that the child's countable income is less than the standard of assistance applicable to the child. The spouse's countable income that exceeds the unmet needs of the parent's or spouse's minor children must then be compared to the needs of the spouse. If the spouse's remaining countable income is greater than the spouse's needs, the parent shall not allocate countable income for the spouse's needs, and the spouse's excess countable income, up to and including the first adult standard, as provided by part 9500.1216, item B, subitem (1), must be considered countable income available to the parent. If the spouse's countable income is less than the spouse's needs, the parent's countable income must be allocated to meet the spouse's unmet needs. The parent's countable income must also be allocated to meet the needs of his or her minor children which are unmet with the spouse's or child's countable income.

C. Subtract the amount of the parent's or parents' countable income calculated in item B from the household standard of assistance calculated in item A.

D. The reduced standard for the applicant or recipient is the amount calculated in item C or the full standard provided by part 9500.1216, whichever is less.

E. When two or more assistance units are subject to this part and share a residence with a responsible relative common to each assistance unit, the members of each of those assistance units must be included when determining the household standard of

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assistance in item A. The reduced standard determined in item D must be divided equally among the assistance units to determine the reduced standard applicable to each assistance unit.

9500.1224 INCOME EVALUATION.

Subpart 1. **Local agency duty to evaluate income.** When the local agency determines the eligibility of an assistance unit under part 9500.1209, subpart 4, and the minimum monthly payment to an assistance unit under part 9500.1229, subpart 4, the local agency must evaluate income received by the following individuals:

- A. the members of the assistance unit;
- B. responsible relatives whose income is considered in determining a reduced standard under part 9500.1220 or 9500.1222, or whose income is considered available to an assistance unit member under part 9500.1228, subpart 2; and
- C. individuals to whom an assistance unit member may allocate income under part 9500.1227, subpart 3.

Subp. 2. **Distribution of income.** Income evaluated under parts 9500.1224 to 9500.1228, must be attributed to the individual who earns it or to the individual beneficiary of the income, subject to items A to C.

A. The local agency must consider funds distributed from a trust, whether from the principal holdings or sale of trust property or from the interest and other earnings of the trust holdings, to be unearned income to the beneficiary of the trust when the funds are legally available to the beneficiary. Trusts are presumed legally available unless a beneficiary can document that the trust is not legally available.

B. The local agency must divide the income from jointly owned property equally among the property owners unless the terms of ownership prescribe a different distribution of equity.

C. The local agency must not allow deductions from an individual's gross income to meet a current or prior debt.

Subp. 3. **Evaluation of assistance unit's income.** The local agency must determine the amount of an assistance unit's earned income as provided in part 9500.1225, and the amount of the assistance unit's unearned income as provided in part 9500.1226. The local agency must add the assistance unit's earned income to the assistance unit's unearned income to determine the assistance unit's gross income as provided in part 9500.1227. The local agency must subtract allowable deductions from the assistance unit's gross income to determine the assistance unit's countable income as provided in part 9500.1228.

9500.1225 EARNED INCOME.

Subpart 1. **Local agency duty to determine earned income.** The local agency must determine the total amount of earned income available to the individuals identified in part 9500.1224, subpart 1. Earned income from self-employment must be calculated in accordance with subpart 2. Earned income from contractual agreements must be calculated in accordance with subpart 3. The total amount of earned income available to an individual for a month must be determined by combining the amounts of earned income calculated under subparts 2 to 4. The total amount of earned income available to an assistance unit for a month must be determined by combining the total earned income of each assistance unit member.

Subp. 2. **Earned income from self-employment.** The local agency must determine the amount of earned income from self-employment by subtracting business costs from gross receipts according to items A to D.

- A. Self-employment expenses must be subtracted from gross receipts except for the expenses listed in subitems (1) to (14):
- (1) purchases of capital assets;
 - (2) payments on the principal of loans for capital assets;
 - (3) depreciation;
 - (4) amortization;
 - (5) the wholesale costs of items purchased, processed, or manufactured that are unsold inventory with a deduction for the costs of those items allowed at the time they are sold;
 - (6) transportation costs that exceed the amount allowed for use of a personal car in the United States Internal Revenue Code;
 - (7) the cost of transportation between the individual's home and his or her place of employment;
 - (8) salaries and other employment deductions made for members of an individual's assistance unit or for individuals who live in the individual's household for whom the individual is legally responsible;
 - (9) monthly expenses in excess of \$70 for a roomer;
 - (10) monthly expenses in excess of \$85 for a boarder;
 - (11) monthly expenses in excess of \$155 for a roomer-boarder;

(12) annual expenses in excess of \$102 or two percent of the estimated market value on a county tax assessment form, whichever is greater, as a deduction for upkeep and repair against rental income;

(13) expenses not allowed by the United States Internal Revenue Code for self-employment income; and

(14) expenses which exceed 60 percent of gross receipts for child care performed in an individual's home unless the individual can document a higher amount. When funds are received from the quality child care program, those funds are excluded from gross receipts, and the expenses covered by those funds must not be claimed as a business expense that offsets gross receipts.

B. Gross receipts from self-employment must be budgeted in the month in which they are received. Expenses must be budgeted against gross receipts in the month in which those expenses are paid except for subitems (1) to (3):

(1) The purchase cost of inventory items, including materials that are processed or manufactured, must be deducted as an expense at the time payment is received for the sale of those inventory items, processed materials, or manufactured items, regardless of when those costs are incurred or paid.

(2) Expenses to cover employee FICA, employee tax withholding, sales tax withholding, employee worker's compensation, employee unemployment compensation, business insurance, property rental, property taxes, and other costs that are commonly paid at least annually, but less often than monthly, must be prorated forward as deductions from gross receipts over the period they are intended to cover, beginning with the month in which the payment for these items is made.

(3) Gross receipts from self-employment may be prorated forward to equal the period of time over which the expenses were incurred except that gross receipts must not be prorated over a period that exceeds 12 months. This provision applies only when gross receipts are not received monthly but expenses are incurred on an ongoing monthly basis.

C. Farm income must be annualized. Farm income is gross receipts minus operating expenses, subject to item A. Gross receipts include sales, rents, subsidies, soil conservation payments, production derived from livestock, and income from sale of home-produced foods.

D. Income from rental property must be considered self-employment earnings when effort is expended by the owner to maintain or manage the property. A local agency must deduct an amount for upkeep and repairs, in accordance with item A, subitem (11), for real estate taxes, insurance, utilities, and interest on principal payments. When an individual lives on the rental property, the local agency must divide the expenses for upkeep, taxes, insurance, utilities, and interest by the number of rooms to determine the expense per room. The local agency shall deduct expenses from rental income only for the number of rooms rented, not for rooms occupied by an individual's assistance unit. When no effort is expended by the owner to maintain or manage the property, income from rental property must be considered unearned income. The deductions described in this item must be subtracted from gross rental receipts.

Subp. 3. **Earned income from contractual agreements.** The local agency must prorate the amount of earned income received by individuals employed on a contractual basis over the period covered by the contract even if the payments are received over a shorter period of time.

Subp. 4. **Other earned income.** The local agency must consider all other forms of earned income not specifically provided for under subparts 2 and 3 to be earned income available to the individual in the month it is received.

9500.1226 UNEARNED INCOME.

Subpart 1. **Local agency duty to determine unearned income.** The local agency must determine the total amount of unearned income available to the individuals identified in part 9500.1224, subpart 1. Educational grants, loans, and scholarships must be calculated as unearned income in accordance with subpart 2. Income allocated to a member or members of an assistance unit from a responsible relative must be calculated as unearned income in accordance with subpart 3. The total amount of unearned income available to an individual for a month must be determined by combining the amounts of unearned income calculated under subparts 2 to 4. The total amount of unearned income available to an assistance unit for a month must be determined by combining the total unearned income of each assistance unit member.

Subp. 2. **Educational grants, scholarships, and loans.** Educational grants, loans, and scholarships received by an individual must be considered unearned income. The local agency must subtract tuition, fees, books, supplies, and transportation expenses from the total amount of the individual's grants, loans, and scholarships, and prorate the remainder over the period the funds are intended to cover.

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PROPOSED RULES

Subp. 3. **Income allocated from a responsible relative.** Income allocated to a member or members of an assistance unit from a responsible relative who is in the filing unit but not in the assistance unit, or from a responsible relative who would have been a member of the filing unit but is not due to receipt of or sanction or disqualification from AFDC, or income allocated by a parent who is not included in his or her minor child's filing unit under the provisions of part 9500.1209, subpart 2, item D, must be considered unearned income available to the member or members of the assistance unit. The local agency must determine how much of the responsible relative's countable income is considered unearned income available to the member or members of an assistance unit in accordance with items A to D.

A. If the responsible relative is not included in the assistance unit because he or she receives AFDC, none of the responsible relative's countable income is considered unearned income available to the member or members of the assistance unit.

B. If the responsible relative is not included in the assistance unit because he or she is disqualified or sanctioned from receiving AFDC or general assistance, the responsible relative's countable income that is not used to determine an AFDC payment must be considered unearned income available to the member or members of the assistance unit, as provided in item C, except that a subtraction for the responsible relative's need, as provided in item C, subitem (1) must not be made.

C. If the responsible relative is not included in the assistance unit because he or she elects not to apply for or receive general assistance or because he or she is not categorically eligible for general assistance as determined under part 9500.1209, subpart 3, item A, the responsible relative's countable income that is considered unearned income available to the member or members of the assistance unit must be calculated as follows:

(1) An amount equal to the responsible relative's needs must be subtracted from his or her countable income. The responsible relative's needs must be equal to the amount the standard of assistance applicable to the assistance unit would increase if the responsible relative were added to the assistance unit.

(2) From the responsible relative's countable income remaining after the subtraction in subitem (1), subtract an amount equal to the unmet needs of the minor children and the responsible relative's spouse who are included in the filing unit but not included in the assistance unit. The spouse's needs are equal to the standard of assistance for a second adult as provided by part 9500.1216, item B, subitem (2). To determine if the spouse's needs are unmet, the spouse's countable income must first be allocated to provide for the unmet needs of the minor children included in the filing unit but not included in the assistance unit. The needs of a minor child are equal to the standard of assistance for an additional child added to the assistance unit as provided by part 9500.1216, item C, and are unmet to the extent that the child's countable income is less than the standard of assistance applicable to the child. The spouse's countable income that exceeds the unmet needs of the minor children must then be compared to his or her own needs. If the spouse's remaining countable income exceeds his or her own needs, the responsible relative shall not allocate countable income for the spouse's needs, and the spouse's excess countable income must be considered countable income available to the responsible relative. If the spouse's countable income is less than his or her needs, the responsible relative's countable income must be allocated to meet the spouse's unmet needs. The responsible relative's countable income must also be allocated to meet the needs of minor children who are included in the filing unit but not included in the assistance unit and whose needs are unmet with the child's or spouse's countable income.

(3) The amount of the responsible relative's countable income remaining after the calculations required in subitem (2) is unearned income available to the member or members of the assistance unit.

D. If a parent is not included in his or her minor child's filing unit as provided under part 9500.1209, subpart 2, item D, the parent's countable income that is considered unearned income available to the minor child must be calculated as follows:

(1) An amount equal to the needs of the parent must be subtracted from the parent's countable income. The parent's needs must equal the standard of assistance that would be applicable to the parent if the parent were to apply for general assistance.

(2) From the parent's countable income remaining after the subtraction in subitem (1), subtract an amount equal to the unmet needs of the parent's other minor children who reside with the parent and who are not included in the assistance unit. A minor child's needs are unmet to the extent that the minor child's countable income is less than the standard of assistance applicable to the minor child if the minor child were to apply for general assistance with the parent.

(3) The amount of the parent's countable income remaining after the calculations required in subitem (2) must be considered unearned income available to the common minor child who is a member of the assistance unit, up to and including the standard of assistance applicable to the member of the assistance unit under part 9500.1216, item C.

Subp. 4. **Other unearned income.** The local agency must consider all other forms of unearned income not provided for in subparts 2 and 3 to be unearned income available to the individual in the month of receipt.

9500.1227 GROSS INCOME.

Subpart 1. **Local agency duty to determine gross income.** The local agency must determine the total amount of gross income available to the individuals identified in part 9500.1224, subpart 1. The total amount of gross income available to an individual for a

month must be calculated in accordance with subparts 2 to 4. The total amount of gross income available to an assistance unit for a month must be determined by combining the total gross income of each assistance unit member.

Subp. 2. **Total earned and unearned income.** The local agency must add the total amount of earned income received by or available to an individual for a month, as calculated in part 9500.1225, to the total amount of unearned income received by or available to an individual for a month, as calculated in part 9500.1226.

Subp. 3. **Allocation of income from assistance unit members to other individuals.** To determine the amount of gross income available to a member of an assistance unit for a month, the amount of income that must be allocated in that month from the assistance unit member to a member of the filing unit who is not included in the assistance unit and for whom the assistance unit member is a responsible relative must be subtracted from the amount calculated in subpart 2. The amount that must be allocated must be determined in accordance with items A and B.

A. If the individual is not included in the assistance unit because the individual receives AFDC or is sanctioned or disqualified from receiving AFDC or general assistance, the assistance unit member shall not allocate income for the individual's needs.

B. If the individual is not included in the assistance unit because the individual elects not to apply for or receive general assistance or because the individual is not categorically eligible for general assistance as determined under part 9500.1209, subpart 3, item A, the assistance unit member's income must be allocated for the individual's unmet needs. The individual's needs equal the amount the standard of assistance applicable to the assistance unit would increase if the individual were added to the assistance unit. The individual's needs are unmet to the extent that the individual's countable income is less than his or her needs.

Subp. 4. **Determination of total amount of gross income.** The amount of earned and unearned income calculated in subpart 2 minus the amount of income allocated under subpart 3 is the amount of gross income available to an individual for the month.

9500.1228 COUNTABLE INCOME.

Subpart 1. **Local agency duty to determine countable income.** The local agency must determine the amount of countable income available to the individuals identified in part 9500.1224, subpart 1. The total amount of countable income available to an assistance unit for a month must be determined by combining the countable income of each assistance unit member.

Subp. 2. **Determination of countable income.** The local agency must determine the amount of countable income available to an individual for a month as follows:

A. The local agency must determine the amount of gross income available to the individual for a month in accordance with part 9500.1227.

B. From the amount determined in item A, the local agency must subtract income or expenses that must be disregarded as an allowable deduction under part 9500.1205, subpart 3. The remaining amount is the individual's countable income for the month.

9500.1229 PROSPECTIVE BUDGETING.

Subpart 1. **Local agency duty to make prospective determinations.** The local agency must make a monthly prospective determination of an assistance unit's countable income, the assistance unit's eligibility for general assistance, and the amount of the monthly payment the assistance unit is eligible to receive.

Subp. 2. **Prospective determination of countable income.** The local agency must prospectively determine the amount of countable income available to an individual for a month when the local agency determines the eligibility of an assistance unit under subpart 3 and part 9500.1209, subpart 4, and when the local agency determines the amount of a monthly payment to an assistance unit under subpart 4.

To prospectively determine the amount of countable income available to an individual for a month, the local agency must estimate the amount of gross income the individual is expected to receive in a month, and subtract the income or expenses that must be disregarded as an allowable deduction under part 9500.1205, subpart 3.

The local agency may base its prospective determination of an individual's countable income on the amount of countable income the individual actually received two months before the current payment month. The local agency must adjust its estimate of an individual's countable income when it has verification that the individual's income will be increasing or decreasing, or when the individual has lost a source of income.

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PROPOSED RULES

Subp. 3. **Prospective determination of eligibility.** The local agency must compare the amount of countable income the assistance unit is expected to receive in the payment month, with the standard of assistance applicable to the assistance unit for the payment month. If the assistance unit meets the conditions under part 9500.1209, subpart 4, the assistance unit is prospectively eligible for general assistance. If the assistance unit's estimated countable income is equal to or exceeds the standard of assistance applicable during the payment month, the assistance unit is prospectively ineligible for that payment month and must be denied general assistance or terminated from general assistance.

Subp. 4. **Determination of monthly payment amounts.** The local agency must determine the monthly general assistance payment to an assistance unit for the payment month by subtracting the estimated amount of countable income for the payment month as determined in subpart 2, from the standard of assistance applicable to the assistance unit during the payment month. The local agency must issue a supplemental payment to an assistance unit equal to the difference between the amount of countable income actually received by the assistance unit and the amount of estimated countable income for the payment month if the difference is \$10 or more.

9500.1230 PAYMENT PROVISIONS.

Subpart 1. **Monthly payment.** The minimum monthly payment to an assistance unit must be the applicable state assistance standard as provided by parts 9500.1216 to 9500.1222 or the higher local agency standard as provided by subpart 5 minus the assistance unit's countable income as determined under part 9500.1229, subpart 4.

Subp. 2. **Standard of assistance applies to full month.** Except when an increase must be made in the standard of assistance applicable to an assistance unit due to the addition of a member to the assistance unit, or when a recipient is discharged into the community from a negotiated rate facility, the standard of assistance applicable to an assistance unit on the first day of a payment month or at the time of application, whichever is later, applies to the assistance unit for the entire month.

Subp. 3. **Monthly payment to an applicant or recipient residing in a nursing home or facility with a negotiated rate.** If the applicant or recipient resides in a nursing home or facility with a negotiated rate, the applicant's or recipient's countable income must first be deducted from the reduced standard provided by part 9500.1218, subpart 2. The applicant's or recipient's countable income which exceeds the reduced standard must be used to reduce the amount of the negotiated rate paid to the nursing home or facility, as provided by subpart 4. The minimum monthly payment to the assistance unit must be the reduced standard minus the assistance unit's countable income. To this minimum payment, the local agency may add an additional amount in accordance with subpart 5.

Subp. 4. **Payments to a nursing home or facility with a negotiated rate.** When an applicant or recipient resides in a facility with a negotiated rate, the applicant's or recipient's countable income which exceeds the reduced state assistance standard, as determined in subpart 3, must be applied to the negotiated rate and paid to the nursing home or facility. The local agency must use general assistance funds to make monthly payments to the nursing home or facility in an amount equal to the difference between the negotiated rate and the assistance unit's excess countable income. The monthly payment to the nursing home or facility may be issued as a voucher or vendor payment.

Subp. 5. **Payment in excess of state standards.** The local agency may establish local standards of assistance for applicants and recipients in excess of the standards under parts 9500.1218 to 9500.1224, and may provide payments for items or needs which it determines are special. If the local agency chooses to provide higher local standards or special needs it must develop clear, written procedures that establish criteria for eligibility and the payment amounts for the higher standards and special needs. Payments for higher standards and special needs made according to local agency procedures must be made to all recipients who reside in the county without regard to the recipient's length of county residency.

9500.1232 STATE PARTICIPATION.

Subpart 1. **State participation for monthly general assistance payments made based on a full state assistance standard.** Except as provided by subparts 2 and 3, the amount of state participation in the monthly general assistance payment made under Minnesota Statutes, section 256D.03, subdivision 2, must be determined by subtracting the assistance unit's countable income from the applicable full state assistance standard and multiplying the difference by 75 percent.

Subp. 2. **State participation for monthly general assistance payments made based on a reduced state assistance standard.** When an assistance unit is subject to a reduced state assistance standard as provided in parts 9500.1218 to 9555.1222, the amount of state participation in the monthly payment to the assistance unit under Minnesota Statutes, section 256D.03, subdivision 2, must be determined by subtracting the assistance unit's countable income from the applicable reduced state assistance standard and multiplying the difference by 75 percent.

Subp. 3. **State participation for monthly general assistance payments made to a negotiated rate facility.** State participation in the monthly payment to a negotiated rate facility under part 9500.1230, subpart 4, must be determined by subtracting the assistance unit's excess countable income from the negotiated rate and multiplying the difference by 75 percent.

Subp. 4. **State participation for payment in excess of state standards.** State participation is not available for special need items

or the amount of the higher local agency standard provided under part 9500.1230, subpart 5, which exceed the applicable state assistance standards.

REPEALER. Minnesota Rules, parts 9500.1204; 9500.1206, subparts 7, 10, and 28; 9500.1208; 9500.1234; 9500.1236; 9500.1244; and 9500.1249 are repealed.

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.

Energy and Economic Development Department Energy and Economic Development Authority

Adopted Rules Relating to Health Care Equipment Loan Program

The rules proposed and published at *State Register*, Volume 10, Number 22, pages 1202-1204, November 25, 1985 (10 S.R. 1202) are adopted with the following modifications:

Rules as Adopted

8300.3201 DEFINITIONS.

Subp. 2. **Application fees.** "Application fees" means the fee charged by the authority, in connection with an application for program funds, based on the actual direct cost of processing the application and servicing loans by the commissioner and the commissioner of health. The application fee is two-fifths of one percent of the program funds requested in applications received during any calendar quarter established by part 8300.3204, subpart 1, and shall be paid in accordance with part 8300.3204, subpart 6. The fees shall not exceed the applicable federal limitations imposed by section 103(c) of the Internal Revenue Code of 1954, as amended, or other applicable federal laws governing the issuance of bonds or notes by the authority.

8300.3204 PROCEDURES FOR APPLICATION PROCESSING.

Subp. 3. **Review and approval.** The authority may not approve an application, or a project within an application, nor make a loan to an applicant unless the application or project within an application has been approved by the commissioner of health. If the commissioner of health has approved an application or project within an application, the authority shall pass a resolution approving the application or project and make the loan if sufficient program funds are available and ~~bond insurance is issued by a private insurer~~ if the loan to the applicant has been approved by the private insurer which has issued a letter of credit or bond insurance policy with respect to the indenture adopted by the authority pursuant to Minnesota Statutes, section 116M.07, subdivision 7b.

Subp. 4. **Authority review and rejection.** If the commissioner of health has approved an application or project within an application, the authority shall pass a resolution rejecting the application or project, and notify the applicant of the rejection, only if the authority finds that there are insufficient program funds available or that ~~bond insurance required to be issued by a private insurer is not available~~ the applicant had been denied by the private insurer which has issued a letter of credit or bond insurance policy with respect to the indenture adopted by the authority pursuant to Minnesota Statutes, section 116M.07, subdivision 7b.

Subp. 6. **Payment of application fee.** The application fee established pursuant to part 8300.3201, subpart 5 2, shall be paid by the trustee specified in the health care equipment loan indenture on a quarterly basis no later than at the time of disbursement.

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EMERGENCY RULES

Proposed Emergency Rules

According to Minn. Stat. of 1984, §§ 14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

- 1) that a free copy of the proposed emergency rule is available upon request from the agency;
- 2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
- 3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
- 4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules

Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§ 14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules

Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

MINNESOTA RULES AMENDMENTS AND ADDITIONS

(Emergency rules published in this issue)

DEPARTMENT OF PUBLIC WELFARE (Now HUMAN SERVICES)

9500.0820, s.6 [Emer] (proposed repealer)	1814
9500.0940 [Emer] (proposed supersession)	1814
9505.0211 [Emer] (proposed)	1814
9505.0212 [Emer] (proposed)	1814

SMALL BUSINESS FINANCE AGENCY (Under ENERGY AND ECONOMIC DEVELOPMENT)

8300.3100-.3106 [Emer] (adopted)	1819
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Department of Human Services

Proposed Emergency Rule Relating to Medical Assistance and Third Party Payer Liability; and

Proposed Emergency Rule Relating to Medical Assistance Assignment of Rights to Benefits from Liable Third Party Payers and Establishment of Paternity

Notice of Proposed Adoption of Emergency Rule

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled emergency rules. The statutory authority to adopt the emergency rules is contained in Minnesota Statutes, section 256B.04, subdivision 2 in regard to the Medical Assistance Program and in Minnesota Statutes, section 14.29, subdivision 1 in regard to the amendment of a rule to comply with a federal law, 42 CFR 433.139, 433.137, 433.145 and 435.604.

All persons have 25 days, or until 4:30 p.m. March 28, 1986, to submit data and views on the proposed emergency rules or any part or subpart of the rules in writing. Any comments must be submitted to:

Jan Taylor
Benefit Recovery Section
Health Care Programs Division
Box 64170
St. Paul, Minnesota 55164
Telephone: 612/296-6964

EMERGENCY RULES

Minnesota Rules, part 9505.0211 [Emergency] govern liability for collection of benefits available to medical assistance recipients for reimbursement of medical expenses.

Part 9505.0211 [Emergency] will require health service providers to bill third-party payers before submitting claims to the Medical Assistance Program. Third-party coverage shall be primary and shall be exhausted before payment is made by medical assistance. The rule contains the provider's responsibility to obtain information about potential coverage and assignment of benefits, billing requirements, and time limit for submission of claims to the department.

Minnesota Rules, part 9505.0212 [Emergency] requires that all legally able Medical Assistance applicants and recipients shall assign rights to benefits from liable third-party payers to the department. Failure to assign third-party benefits shall result in ineligibility for Medical Assistance. Children who are otherwise eligible shall not have their eligibility delayed or denied because of action of the parent.

Part 9505.0212 [Emergency] also requires that a Medical Assistance applicant or recipient must cooperate with the local agency in establishing paternity of her eligible child and in obtaining medical care support and payments. Cooperation includes providing the local agency with information, appearing at a state or local office, appearing as a witness at a court or other proceeding, paying to the local agencies any support or medical care funds received that are covered by the assignment, or other reasonable steps to establish support. The rule includes criteria to use in establishing whether "good cause" exists in an applicant's or recipient's non-cooperation in the establishment of paternity or in obtaining medical care supports and payments.

A free copy of the proposed rules are available by contacting:

Jan Taylor
Benefit Recovery Section
Health Care Programs Division
Box 64170
St. Paul, Minnesota 55164

The proposed rules may be reviewed at county welfare or human service agencies in the state of Minnesota.

The proposed rules may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rules as noticed.

Upon adoption of the emergency rules by the agency, the rules as adopted and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rules, must submit the written request to Jan Taylor.

The emergency rules will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rules will be continued in effect for an additional 180 days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

The Department anticipates that part 9505.0211 [Emergency] will result in increased third-party collections for medical care, thereby reducing public agencies' medical assistance payments.

The administration of part 9505.0212 [Emergency] will result in additional costs to the local county agency. Under IV-D regulations, federal reimbursement for AFDC cases is at 70%. Under the Medical Assistance Program, the county will receive 70% federal reimbursement for certain activities and 50% federal reimbursement for medical support enforcement activities.

During the implementation period, an addition of approximately 3000 cases would result. After the initial start-up, approximately 200 medical assistance paternity cases will be referred to the county IV-D caseworkers monthly. Only a small proportion of the cases will result in "good cause actions" with the remainder resulting in IV-D casework.

If paternity is established, reimbursement of all costs may be required of the defendant as a part of the court decree. As paternity cannot be established in less than one-third of the cases, the potential for reimbursement is great.

The exact fiscal impact of the proposed rule is not determinable due to the many factors involved in paternity actions. The Department estimates that the net fiscal impact on local public bodies as a result of adoption of this rule will be less than \$100,000 in either of the first two years following adoption. The increased administrative costs of local public bodies will be offset by increased paternity collections and increased collections from third-party payors due to the assignment of benefits from third-party payors.

A fiscal note explaining the costs of the rule is available from Jan Taylor.

February 14, 1986

Leonard W. Levine, Commissioner
Department of Human Services

EMERGENCY RULES

Proposed Emergency Rule Relating to Medical Assistance and Third Party Payer Liability

Rule as Proposed, Emergency (all new material)

9505.0211 [Emergency] THIRD PARTY PAYER LIABILITY.

Subpart 1. **Definitions.** The terms used in subparts 1 to 9 have the meanings given them.

A. "Assignment" or "assignment of benefits" means the written authorization by a person or the person's authorized representative, a policyholder, or other authorized individual to transfer to another individual, entity, or agency his or her rights or the rights of his or her dependents to medical support or other third party payments.

B. "Authorized representative" means an individual authorized by the medical assistance applicant or recipient to apply for medical assistance or perform duties required of the recipient by parts 9500.0760 to 9500.0860 on behalf of the applicant or recipient.

C. "Person" means an individual applying for or receiving benefits under the medical assistance program authorized by Minnesota Statutes, chapter 256B including individuals eligible for medical assistance because of eligibility for aid to families with dependent children and Minnesota supplemental assistance.

D. "Provider" means a vendor as specified in Minnesota Statutes, section 256B.02, subdivision 7, that has signed an agreement approved by the department for the provision of health services to a recipient.

E. "Third party payer" means a person, entity, agency, or government program, other than Medicare or the medical assistance program, that has a probable liability to pay all or part of the costs of a recipient's health services. Examples are an insurance company, health maintenance organization, CHAMPUS, workers' compensation, and potential defendants in legal actions arising out of unintentional or intentional torts.

Subp. 2. **Third party payer; primary coverage.** A third party payer who is liable to pay all or part of the cost of a health service provided to a medical assistance applicant or recipient shall be the primary payer. The third party payer's coverage or liability for a health service provided to a medical assistance applicant or recipient shall be utilized to the fullest extent available before a medical assistance payment is made on the recipient's behalf.

Subp. 3. **Provider responsibility to obtain information and assignment of benefits.** The provider shall obtain information about the recipient's potential health service coverage by a third party payer from the recipient, from the recipient's responsible relative, or from the remittance advice provided by the department upon rejection of a claim because of the department's identification of a potential third party payer. Further, the provider shall be responsible to obtain an assignment of benefits from the recipient, policyholder, or other authorized individual or representative. In the case of a dependent child insured under a policy held by a parent or other individual who does not have custody of the child, the provider shall obtain the assignment from the individual who has custody of the child. For purposes of this subpart, "responsible relative" means the spouse of a medical assistance recipient or applicant or the parent of a child under age 18 who is a medical assistance recipient or applicant.

Subp. 4. **Provider billing; third party.** When a provider is informed by a recipient, the recipient's responsible relative, a local agency, or the department that the recipient has health service coverage by a third party payer, the provider shall bill the third party payer before seeking medical assistance payment for the health service.

Subp. 5. **Provider billing; department.** Except as in subpart 7, the provider shall not submit a claim for medical assistance payment until receiving from the third party payer either a payment, a partial payment, or a notice that the claim has been denied. A provider may submit a claim for medical assistance payment for the difference between the amount paid by the third party and the amount payable by medical assistance in the absence of other coverage. However, no medical assistance payment will be made to a provider under contract with a private health coverage plan when the private health coverage plan calls for the provider to accept the plan's payment as payment in full. The provider who submits a claim for medical assistance payment by the department after a third party payer has paid part of the claim or denied the claim shall submit with the claim the additional information or records required by the department to document the reason for the partial payment or denial.

Subp. 6. **Time limit for submission of claims.** A provider must submit claims to the department according to the 12-month billing requirement in part 9500.1080, subpart 2.

Subp. 7. **Provider billing; third party failure to respond.** A provider who has not received either a payment or denial notice from a third party payer within 90 days after submitting the claim for payment may bill the medical assistance program. The provider shall submit to the department, no later than 12 months after the date of service to the recipient, a copy of the original claim to the third party payer, documentation of two further attempts to contact the third party payer, and any written communication the provider has received from the third party payer.

Subp. 8. **Recovery of payments to recipients.** Notwithstanding the provisions of part 9500.1080, subpart 1, a provider must bill a

recipient to recover the amount of a payment received by a recipient from a third party payer. The department is liable only to the extent that the amount payable by medical assistance exceeds the third party liability.

Subp. 9. **Exclusion from third party payer billing requirements.** The department will exclude from third party payer billing requirements those health services for which the probable existence of liability cannot be determined or the third party payer billing is not cost effective to the department. Providers are not required to bill third party payers for:

A. Prescription drugs and medical supplies under major medical expense insurance which provides protection against extraordinary medical expenses that would otherwise create a serious financial hardship. This exclusion does not apply to pharmacy only insurance and private health maintenance organization plans (HMOs).

B. Early periodic screening diagnosis and treatment (EPSDT) claims except when the person is covered by a private health maintenance organization plan (HMO).

C. Claims for which the submitted charge is less than \$5. For purposes of this item, "claim" means a single line on the pharmacy and medical supply invoice of the department and the total of all lines on other invoice forms of the department.

D. Personal care attendant services provided by unlicensed personnel.

E. Day activity center (DAC) services.

F. Waivered services billed to the department by the local agency.

G. Health service bills for an individual recipient approved by the department because facts presented by the provider and the local agency demonstrate that third party payer billing is not cost effective to the department.

H. Other health services for which the Health Care Financing Administration (HCFA) has granted the state a waiver. The department will implement any waiver approved or withdrawn by HCFA within 60 days after the department's receipt of the notice from HCFA.

APPLICABILITY. Part 9505.0211 [Emergency] supercedes any inconsistent provision of part 9500.0940.

Proposed Emergency Rule Relating to Medical Assistance Assignment of Rights to Benefits from Liable Third Party Payers and Establishment of Paternity

Rule as Proposed, Emergency (all new material)

9505.0212 [Emergency] ASSIGNMENT OF RIGHTS.

Subpart 1. **Definitions.** The terms used in subparts 1 to 6 have the meanings given them in items A to F.

A. "Assignment" or "assignment of benefits" means the written authorization by a person or the person's authorized representative, a policyholder, or other authorized individual to transfer to another individual, entity, or agency his or her rights or the rights of his or her dependents to medical support or other third party payments.

B. "Authorized representative" means an individual authorized by the medical assistance applicant or recipient to apply for medical assistance or perform duties required of the recipient by parts 9500.0760 to 9500.0860 on behalf of the applicant or recipient.

C. "Department" means the Minnesota Department of Human Services.

D. "Local agency" means a county or multi-county agency that is authorized under Minnesota Statutes, sections 393.01, subdivision 7 and 393.07, subdivision 2, as the agency responsible for determining eligibility for the medical assistance program.

E. "Person" means an individual applying for or receiving benefits under the medical assistance program authorized by Minnesota Statutes, chapter 256B including individuals eligible for medical assistance because of eligibility for aid to families with dependent children and Minnesota supplemental assistance.

F. "Third party payer" means an individual, entity, agency, or government program, that has a probable liability to pay all or part of the costs of a recipient's health services. Examples are an insurance company, health maintenance organization, CHAMPUS, workers' compensation, and potential defendants in legal actions arising out of unintentional or intentional torts.

Subp. 2. **Notification to local agency.** A person or the person's authorized representative shall notify the local agency of the availability of third party payer coverage at the time of application, at the time of an eligibility redetermination, and within ten days of a change in potential coverage.

Subp. 3. **Assignment of benefits.** All legally able medical assistance applicants and recipients shall assign to the department their rights and the rights of their dependent children to benefits from liable third party payers. Any applicant or recipient who

EMERGENCY RULES

refuses to assign to the department his or her own rights or those of any other individual for whom he or she can legally make an assignment shall be found ineligible for medical assistance. An individual who is otherwise eligible for medical assistance shall not have his or her eligibility denied or delayed because he or she cannot legally assign his or her own rights and the individual legally able to make the assignment refuses to assign the rights or to cooperate.

Subp. 4. Cooperation in establishing paternity and obtaining medical support. Except as provided in subparts 5 and 6, a person must cooperate with the department and local agency in establishing paternity of an eligible child and in obtaining medical care support and payments for himself or herself and any other person for whom he or she can legally assign rights. Cooperation includes providing the local agency with information, appearing at a state or local office to provide information or evidence relevant to the case, appearing as a witness at a court or other proceeding, paying to the local agency any support or medical care funds received that are covered in the assignment, provide information or attest to lack of information under penalty of perjury, and other reasonable steps to establish support. The person who fails to cooperate in establishing paternity and obtaining medical support shall be ineligible for medical assistance.

Subp. 5. Good cause exemption from the requirement to cooperate in establishing paternity and obtaining medical care support for children. Before requiring a person to cooperate in establishing paternity and obtaining medical care support for children, a local agency shall notify the person that she may claim a good cause exemption from cooperating with the requirements of subpart 4 at the time of application or at any subsequent time. When a person submits a good cause claim in writing, the local agency must stop action related to obtaining medical care support and payments. The person shall submit corroborative evidence of a good cause claim to the local agency within 20 days of submitting the claim.

A. Good cause exists when:

- (1) a child for whom child support enforcement is sought was conceived as the result of incest or rape;
- (2) legal proceedings for the adoption of a dependent child are pending before a court of competent jurisdiction; or
- (3) the person is receiving services from a licensed adoption agency to determine whether to keep the child or relinquish the child for adoption, and the services have not been provided for longer than three months.

B. Good cause exists when the person documents that her cooperation would not be in the best interest of the dependent child because the cooperation could result in:

- (1) physical harm to the child;
- (2) emotional impairment of the child which would substantially affect the child's functioning; or
- (3) physical harm to or emotional impairment of the person which would substantially affect the person's functioning and reduce the person's ability to adequately care for the child.

C. The local agency shall help a person who has difficulty getting the evidence to support a good cause claim. When a local agency requires additional evidence to make a determination on the claim for good cause, the local agency shall notify the person that additional evidence is required, explain why the additional evidence is required, identify what form this evidence might take, and specify an additional period that will be allowed to obtain it.

D. A local agency shall determine whether good cause exists by comparing the good cause claim of the person to sufficiency of the evidence.

E. Once a local agency determines that a person has good cause, the exemption from cooperation under subpart 4 must remain in effect for the period the child remains eligible under that application, except for subitems (1) to (4).

(1) A good cause exemption allowed because a child was conceived as the result of incest or rape must continue until a subsequent acknowledgement of paternity or an application for adoption by a second parent is submitted for that child.

(2) A good cause exemption allowed because of adoption proceedings must be issued for a fixed period of time based on the expected time required to complete adoption proceedings. The exemption must be extended when the required time is longer than was anticipated and must stop when adoption proceedings are discontinued or completed.

(3) A good cause exemption allowed because of adoption counseling must last no more than three months from the time the counseling began.

(4) A good cause exemption must be allowed under subsequent applications without additional evidence when the factors which led to the exemption continue to exist. A good cause exemption allowed under item B must end when the factors which led to allowing the exemption have changed.

F. A good cause exemption which has been allowed by a local agency for a person must be honored by the local agency in the county of residence when the person moves into that county, until the factors which led to allowing the exemption change.

G. When a local agency denies a claim for a good cause exemption, the local agency shall require the person to submit

additional evidence in support of a later claim for a good cause exemption before the local agency stops acting to enforce child support under subpart 4.

H. Following a determination that a person has good cause for refusing to cooperate, a local agency shall take no further action to enforce child support until the good cause exemption ends according to item E.

Subp. 6. Good cause exemption from the requirement to cooperate in obtaining medical care support and payments for other individuals. Before requiring a person to cooperate in obtaining medical care support and payments for other individuals, a local agency shall notify the person that he or she may claim a good cause exemption from cooperating with the requirements of subpart 4 at the time of application or at any subsequent time. When a person submits a good cause claim in writing, the person shall submit corroborative evidence of the good cause claim to the local agency within 20 days of submitting the claim. The local agency must send the claim and the corroborative evidence to the department and must stop action related to obtaining medical care support and payments.

A. Good cause exists when cooperation is against the best interests of the individual or other person to whom medical assistance is being furnished because it is anticipated that cooperation will result in reprisal against and cause physical or emotional harm to the individual or other person.

B. The local agency shall help a person who has difficulty getting the evidence to support a good cause claim. When a local agency or the department requires additional evidence to make a determination on the claim for good cause, the local agency or department shall notify the person that additional evidence is required, explain why the additional evidence is required, identify what form this evidence might take, and specify an additional period that will be allowed to obtain it.

C. The department shall determine whether good cause exists by comparing the good cause claim of the person to sufficiency of the evidence.

D. Once the department determines that a person has good cause, the exemption from cooperation under subpart 4 must remain in effect for the period the person remains eligible under that application. A good cause exemption must be allowed under subsequent applications without additional evidence when the factors which led to the exemption continue to exist. A good cause exemption allowed under this subpart must end when the factors which led to allowing the exemption have changed.

E. When the department denies a claim for good cause exemption, the department shall continue to enforce medical care support and payment requirements unless the person submits additional evidence in support of a later claim for a good cause exemption before the department or local agency stops acting to obtain medical care support and payments under subpart 4.

F. Following a determination that a person has good cause for refusing to cooperate, a local agency and the department shall take no further action to obtain medical care support and payment until the good cause exemption ends under item D.

REPEALER. Minnesota Rules, part 9500.0820, subpart 6 is repealed.

Energy and Economic Development Department Energy and Economic Development Authority

Adopted Emergency Rules Relating to Qualified Economic Diversification Projects

The rules proposed and published at *State Register*, Volume 10, Number 25, pages 1331-1334, December 16, 1985 (10 S.R. 1331) 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.

Metropolitan Council

Public Hearing: Draft Amendment to the Transportation Development Guide/Policy Plan

The Metropolitan Council will hold a public hearing on Tuesday, March 25, 1986, beginning at 11 a.m. at the Metropolitan Council Chambers, 300 Metro Square Bldg., 7th and Robert Streets, St. Paul, Minn., on an amendment to its Transportation Policy Plan. The amendment includes several plan elements required by the creation of the Regional Transit Board (RTB). These elements include support of goals established for the RTB by the legislature, timing and priorities for improvement, policies and standards for transit facilities, services and service areas, levels of expenditure and funding and a description of the contents to be included in the implementation plans prepared by the RTB.

All interested people are encouraged to attend the hearing and offer comments. People may register to speak in advance by contacting Guy Peterson at 291-6527. Questions about the proposed procedures and standards should be directed to Stephen Wilson at 291-6344. Copies of the draft amendments are available free of charge from the Council's Community Services Department at 291-6464. Copies are also available for public inspection beginning Feb. 21 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
314 Walnut St.
Chaska, MN 55318

Dakota County Library—Eagan Branch
1340 Wescott Rd.
Eagan, MN 55123

Hennepin County Library—Southdale Branch
7001 York Av.
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.
Cottage Grove, MN 55106

Metropolitan Council

Review Schedule for an Amendment to the Transportation Development Guide/Policy Plan of the Metropolitan Development Guide

As a result of the creation of the Regional Transit Board (RTB), the 1984 Minnesota Legislature through M.S. 473.146, Subd. 3, directed the Metropolitan Council to address several elements in its Transportation Policy Plan.

The plan, as part of the Metropolitan Development Guide, sets forth policies relating to ground transportation, such as highway and transit facilities. The present plan was adopted in January, 1983. The elements requested by the Legislature included: support of goals established for the RTB by the Legislature; timing and priorities for improvement; policies and standards for transit facilities, services and service areas; levels of expenditure and funding; and a description of the contents to be included in the implementation plans prepared by the RTB.

The amendment, an appendix to the existing plan, clarifies and restates the plan in the context of the legislative requirements. Where necessary additional information is included. However, no new policies are proposed. Because two major current transit studies that are needed for a more comprehensive revision of the policy plan will not be completed until the end of 1986, this amendment is considered only interim in nature. The most extensive additions to the plan are in the areas of transit expenditures

and sources of funding, where current levels of transit funding and key recommendations of the Metropolitan Council's Regional Services and Finance Study on Transit have been incorporated.

The following is a tentative schedule for review of the Amendment to the Transportation Development Guide/Policy Plan:

February 13, 1986	Metropolitan Council approves draft plan for public hearing and sets public hearing date.
March 25, 1986	Public hearing.
April 9, 1986	Hearing record closes.
April 29, 1986	Metropolitan Systems Committee reviews hearing report and recommends adoption of Amendment to Transportation Policy Plan.
May 8, 1986	Metropolitan Council adopts Amendment to Transportation Policy Plan.

This schedule is tentative and subject to change. A subsequent notice of public hearing will be published. If you have questions regarding the schedule or the Transportation Policy Plan amendment, call Stephen Wilson of the Council's Transportation Planning staff at 291-6344.

Department of Transportation

Petition of City of Eden Prairie for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Eden Prairie has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a construction project on Municipal State Aid Street 103 (Valley View Road) from Edenvale Boulevard to Penny Hill Road.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapter 161 and 162, so as to permit a street width of 48 feet with no parking instead of the required 52 feet with no parking.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 24, 1986

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of City of Mendota Heights for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the City Council of the City of Mendota Heights has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a construction project on Municipal State Aid Street 108 (Chippewa Avenue) Dodd Road to Annapolis Street.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapter 161 and 162, so as to permit design speeds of 23 and 17 mph instead of the required 30 MPH.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 24, 1986

Richard P. Braun
Commissioner of Transportation

OFFICIAL NOTICES

Department of Transportation

Petition of City of Minneapolis for a Variance from State Aid Standards for Designed Speed

Notice is hereby given that the City Council of the City of Minneapolis has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a reconstruction project on Cedar Avenue from 15th Avenue South to T.H. 12.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapter 161 and 162, so as to permit a design speed of 26.5 MPH instead of the required design speed of 30 MPH.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 24, 1986

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of City of Robbinsdale for a Variance from State Aid Standards for Street Width and Related Parking Restrictions

Notice is hereby given that the City Council of the City of Robbinsdale has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a construction project on Municipal State Aid Street 306 (Regent Avenue North) from 36th Avenue North to 41st Avenue North.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapter 161 and 162, so as to permit a street width of 34 feet with parking on both sides of the street instead of the required 40 foot width with parking allowed on both sides.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 24, 1986

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of City of St. Paul for a Variance from State Aid Standards for Design Speed and Street Width

Notice is hereby given that the City Council of the City of St. Paul has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a construction project on Municipal State Aid Street 231 (Snelling Avenue) from Edgumbe Road to West Seventh Street.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapter 161 and 162, so as to permit a design speed of 20 miles per hour instead of the required 30 miles per hour and a street width of 26 feet with no parking permitted instead of the required width of 36 feet with no parking permitted.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 24, 1986

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of City of St. Paul for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of St. Paul has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a reconstruction project on Eighth Street (Trunk Highway 5) from Minnesota Street to Jackson Street.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapter 161 and 162, so as to permit a divided street width of 64 feet including a 10' median and parking on one side instead of the required width of 72 feet including a 10' median and parking permitted on one side. The variance is necessary so that the City of St. Paul can finance this project with their Municipal State Aid Street funds.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 24, 1986

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of City of St. Paul for a Variance from State Aid Standards for Street Width and Related Parking Restrictions

Notice is hereby given that the City Council of the City of St. Paul has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a construction project on Municipal State Aid Street 145 (Hamline Avenue) from Como Avenue to Hoyt Avenue.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapter 161 and 162, so as to permit a street width of 36 feet with parallel parking on one side instead of the required street width of 38 foot with parking on one side. Also to permit parking on both sides of Hamline Avenue during periods at the Minnesota State Fair and on weekends during the summer.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 24, 1986

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of City of Winona for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Winona has made a written request to the Commissioner of Transpor-

OFFICIAL NOTICES

tation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a reconstruction project on Municipal State Aid Street 103 (Fifth Street) from High Street to Huff Street.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9912 adopted pursuant to Minnesota Statutes Chapter 161 and 162, so as to permit a street width of 44 feet with parking instead of the required street width of 48 feet with parking.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 24, 1986

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of County of Wadena for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Wadena County has made a written request to the Commissioner of Transportation pursuant to Minnesota Rules § 8820.3300 for a variance from minimum standards for a construction project on CSAH 21 from the east limits of Menagha to CSAH 23.

The request is for a variance from Minnesota Rules for State Aid Operations § 8820.9910 adopted pursuant to Minnesota Statutes Chapters 161 and 162, so as to permit a design speed of 20 MPH instead of a required design speed of 40 MPH.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

February 24, 1986

Richard P. Braun
Commissioner of Transportation

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 final submission date of 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
26-070-11507	Collator	Bemidji State University	Bemidji	Contact buyer
79-100-03483, etc. Contract	Cylinder Molds	Transportation	Various	Contact buyer
07-700-35550	Janitor Service	Public Safety	Minneapolis	Contact buyer
29-000-43508	Concrete Planks & Connectors	Natural Resources Administration—	Various	Contact buyer
02-410-48175	Belden Cable	Information Management Bureau	IMB	Contact buyer
55-103-03668	Offset Press	Human Services— Moose Lake Regional Treatment Center	Moose Lake	Contact buyer
Contract	Genuine Triumph Mower Repair Parts	Various	Various	\$5,000-10,000
21-603-38288	Van	Jobs & Training	Duluth	Contact buyer
29-000-43429	Cor-Ten Picnic Table Frames	Natural Resources	St. Paul & Grand Rapids	Contact buyer
79-382-01059	Pickup Sweeper & Loader	Transportation	Rochester	Contact buyer
02-310-14515	Furnish & Install Outdoor Benches & Trash Receptacles	MN Correctional Facility	Shakopee	Contact buyer
24-000-10343-5967	Employee Action Forms	Employee Relations	St. Paul	Contact buyer
26-070-11547	Install Overhead Door Operator	Bemidji State University	Bemidji	Contact buyer
26-175-06454	Electronic Balance	Southwest State University	Marshall	Contact buyer
Sch. 113E	Trucks	Various	Various	Contact buyer
78-620-25846	Treated Lumber	MN Correctional Facility	Stillwater	Contact buyer
12-100-90208	Purchase of Photocopy	Health	Minneapolis	Contact buyer
79-000-52231	Move Transportation offices	Transportation	So. St. Paul	Contact buyer
79-100-03486 etc.	Nursery Stock	Transportation	Various	Contact buyer
78-620-25847	MEECO Floats	MN Correctional Facility	Stillwater	Contact buyer
26-137-03507	Modular Cooling Units	Mankato State University	Mankato	Contact buyer

STATE CONTRACTS

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
79-000-52047-02-307-48383	Kitchen Equipment	Transportation	St. Paul	Contact buyer
Sch. 95A	Crackfiller	Transportation	Various	Contact buyer
29-003-09869	Laminated Rulers	Natural Resources	Brainerd	Contact buyer
32-300-14143-REBID	Disposal of Hazardous Waste	Pollution Control	Pollution Control	Contact buyer
26-071-16392	Security System Accessories	Mankato State University	Mankato	Contact buyer
26-071-16440	Security Detection Devices	Mankato State University	Mankato	Contact buyer
55-201-06436	Repairs to Water Softener	Human Services—Cambridge Regional Treatment Center	Cambridge	Contact buyer
29-000-43484	Mobile Boat Dock	Natural Resources	St. Paul	Contact buyer
14-000-01069-6220	Certificate of Veterinary Inspect	Animal Health Board	St. Paul	Contact buyer
29-001-09857	Furnish & Install Aeration Equipment in Cameron Lake	DNR Natural Resources	Erskine	Contact buyer
21-200-12163-6234	Employees Biweekly Time Report	Jobs and Training	St. Paul	Contact buyer
27-140-43337-5640	Catalog Reprint With Changes	Brainerd Community College	Brainerd	Contact buyer
07-100-37914 & 7-6260 & 1	Take Motorcycle Training Outdoor Board & Bus Posters	Public Safety	St. Paul	Contact buyer
26-073-18659	Trailers, Cargo & Utility	St. Cloud State University	St. Cloud	Contact buyer

Contact 296-6152 for referral to specific buyers.

Department of Education Executive Division

Request for Information for Office Automation/Information System

The Department of Education is seeking information about hardware/software systems which may be available to provide department-wide automation. The system would provide a wide range of services to approximately 400 department staff located in St. Paul, Minnesota. The system will ultimately also serve staff located in Faribault, Minnesota, and field offices located in Bemidji, Minnesota and Duluth, Minnesota. The system will also include an electronic mail component, linking the Department to the 436 Minnesota school districts.

The formal RFI may be requested from and inquiries directed to:

Minnesota Department of Education
George W. Fortmeyer, Director
Administrative Services
740 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
612/296-8418

The deadline for responses to the RFI will be April 7, 1986.

Metropolitan Council

Request for Service Insurance Agent

Notice is hereby given by the Metropolitan Council of the Twin City Area that it will consider appointing an Insurance Agent of Record to perform the following services:

Review the Council's property, liability, automobile, and Workers Compensation exposures and insurance policies, including assistance in preparing specifications and obtaining quotations on behalf of the Council for the various policies.

Interested agents may submit an Agency Services, Experience and Qualifications Questionnaire which is available upon request by contacting William E. Scott, III at (612) 291-6430 or the Metropolitan Council Offices, Suite 300 Metro Square Building, 7th and Robert, St. Paul, MN 55101.

Submissions received by 4:00 p.m., local time, March 7, 1986 at the Offices of the Council will be considered. The Council reserves the right to accept or reject any submissions and to waive any informalities.

Department of Natural Resources

Request for Proposals for Lake Use Study

The Department of Natural Resources is requesting proposals from highly qualified firms or individuals for a study of lake surface use in Minnesota. The study will include a population of approximately 200 water-access priority lakes in the counties of Becker, Douglas, Grant, Otter Tail, Pope and Stevens. A stratified sample of some 50 lakes has been selected. The goals of the survey are to:

1. Measure boater attitudes concerning safety-related issues such as:
 - a. Perception of lake crowding as related to boating safety.
 - b. Occurrence of specific safety problems.
 - c. Participation in boating safety courses.
 - d. Alcohol use by boat operators.
 - e. Awareness of boating use restrictions and perceptions of needed restrictions.
2. Describe boat/boater/boating characteristics such as:
 - a. Boat type, engine size.
 - b. Activity, boating time, fuel consumption.
 - c. Distance traveled by land and money spent on boating activities.
3. Evaluate access characteristics including:
 - a. Overall adequacy for launching and landing as perceived by boaters.
 - b. Problems encountered and improvements needed.
 - c. Identification of specific access features liked.
4. Measure the volume boaters using accesses at different times in the season, times in the week, time of day and from different lake categories.
5. Ascertain the attitudes and use statistics of persons who reside on the lake in proportion to their use contribution.
6. Ascertain the volume boating use of the study area lakes, classified by source of access to the lake.

Interested parties may request a detailed request for proposal by writing to:

William H. Becker
Office of Planning
Department of Natural Resources
Box 10F
500 Lafayette Road
St. Paul, Minnesota 55146
Or call 296-3093.

STATE CONTRACTS

Proposals are due in Mr. Becker's office at the Department of Natural Resources at 4 p.m. twenty-one days following the publication of this Request in the *State Register*.

The contract for a similar study in 1985 was approximately \$50,000.

Supreme Court Legal Services Advisory Committee Request for Proposals for Legal Services

The Legal Services Advisory Committee is requesting proposals for legal services and alternative dispute resolution programs for low income people.

Inquiries should be directed to:

J. L. Rehak
230 State Capitol
St. Paul, MN 55155
(612) 296-6822

Application Deadline: April 15, 1986.

Department of Transportation Debarment Order for William E. Drown

Pursuant to Laws 1984, Chapter 654, Article 2, Section 8, Minnesota Rule 1230.3400, and a Stipulation for Informal Disposition dated February 6, 1986 you are debarred and disqualified from entering into or receiving a Minnesota Department of Transportation contract and from serving as a subcontractor or material supplier under a Mn/DOT contract. Neither you nor any business or entity owned by, or associated with you may enter into a contract with Mn/DOT or serve as a subcontractor or supplier of materials or services under a Mn/DOT contract.

Minnesota Rule 1230.3100, Subpart 9. states:

Subp. 9. Mn/DOT contract. "Mn/DOT contract" means a written instrument:

- A. containing the elements of offer, acceptance, and consideration to which the Minnesota Department of Transportation is a party, or acts as an agent for a party under Minnesota Statutes, section 161.36, subdivisions 2 and 3, 360.016, subdivisions 2 and 3, or 360.039, subdivisions 2 and 3;
- B. for which competitive bids are required or taken; and
- C. which is subject to the approval of the commissioner.

This order takes effect on February 18, 1986, and continues until and including July 10, 1986.
February 14, 1986

Robert McDonald
Deputy Commissioner

SUPREME COURT DECISIONS

Decisions Filed Friday, February 21, 1986

Compiled by Wayne O. Tschimperle, Clerk

C8-85-959 Randy Jay Blaisdell v. Commissioner of Public Safety, petitioner, Appellant. Court of Appeals.

The information provided by a clerk at a gas station to the police officer as to a motorist's possible involvement in a prior misdemeanor theft of gasoline did not justify stopping the motorist or otherwise interfering with his freedom of movement; accord-

ingly, the Court of Appeals erred in addressing the broader issue of whether all stops for completed misdemeanor offenses are impermissible under the Fourth Amendment.

Affirmed on other ground. Amdahl, C. J.

Dissenting, Scott, J.

Orders

C8-84-1647, C4-84-2178 In the Matter of the Welfare of: J.J.B., a Minor Child. Court of Appeals.

Reversed; An opinion of this court will follow. 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 County of Stearns, Regular Division

J. L. Shiely Company, Petitioner, v. County of Stearns, Respondent, and Hubert H. Humphrey III, Attorney General for the State of Minnesota, Intervenor, File No. C-84-3138

Findings of Fact, Conclusions of Law, and Order for Judgment Dated February 13, 1986

The above matter was tried by the Minnesota Tax Court, Chief Judge Carl A. Jensen presiding. Hearings were held on September 12, 1985 in St. Cloud, Minnesota, and on October 31, 1985 in the Courtroom of the Minnesota Tax Court in St. Paul, Minnesota.

David S. Doty, Fred L. Morrison and Gary D. Blackford, Attorneys with Popham, Haik, Schnobrich, Kaufman & Doty, Ltd., appeared for the petitioner.

Gerald W. Von Korff, Attorney with Rinke, Noonam, Grote & Smocey, Ltd., appeared on behalf of respondent.

Linda F. Close, Deputy Attorney General, appeared on behalf of the State of Minnesota, intervenor.

Briefs were subsequently filed by the parties.

Findings of Fact

1. The J. L. Shiely Company operates a crushed rock plant for the production of aggregate material in St. Cloud Township, Stearns County. In the quarter ending September 30, 1984, the J. L. Shiely Company produced 557,389 tons of aggregate material at that plant.
2. The Stearns County Auditor assessed an aggregate production tax, as provided by Minnesota Statutes § 298.75, on the J. L. Shiely Company's production for that quarter in the amount of \$39,017.28.
3. The J. L. Shiely Company paid the tax of \$39,017.28 on October 18, 1984, and concurrently filed a Statement of Objections which was proper in form and which raised the constitutional issues in this case.
4. The Stearns County Auditor filed the Statement of Objections with the Stearns County District Court, as in the case of an appeal against property taxes.
5. The Stearns County District Court by order transferred the case to the Minnesota Tax Court.
6. In 1980, a general law was passed allowing any county to impose production taxes on gravel in an amount not exceeding \$.10 per cubic yard of gravel removed. All of the prior special laws for various counties were continued in force.

TAX COURT

7. In 1981, various minor changes were made in these statutes.
8. In 1982, the law was amended to make the tax mandatory on a state-wide basis. The tax was to be \$.10 per cubic yard or \$.07 per ton on all aggregate material which was defined as being non-metalic natural mineral aggregate including, but not limited to sand, silica sand, gravel, building stone, crushed rock, limestone and granite, but not including dimension stone and dimension granite. This statute required every county to impose the production tax, and this 1982 amendment repealed all previous local laws. The effective date was January 1, 1983.
9. In accordance with the above laws of 1982, Stearns County adopted Ordinance No. 98, which basically included the provisions of the 1982 law which required all counties to impose this tax.
10. In 1983, these laws were again amended. County was defined to mean 26 named counties. The named counties formed an "L" shaped group starting from the northwest corner of the state down the west border of the state to approximately the middle, and then easterly to the east border of the state, in a contiguous group which included Stearns County. All of the old special laws were expressly repealed. A new section included a new provision which required a tax on importers which was defined as follows:
"Importer" shall mean any person who buys aggregate material produced from a county not listed in paragraph (6) or another state and causes the aggregate material to be imported into a county in this state which imposes a tax on aggregate material.
This 1983 amendment was effective for aggregate material produced after June 30, 1983. This meant that under the 1982 law, aggregate material in the entire state was subject to these taxes from January 1, 1983 to June 30, 1983.
11. In 1984, five counties were deleted from the taxed area and one county was added. With the deletions and addition, there were now two groups of contiguous counties and one county, Big Stone, which was not contiguous to any of the other counties.
12. Since January 1, 1983, the legislature has imposed a tax on the production of aggregate material (sand, gravel and crushed rock) by law. For the first six months of 1983 the legislature imposed that tax throughout the state. For the twelve months from July 1, 1983 through July 1, 1984, the legislature imposed that tax in only 26 counties, exempting the remainder of the state. For the period since July 1, 1984, the legislature has imposed that tax in only 22 counties, exempting the remainder of the state.
13. Stearns County is one of the counties in which the legislature requires the collection of the tax.
14. There is no rational basis or legitimate state purpose for levying the tax in only 26 specified counties from July 1, 1983 through July 1, 1984, and 22 specified counties thereafter.
15. Minnesota Statutes § 298.75 has been unconstitutional in its application since July 1, 1983 when it levied a production tax on producers in only 26 counties and exempted producers in 61 counties because it violates the uniformity requirement of Minnesota Constitution, Article X, § 1, and the equal protection clauses of the Minnesota Constitution and the United States Constitution. It also violates Minnesota Constitution Article XII, § 1, which prohibits special laws exempting property from taxation.
16. Minnesota Statutes § 298.75 is a general law and is not a special or local law.
17. Petitioner is entitled to a refund of taxes paid for the quarter ending September 30, 1984 in the amount of \$39,017.28 together with interest.

Conclusions of Law and Order for Judgment

1. This Court has jurisdiction over this matter, including jurisdiction over the constitutional issues which have been raised.
2. Minnesota Statutes § 298.75 discriminates against the petitioner and aggregate producers in the named counties without a rational basis for that classification and is unconstitutional because it violates the uniformity requirement of Minnesota Constitution Article X, § 1, and the equal protection clauses of the Minnesota Constitution and the United States Constitution.
3. Minnesota Statutes § 298.75 is unconstitutional and void as of July 1, 1983.
4. Respondent's assessment of taxes against the petitioner for the quarter ending September 30, 1984 in the amount of \$39,017.28, which is the subject of this appeal, is invalid. Respondent is ordered to refund to petitioner the sum of \$39,017.28 together with interest from the original date of payment.

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

February 13, 1986

By the Court,
Carl A. Jensen, Chief Judge
Minnesota Tax Court

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