

87, January 26

STATE OF MINNESOTA

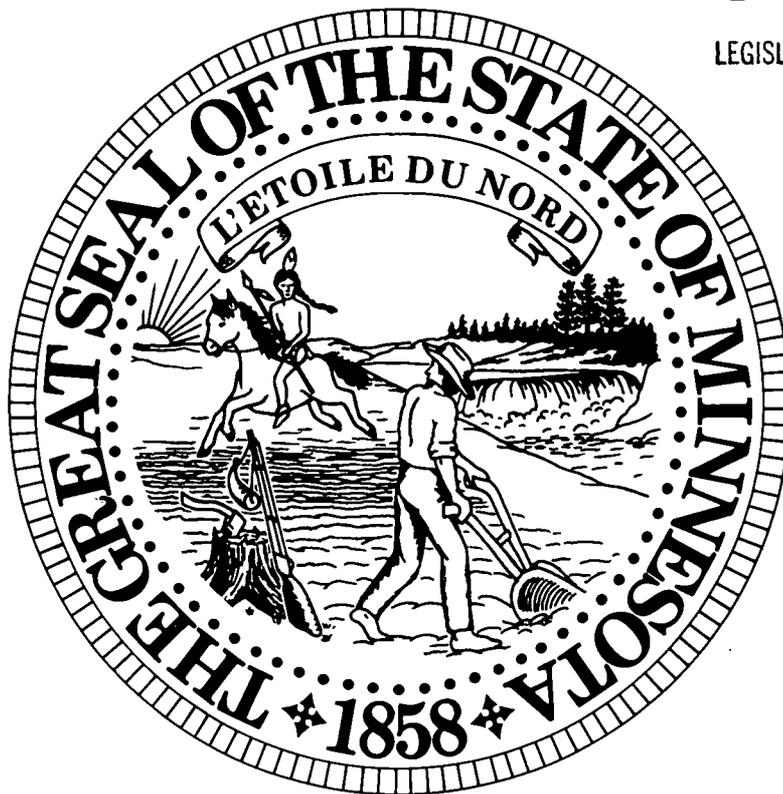
STATE REGISTER

DEPARTMENT OF ADMINISTRATION—DOCUMENTS DIVISION

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VOLUME 11, NUMBER 30

Pages 1349-1380

STATE REGISTER

Judicial Notice Shall Be Taken of Material Published in the *State Register*

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, official notices to the public, state and non-state public contracts, supreme court and tax court decisions, and a monthly calendar of cases to be heard by the state supreme court.

Volume 11 Printing Schedule and Submission Deadlines

Vol. 11 Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
30	Monday 12 January	Friday 16 January	Monday 26 January
31	Friday 16 January	Monday 26 January	Monday 2 February
32	Monday 26 January	Monday 2 February	Monday 9 February
33	Monday 2 February	Monday 9 February	Monday 16 February

*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 *State Register* editorial offices, 504 Rice Street, St. Paul, Minnesota 55155, (612) 296-4273.

The *State Register* is published by the State of Minnesota, Department of Administration, 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 \$3.50 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.

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

SENATE

Briefly-Preview—Senate news and committee calendar; published weekly during legislative sessions.

Perspectives—Publication about the Senate.

Session Review—Summarizes actions of the Minnesota Senate.

Contact: Senate Public Information Office
Room 231 State Capitol, St. Paul, MN 55155
(612) 296-0504

HOUSE

Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
(612) 296-2146

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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:

- 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 requested by an agency.)
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 are included in a supplement published 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.

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.

ADMINISTRATION DEPARTMENT

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COMMERCE DEPARTMENT

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EXECUTIVE ORDERS

Order No. 87-1 Amending Executive Order No. 85-9 Assigning Emergency Responsibilities to State Agencies; Repealing Executive Orders Nos. 83-10 and 83-17

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

WHEREAS, Executive Order No. 85-9 was issued on March 1, 1985, providing for assignment of emergency responsibilities to state agencies; and

WHEREAS, it is necessary to amend Executive Order 85-9 by amending titles;

NOW, THEREFORE, I hereby order that:

Executive Order No. 85-9 be amended according to the following changes:

1. Any reference to the Department of Economic Security be changed to the Department of Jobs and Training.
2. Any reference to the Field Operations Division of the Department of Economic Security be changed to the Jobs, Opportunities, and Insurance Division of the Department of Jobs and Training.
3. Any reference to the Unemployment Insurance Division of the Department of Economic Security be changed to the Jobs, Opportunities, and Insurance Division of the Department of Jobs and Training.
4. Any reference to the Employment Programs Division of the Department of Economic Security be changed to the Jobs, Opportunities, and Insurance Division of the Department of Jobs and Training.

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

IN TESTIMONY WHEREOF I have set my hand this seventh day of January, 1987.



Rudy Perpich
Governor

ANNOUNCEMENTS

HEALTH DEPARTMENT Sister Mary Madonna Ashton, Minnesota Commissioner of Health, has recommended the creation of a mandatory client protection system for patients of currently unregulated mental health practitioners in the State. The Commissioner has also recommended the formal registration of mental health practitioners in two occupational groups—social workers, and marriage and family therapists. Registration gives the members of a registered occupation the exclusive right to use a particular occupational title—but other persons are not prohibited from offering the same types of services.

The proposed client protection system would cover all persons who offer mental health services, regardless of occupational title, with the exception of psychiatrists, psychologists, and psychiatric nurses. Persons in those occupations are now licensed by the State Boards of Medicine, Psychology and Nursing—and are already subject to regulation.

The proposed system would provide a way to discipline mental health practitioners who harm their clients, according to staff at the State Health Department. The kinds of problems that would be handled under the system include the sexual abuse or deception of clients, and the failure of practitioners to seek help for chemical dependency.

Practitioners covered by the system would be required to place their names on a list maintained by the State. They would also be required to inform clients about their professional credentials and training, to observe a professional code of conduct, and to provide—and comply with—a client's bill of rights. The bill of rights would include information on how and where to make a complaint about practitioner misconduct. Penalties would be provided for practitioners who seriously harm their clients, including possible loss of the right to practice. Other legal penalties, yet to be determined, would be provided for practitioners who fail to have themselves listed with the State.

Registration of social workers and marriage and family therapists had been recommended earlier by the State Human Services Occupations Advisory Council, which advises the Commissioner on the regulation of health-related occupations. In addition, a specially-created task force had recommended the licensing of all currently unregulated mental health practitioners, although dissenting members of that body recommended less stringent forms of regulation. Under State law, the Health Commissioner is required to find the least restrictive form of regulation that will still protect the safety and well being of the public.

The most stringent form of regulation is licensing, which restricts unlicensed persons from using a particular occupational title—and from offering the kinds of services provided by persons who practice that occupation. Both licensing and registration require practitioners to meet certain qualifications, in terms of training and experience.

The client protection system would not restrict anyone from offering mental health services, or set any qualifications for mental health practitioners, other than those using the title "social worker" or "marriage and family therapist."

The kinds of problems commonly encountered by mental health clients—sexual abuse or chemical dependency, for instance—are not related to the training or experience of the practitioner, according to Commissioner Ashton. The issues involved tend, instead, to be moral and ethical ones. Therefore, limiting the right to practice, based on prior training, would not serve to protect the public. But it could serve to discourage innovation in the field of mental health, and it could also increase the cost of mental health care, by setting up licensed groups or occupations as a mental health monopoly.

Licensing or registration is only justified for some occupations, where the client can clearly be harmed if the practitioner lacks proper training and experience, Commissioner Ashton said. For more information contact Daniel J. McInerney, (612) 623-5460 or Kathleen P. Burek, (612) 623-5615.

MINNESOTA HISTORICAL SOCIETY Celebrate the opening of "Capitol in the Works: Area Under Construction" exhibition, chronicling the dramatic cycle of destruction and creation that has taken place in the area surrounding the Capitol since its construction at the turn of the century. Placed in the middle of an established neighborhood, the Capitol and its associated government buildings and grounds have overgrown and replaced that neighborhood during the last 80 years. Wine and hors d'oeuvres will be served. R.S.V.P. by calling (612) 296-6126. Free admission. February 10 Tuesday 5 to 8 pm at the Minnesota Historical Society, 690 Cedar Street, St. Paul, east of the Capitol.

NATURAL RESOURCES DEPARTMENT The midwest regional conference on Women in Natural Resources, entitled, "Moving Toward the 90's," will be held April 21-23 at the Holiday Inn East in St. Paul. The seminar will explore topics such as recruiting women into the natural resources field, keeping women natural-resource professionals, developing leadership skills and dealing with sexual harassment. The seminar will also cover issues facing women, such as dual careers and parenting.

Persons interested in attending may contact Ann Mayhew at the University of Minnesota, College of Forestry (612) 624-0793 for further information.

Conference sponsors are the Minnesota Department of Natural Resources, University of Minnesota College of Forestry, University of Wisconsin—Stevens Point College of Natural Resources, the U.S. Forest Service North Central Forest Experiment Station, the Minnesota Society of American Foresters and the Michigan Society of American Foresters.

PROPOSED RULES

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

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

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

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

Department of Human Services

Proposed Permanent Rules Relating to Use of Aversive and Deprivation Procedures in Licensed Facilities Serving Persons with Mental Retardation and Related Conditions

Notice of Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in the Veterans Home, Auditorium/Chapel, Building 15, 5101 Minnehaha Avenue South, Minneapolis, MN 55417 on Thursday, February 26, 1987 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 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.

Minnesota Rules, parts 9525.2700 to 9525.2810 (Proposed) implement Minnesota Statutes, section 245.825 by setting standards that govern the use of aversive and deprivation procedures with persons who have mental retardation and related conditions and who are served in or by a facility licensed by the Department of Human Services. The standards set by the rule parts prohibit or restrict the use of certain procedures, designate other procedures as permitted but controlled, and establish the controls that must be complied with when permitted procedures are implemented. These controls include obtaining informed consent from the person with whom the procedure will be used or from the person's legal representative according to requirements set by the rule parts. The rule parts also set standards governing emergency use of controlled procedures and establish the regional review committees mandated by Minnesota Statutes, section 245.825, to monitor the use of aversive and deprivation procedures under the rules.

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

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, section 245.825.

The adoption of this rule will increase aggregate local public body spending by over \$100,000 in either of the first two years following the rule's adoption. See the fiscal note attached to this notice which contains the Department's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing or calling Alice Weck, Rules Unit, Department of Human Services, Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155, telephone 612/297-1461. A copy of the rule may also be viewed at any of the 87 county welfare agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Alice Weck at the address and number shown above.

NOTICE: Any person may request notification of the date on which the Administrative 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.

Sandra S. Gardebring, Commissioner
Department of Human Services

Fiscal Impact Statement for Proposed Rule Parts 9525.2700 to 9525.2810 Governing the Use of Aversive and Deprivation Procedures in Licensed Facilities Serving Persons with Mental Retardation and Related Conditions as Mandated by Minnesota Statutes, Section 245.825

The fiscal impact of these proposed rule parts is on the Department of Human Services and county social service agencies. Facilities governed by these proposed rule parts should experience minimal fiscal impact. This is due primarily to the fact that: (1) the requirements of the proposed rule parts are consistent with existing requirements within the Code of Federal Regulations and licensing standards for planning, training and staffing of facilities; and (2) the review and monitoring required by the proposed rule parts and mandated by Statute are primarily the responsibility of case managers.

Summary of Fiscal Impact

	<u>F.Y.88</u>	<u>F.Y.89</u>	<u>F.Y.90</u>
County Social Service Agencies	\$332,025	\$311,682	\$252,685
Department of Human Services	\$ 83,600	\$111,500	\$111,500
TOTAL FISCAL IMPACT	\$415,625	\$423,182	\$364,185

The county social service agencies costs for implementing these proposed rule parts can be offset by additional revenues received for medicaid administrative reimbursement for health related services and a reduced share of the medicaid cost for case management for participants in the home and community-based services waiver.

The funds to support the costs for the Department of Human Services have been requested in the 1988-89 Biennial Budget.

Fiscal Impact to County Social Service Agencies: Methodology

The proposed rule's requirements mean that case managers of the estimated 508 persons with whom the procedures controlled by the proposed rule parts will be used will spend an additional 44.5 hours per year (on an average) planning, developing and monitoring services for each of those 508 persons.

<u>Case Manager Activity</u>	<u>Average Additional Time Per Case Required by This Rule Beyond Rule 185 Requirements</u>	
Obtaining, Reviewing, Analyzing Appropriate Assessment Information for the Individual Service Plan (ISP)	3.0 hrs/yr	annual
Additional time to develop ISP	.5 hrs/yr	annual
Additional time to develop the Individual Habilitation Plan (IHP)	1.0 hrs/yr	annual
Quarterly Interdisciplinary Team Meeting/Review	(1.5 hrs × 4) = 6 hrs/yr	quarterly
Preparation for Regional Review Committee	(1.5 hrs × 4) = 6 hrs/yr	quarterly
Family/Guardian Contact—Obtaining Informed Consent	(1 hr × 4) = 4 hrs/yr	quarterly
Review and Follow-up to Emergency Situations	4.0 hrs/yr	as needed
Monitoring/On-site Observation	(1.5 hrs × 2 locations) = 12 hrs/yr	At least quarterly in residential and day program
Specific training needs	8.0 hrs/yr	
Total	44.5 hrs/yr	

The current statewide average for case management services, according to billings under the Home and Community-Based Waiver, is \$50.00 per hour. Administrative costs account for approximately one half of this \$50.00. Since the proposed rule parts primarily affect case management time, no county administrative costs have been considered in this statement of fiscal impact. Therefore, the Department has used a factor of \$25.00 per hour to calculate the additional case management effort required to review and monitor use of the procedures controlled by the proposed rule parts.

	<u>F.Y.88</u>	<u>F.Y.89</u>	<u>F.Y.90</u>
Individuals affected	508	457	356
Additional case management total hours	22,606	20,337	15,842
Cost	\$565,150	\$530,389	\$430,110

The Department projects a reduction of 10 percent (in F.Y.89) and 30 percent (by F.Y.90) in the use of the procedures controlled by the proposed rule parts. In estimating the cost of case management, a 4.3 percent inflation factor has been used in determining the cost for F.Y.89 and 4.1 percent inflation factor for F.Y.90. Both inflation factors are based upon projected changes in the consumer price index.

County social service agencies will be additionally impacted by requirements pertaining to responsibilities for wards of the Commissioner. Since these responsibilities must be met by county staff members, the Department has included these additional costs in this fiscal impact statement.

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

The Department anticipates that an additional 11.5 hours of county guardianship activity for 344 wards of the Commissioner will be needed in order to meet the requirements of the proposed rule parts.

<u>Guardianship Activity</u>	<u>Average Additional Time Per Case Beyond Rule 185 Requirements</u>	
Additional time to develop ISP	.5 hrs/yr	annual
Additional time to develop IHP	1.0 hrs/yr	annual
Quarterly Interdisciplinary team meeting/ review	(1.5 hrs × 4) = 6 hrs/yr	quarterly
Family/guardian contact—Informed Consent	(1 hr × 4) = 4 hrs/yr	quarterly
Total	11.5 hrs/yr	

Of the 200 persons currently in regional treatment centers and the 308 in community facilities who will experience the procedures controlled by the proposed rule parts, approximately 190 persons and 154 persons respectively are wards of the Commissioner. This estimate was derived through consultation with the guardianship office and represents an estimate that 95% of all persons residing in regional centers and experiencing aversive and deprivation procedures are Commissioner's wards and that 50% of all persons residing in community ICFs/MR and experiencing aversive and deprivation procedures are Commissioner's wards.

	<u>F.Y.88</u>	<u>F.Y.89</u>	<u>F.Y.90</u>
Commissioner's wards affected	344	310	241
Additional county time (hrs)	3956	3565	2772
Cost	\$98,900	\$92,975	\$75,260

The cost per hour for guardianship activity was tabulated at a rate of \$25.00 per hour plus adjustments for inflation using the consumer price index. This cost, however, would be considered as an administrative cost and not a case management cost.

<u>F.Y.88</u>	<u>F.Y.89</u>	<u>F.Y.90</u>	
\$565,150	\$530,389	\$430,110	Case Management
\$ 98,900	\$ 92,975	\$ 75,260	Guardianship Activity
\$664,050	\$623,364	\$505,370	Total

With both the case management costs and guardianship activity costs, there is a 50 percent federal medicaid financial participation (FFP) through the Department's random moment study. This study allows county social service agencies to be reimbursed for administrative activities that are health related services. Below are tables reflecting the required 50 percent county match.

	<u>F.Y.28</u>	<u>F.Y.89</u>	<u>F.Y.90</u>
Federal Financial Participation	\$332,025	\$311,682	\$252,685
County Local Match	\$332,025	\$311,682	\$252,685

The projected costs for county case management can be offset by two sources of revenue. For the first time in fiscal year 87, county social service agencies will receive \$3,500,000 earned through medicaid administrative reimbursement for health related services. Secondly, county social service agencies will experience a decrease in their share of cost for medicaid reimbursed case management services as persons enter the Home and Community-Based Services waiver (4.6% county share) and leave ICFs/MR (50% county share). The Home and Community-Based Services waiver is projected to serve an additional 974 persons in the FY.88-89 biennium.

Fiscal Impact to the Department of Human Services: Methodology

The Department has requested in its 1988-89 Biennial Budget the following funds to implement proposed rule parts 9525.2700 to 9525.2810. The funding requested in FY.88 is for only 9 months to adjust for the phased-in hiring of three new positions. The Department funds have not been adjusted to reflect changes in the consumer price index.

<u>F.Y.88</u>	<u>F.Y.89</u>	<u>F.Y.90</u>
\$83,600	\$111,500	\$111,500

These funds will be used to cover personnel costs for staff and expenses necessary to:

1. establish the regional review committees mandated by Minnesota Statutes, section 245.825, to review, monitor, and approve the use of aversive and deprivation procedures;
2. ensure statewide compliance with proposed parts 9525.2700 to 9525.2810;

3. protect persons from the excessive or unauthorized use of aversive and deprivation procedures;
4. improve individual planning for persons with challenging behaviors by replacing the use of aversive and deprivation procedures with positive approaches to behavior management; and
5. analyze the use of aversive and deprivation procedures and develop strategies and interventions to reduce the use of aversive and deprivation procedures.

Included in the Biennial Budget request is approximately \$8000 per year in costs to cover operating expenses for four Regional Review Committees comprised of six members on each team. Membership is projected to include an advocate, two service providers, a physician, a psychologist, and an interested community member.

6 members × 4 committees = 24 persons	
8 meetings per year × 24 persons = 192 days	
192 days × \$15/day (meals) =	\$2,880
192 days × 100 miles (average) × .27 mile =	\$5,184
TOTAL	\$8,064

Rules as Proposed (all new material)

9525.2700 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** Parts 9525.2700 to 9525.2810 implement Minnesota Statutes, section 245.825 by setting standards that govern the use of aversive and deprivation procedures with persons who have mental retardation or related conditions and who are served in or by a facility licensed by the commissioner under Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2.

Parts 9525.2700 to 9525.2810 are not intended to encourage or require the use of aversive and deprivation procedures. Rather, parts 9525.2700 to 9525.2810 encourage the use of positive approaches as an alternative to aversive or deprivation procedures and require documentation that positive approaches have been tried and have been unsuccessful as a condition of implementing an aversive or deprivation procedure.

The standards and requirements set by parts 9525.2700 to 9525.2810:

- A. exempt from the requirements of parts 9525.2700 to 9525.2810 any procedures that are positive in approach or are minimally intrusive;
- B. prohibit the use of certain actions and procedures specified in part 9525.2730;
- C. control the use of aversive and deprivation procedures permitted under parts 9525.2700 to 9525.2810 by requiring review by a facility committee, authorization by an expanded interdisciplinary team, informed consent from the person or the person's legal representative, and development of a detailed individual habilitation plan as conditions of implementation;
- D. specify the procedures to be followed in obtaining informed consent;
- E. establish criteria and procedures for emergency use of controlled aversive and deprivation procedures; and
- F. assign a monitoring and technical assistance role to the regional review committees mandated by Minnesota Statutes, section 245.825.

Subp. 2. **Applicability.** Parts 9525.2700 to 9525.2810 govern the use of aversive and deprivation procedures with persons who have mental retardation and related conditions when those persons are being served in or by:

- A. a facility licensed by the commissioner as a day care facility as defined in part 9525.2710, subpart 10; or
- B. a facility licensed by the commissioner as a residential facility as defined in part 9525.2710, subpart 31.

Subp. 3. **Exclusion.** Parts 9525.2700 to 9525.2810 do not govern the regulated treatments specified in part 9515.0400 which must be administered pursuant to parts 9515.0500 to 9515.0700.

9525.2710 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 9525.2700 to 9525.2810 have the meanings given to them in this part.

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PROPOSED RULES

Subp. 2. **Adaptive behavior.** "Adaptive behavior" means a behavior that increases a person's capability for functioning independently in activities of daily living.

Subp. 3. **Advocate.** "Advocate" means an individual who has been authorized, in a written statement signed by the person with mental retardation or a related condition or by that person's legal representative, to help the person understand and make choices regarding identification of needs and choices of services.

Subp. 4. **Aversive procedure.** "Aversive procedure" means the planned application of an aversive stimulus (1) contingent upon the occurrence of a behavior identified in the individual habilitation plan for reduction or elimination; or (2) in an emergency situation governed by part 9525.2770.

Subp. 5. **Aversive stimulus.** "Aversive stimulus" means an object, event, or situation that is presented immediately following a target behavior in an attempt to suppress that behavior. Typically, an aversive stimulus is unpleasant and penalizes or confines.

Subp. 6. **Baseline measurement.** "Baseline measurement" means the frequency, intensity, duration, or other quantification of a behavior. The baseline measurement is determined before initiating or changing an intervention procedure to modify that behavior.

Subp. 7. **Case manager.** "Case manager" means the individual 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. 8. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

Subp. 9. **Controlled procedure.** "Controlled procedure" means an aversive or deprivation procedure that is permitted by parts 9525.2700 to 9525.2810 and is implemented under the standards established by those parts. Controlled procedures are listed in part 9525.2740.

Subp. 10. **Day care facility.** "Day care facility" means any public or private facility that for gain or otherwise regularly provides one or more persons with care, training, supervision, habilitation, rehabilitation, or developmental guidance on a regular basis for periods of less than 24 hours per day, in a place other than the person's own home, as specified in Minnesota Statutes, section 245.782, subdivision 5.

Subp. 11. **Department.** "Department" means the Minnesota Department of Human Services.

Subp. 12. **Deprivation procedure.** "Deprivation procedure" means the planned delay or withdrawal of goods, services, or activities to which the person is otherwise entitled: (1) contingent upon the occurrence of a behavior that has been identified for reduction or elimination in the individual habilitation plan; or (2) in an emergency governed by part 9525.2770.

Subp. 13. **Emergency use.** "Emergency use" means using a controlled procedure without first meeting the requirements in parts 9525.2750, 9525.2760, and 9525.2780 when it can be documented under part 9525.2770 that immediate intervention is necessary to protect a person or other individuals from physical injury or to prevent severe property damage.

Subp. 14. **Expanded interdisciplinary team.** "Expanded interdisciplinary team" means an interdisciplinary team defined in subpart 19 that includes a qualified mental retardation professional (QMRP) as required by part 9525.2750.

Subp. 15. **Facility review committee.** "Facility review committee" means the committee required by and described in part 9525.2750, subparts 1 and 2.

Subp. 16. **Faradic shock.** "Faradic shock" means the application of electric current to a person's skin or body parts as an aversive stimulus contingent upon the occurrence of a behavior that has been identified in the person's individual habilitation plan for reduction or elimination.

Subp. 17. **Individual habilitation plan.** "Individual habilitation plan" means the written plan for providing service to persons required by and specified in part 9525.0105.

Subp. 18. **Informed consent.** "Informed consent" means consent to the use of an aversive or deprivation procedure that is given voluntarily by a person or the person's legal representative after disclosure of the information required in part 9525.2780, subpart 4, and that is obtained by the case manager under part 9525.2780.

Subp. 19. **Interdisciplinary team.** "Interdisciplinary team" means a team composed of the case manager, the person with mental retardation or a related condition, the person's legal representative and advocate, if any, and representatives of all providers of services set forth in the person's individual service plan. The expanded interdisciplinary team referred to in parts 9525.2700 to 9525.2810 adds a qualified mental retardation professional to the team described here.

Subp. 20. **Intermediate care facility for persons with mental retardation and related conditions or ICF/MR.** "Intermediate care facility for persons with mental retardation and related conditions" or "ICF/MR" means a program licensed under Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2, to provide services to persons with mental retardation and related conditions 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 persons with mental retardation and related conditions.

Subp. 21. **Legal representative.** "Legal representative" means the parent or parents of a person under 18 years old or a guardian or conservator authorized by the court to make decisions about services for a person of any age.

Subp. 22. **Licensed facility.** "Licensed facility" means a facility licensed by the department as a day care facility or a residential facility under Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2.

Subp. 23. **Manual restraint.** "Manual restraint" means physical intervention intended to hold a person immobile or limit a person's movement by using body contact as the only source of physical restraint. The term does not mean physical contact used to: (1) facilitate a person's completion of a task or response when the person does not resist; or (2) escort or carry a person to safety when the person is in danger.

Subp. 24. **Mechanical restraint.** "Mechanical restraint" means the use of devices such as mittens, straps, restraint chairs, or papoose boards to limit a person's movement or hold a person immobile as an intervention precipitated by a person's behavior. The term does not apply to mechanical restraint used to treat a person's medical needs, to protect a person known to be at risk of injury resulting from lack of coordination or frequent loss of consciousness, or to position a person with physical disabilities in a manner specified in the person's individual habilitation plan.

Subp. 25. **Person with mental retardation or a related condition or person.** "Person with mental retardation or a related condition" or "person" 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; or

C. a person who has a related condition. A related condition is a severe chronic disability that:

(1) is attributable to cerebral palsy, epilepsy, autism, or any other condition other than mental illness that is found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation;

(2) is likely to continue indefinitely;

(3) results in substantial functional limitations in three or more of the following areas of major life activity: self-care; understanding and use of language; learning; mobility; self-direction; or capacity for independent living; and

(4) has been determined to be a related condition in accordance with rules adopted by the commissioner.

Subp. 26. **Positive practice overcorrection.** "Positive practice overcorrection" means a procedure that requires a person to demonstrate or practice a behavior at a rate or for a length of time that exceeds the typical frequency or duration of that behavior. The behaviors identified for positive practice are typically appropriate adaptive behaviors or are incompatible with a behavior identified for reduction or elimination in a person's individual habilitation plan.

Subp. 27. **Positive reinforcement.** "Positive reinforcement" means the presentation of an object, event, or situation following a behavior that increases the probability of the behavior recurring. Typically, the object, event, or situation presented is enjoyable, rewarding, or satisfying.

Subp. 28. **Qualified mental retardation professional or QMRP.** "Qualified mental retardation professional" or "QMRP" means an individual who meets the qualifications specified in Code of Federal Regulations, title 42, section 442.401, as amended through October 1, 1985.

Subp. 29. **Regional center.** "Regional center" has the meaning given it in Minnesota Statutes, section 253B.02, subdivision 18.

Subp. 30. **Regional review committee.** "Regional review committee" means a committee established by part 9525.2790 to monitor parts 9525.2700 to 9525.2810 as mandated by Minnesota Statutes, section 245.825. Review committee jurisdictions and responsibilities are defined in part 9525.2790.

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Subp. 31. **Residential facility.** "Residential facility" means a public or private facility that, for gain or otherwise, regularly provides one or more persons with a 24-hour per day substitute for necessary care, food, lodging, training, rehabilitation, and treatment that cannot be furnished in the person's own home, as specified in Minnesota Statutes, section 245.782, subdivision 6.

Subp. 32. **Restitutional overcorrection.** "Restitutional overcorrection" means a procedure that requires a person to clean, repair, or correct an area or situation damaged or disrupted as a result of the person's behavior to a point where the area or situation is not only restored to but exceeds its original condition.

Subp. 33. **Seclusion.** "Seclusion" means the placement of a person alone in a room from which egress is prohibited by a mechanism such as a lock or by a device or object positioned to hold the door closed or otherwise prevent the person from leaving the room.

Subp. 34. **Separation.** "Separation" has the same meaning given "room time out" in subpart 36.

Subp. 35. **Target behavior.** "Target behavior" means a behavior identified in a person's individual habilitation plan as the object of efforts intended to increase, reduce, or eliminate the behavior.

Subp. 36. **Time out.** "Time out" or "time out from positive reinforcement" means removing a person from the opportunity to gain positive reinforcement and is used contingent upon the occurrence of a behavior identified in the individual habilitation plan for reduction or elimination. Time-out procedures governed by parts 9525.2700 to 9525.2810 are:

A. exclusionary time out, which means removing a person from an ongoing activity to a location where the person cannot observe the ongoing activity; and

B. room time out or separation, which means removing a person from an ongoing activity to an unlocked room for a brief time, typically five minutes or less. The person may be prevented from leaving a time-out room by staff members but not by mechanical restraint or by the use of devices or objects positioned to hold the door closed.

9525.2720 EXEMPTED ACTIONS AND PROCEDURES.

Use of the instructional techniques and intervention procedures listed in items A to F is not subject to the restrictions established by parts 9525.2700 to 9525.2810.

A. The use of corrective feedback or prompts to assist a person in performing a task or exhibiting a response.

B. The use of physical assistance to facilitate a person's completion of a response in a situation where the person offers no physical resistance to the assistance.

C. The use of positive reinforcement alone or in combination with the procedures described in items A and B to develop new behaviors or increase the frequency of existing behaviors.

D. Temporary interruptions in instruction or ongoing activity in which a person is removed from an activity to a location where the person can observe the ongoing activity and see others receiving positive reinforcement for appropriate behavior. This procedure is often referred to as contingent observation.

E. Temporary withdrawal or withholding of goods, services, or activities to which a person would otherwise have access as a natural consequence of the person's inappropriate use of the good, service, or activity. Examples of situations in which the exemption would apply are delaying the return of a person's beverage at mealtime after the person has thrown the beverage across the kitchen or the temporary removal of an object the person is using to hit another individual.

F. Use of token fines or response cost procedures such as removing objects or other rewards received by a person as part of a positive reinforcement program. Token fines or response cost procedures are typically implemented after the occurrence of a behavior identified in the individual habilitation plan for reduction or elimination. Removing the object or other reward shall not interfere with a person's access to the goods, services, and activities protected by part 9525.2730.

9525.2730 PROCEDURES AND ACTIONS RESTRICTED OR PROHIBITED.

Subpart 1. **Restrictions required by Minnesota Statutes.** An aversive or deprivation procedure shall not:

A. be implemented with a child in a manner that constitutes sexual abuse, neglect, or physical abuse as defined in Minnesota Statutes, section 626.556 governing the reporting of maltreatment of minors;

B. be implemented with an adult in a manner that constitutes abuse or neglect as defined in Minnesota Statutes, section 626.557 governing the reporting of maltreatment of vulnerable adults;

C. restrict a person's normal access to a nutritious diet, drinking water, adequate ventilation, necessary medical care, ordinary hygiene facilities, normal sleeping conditions, or necessary clothing as mandated by Minnesota Statutes, section 245.825, or to any protection required by state licensing standards and federal regulations governing the facility; or

D. deny the person ordinary access to legal counsel and next of kin as mandated by Minnesota Statutes, section 245.825.

Subp. 2. **Procedures and actions prohibited.** The actions or procedures listed in items A to H are prohibited.

A. Using corporal punishment such as hitting, pinching, or slapping.

B. Speaking to a person in a manner that ridicules, demeans, or is abusive.

C. Requiring a person to assume and maintain a specified physical position or posture as an aversive procedure. Examples include requiring persons to stand with their hands over their heads for long periods of time or to remain in a fixed position.

D. Placing a person in seclusion.

E. Totally or partially restricting a person's senses, except as expressly permitted in part 9525.2740, subpart 1.

F. Presentation of intense sounds, lights, or other sensory stimuli as an aversive stimulus.

G. Use of a noxious smell, taste, substance, or spray as an aversive stimulus.

H. Denying or restricting a person's access to equipment and devices such as hearing aids and communication boards that facilitate the person's functioning. If temporary removal of the equipment or device is necessary to prevent injury to the person or others, the equipment or device shall be returned to the person as soon as possible.

Subp. 3. **Restrictions on use of faradic shock.** Emergency use of faradic shock as an aversive stimulus is prohibited. Use of faradic shock as an aversive stimulus is permitted only when all the conditions in subitems (1) to (4) are met:

(1) the target behavior is extreme self-injury which threatens irreparable bodily harm;

(2) it can be documented that other methods of treatment have been tried and were unsuccessful in controlling the behavior;

(3) a state or federal court orders the use of faradic shock; and

(4) use of faradic shock ordered by a court is implemented in accordance with parts 9525.2750 and 9525.2760.

9525.2740 PROCEDURES PERMITTED AND CONTROLLED.

Subpart 1. **Controlled procedures.** The procedures listed in items A to K are permitted when the procedures are implemented in compliance with parts 9525.2700 to 9525.2810. Permitted but controlled procedures, referred to as controlled procedures, are:

A. time out procedures;

B. positive practice overcorrection;

C. restitutional overcorrection;

D. application of a commercially available product such as Thumb to a person's hands as a deterrent to placing the hands in the mouth or as a deterrent to self-injury;

E. partially restricting a person's senses at a level of intrusiveness that does not exceed placing a hand in front of a person's eyes as a visual screen or playing music through earphones worn by the person at a level of sound which does not cause the person discomfort;

F. manual restraint; or

G. mechanical restraint.

Subp. 2. **Authorization for procedures not specified as exempted, restricted, prohibited, or controlled.** If an expanded interdisciplinary team prepares a plan proposing the use of an aversive or deprivation procedure that is not specifically exempted by part 9525.2720, or specifically prohibited or restricted by part 9525.2730, or specifically permitted and controlled by subpart 1, the case manager shall request authorization for the use of that procedure from the regional review committee. If a procedure is authorized by a regional review committee, use of the procedure is subject to the controls established in parts 9525.2700 to 9525.2810.

9525.2750 STANDARDS GOVERNING USE OF CONTROLLED PROCEDURES IN AN INDIVIDUAL HABILITATION PLAN.

Subpart 1. **Standards and conditions.** Except in an emergency governed by part 9525.2770, use of a controlled procedure shall occur only when the controlled procedure is proposed, approved, and implemented as part of an individual habilitation plan. Use of a controlled procedure within an individual habilitation plan must comply with items A to I.

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PROPOSED RULES

A. The controlled procedure is proposed or implemented only as a part of the total methodology specified in the person's individual habilitation plan. The individual habilitation plan shall have as its primary focus the development of adaptive behaviors.

B. The proposed use of a controlled procedure is supported by documentation describing how intervention procedures incorporating positive approaches and, if applicable, less intrusive controlled procedures, have been tried and were unsuccessful in controlling the behavior of concern.

C. The case manager obtains informed consent for the implementation of the procedure as specified in part 9525.2780 before the procedure is implemented except when faradic shock is ordered by a court under part 9525.2730, subpart 3.

D. The proposed use of the procedure is approved by a facility review committee that meets the requirements in subpart 2.

E. The proposed use of the procedure is authorized by the expanded interdisciplinary team required by subpart 3.

F. The procedure is implemented and monitored by staff members trained to implement the procedure. Facilities where staff members are employed are responsible for providing ongoing training to ensure that the competence necessary to implement the procedures is present within the staff currently employed.

G. When a controlled procedure involves removing a person from an ongoing activity, the person is returned to the activity when the procedure is completed.

H. Time-out procedures are implemented in the person's own room or other area commonly used as living space whenever possible rather than in a room used specifically for time out. If a room is used specifically for time out, the room must:

(1) provide a safe environment for the person;

(2) have an observation window or other device to permit continuous monitoring of the person;

(3) measure at least six feet by six feet and be large enough to allow the person to stand, to stretch his or her arms, and to lie down; and

(4) be well lighted, well ventilated, and clean.

I. Use of mechanical restraint must meet the standards in subitems (1) and (2) in addition to the other standards in parts 9525.2700 to 9525.2810.

(1) A person placed in mechanical restraint must be given an opportunity for motion and exercise for not less than ten minutes during each one hour of restraint. Efforts to lessen or discontinue the restraint must be made at least every 15 minutes. The time each effort was made and the person's response to the effort must be noted in the person's permanent record.

(2) A staff member must remain with a person placed in mechanical restraint during the time the person is in mechanical restraint and must take the action specified in subitem (1).

Subp. 2. Facility review committee. Each facility shall have at least one committee that reviews all individual habilitation plans proposing the use of controlled procedures. The committee shall be appointed by the administrator with overall responsibility for the facility's policy and program. The committee shall determine if each plan as submitted meets the requirements of parts 9525.2700 to 9525.2810 and all other applicable requirements governing behavior management established by federal regulations or by order of a court before approving the plan. The committee membership must meet the criteria in items A and B.

A. The committee must include two individuals employed by the facility as staff members or consultants. One of the two individuals must be a qualified mental retardation professional.

B. At least one third of the committee members shall be individuals who have no ownership or controlling interest in the facility and who are not employed by or under contract with the facility in any other capacity besides serving on the committee. This component of the committee membership must include at least one parent or guardian of a person with mental retardation or a related condition.

Subp. 3. Review and authorization by an expanded interdisciplinary team. When an individual habilitation plan proposes the use of a controlled procedure, the plan must be reviewed by and use of the procedure must be authorized by an interdisciplinary team expanded beyond the membership specified in part 9525.2710, subpart 19, to include a qualified mental retardation professional.

Subp. 4. Report to regional review committee. When a controlled procedure in items A to D is authorized under subpart 3, the case manager shall send the regional review committee a copy of the individual habilitation plan that proposes the procedure and that includes the information required in part 9525.2760.

A. manual restraint;

B. mechanical restraint;

C. use of a time-out procedure for 15 minutes or more at one time or for a cumulative total of 30 minutes or more in one day; or

D. faradic shock.

The case manager shall send the individual habilitation plan within ten working days after the controlled procedure is implemented.

9525.2760 REQUIREMENTS GOVERNING INDIVIDUAL HABILITATION PLANS THAT PROPOSE THE USE OF A CONTROLLED PROCEDURE.

Subpart 1. **Requirements.** An individual habilitation plan that includes the use of a controlled procedure must contain the information specified in subparts 2 to 6.

Subp. 2. **Assessment information.** When an interdisciplinary team is developing an individual habilitation plan that includes the use of a controlled procedure, the case manager must provide the team with assessment information that includes the elements specified in items A to F

A. A physical and psychological description of the person.

B. A report completed by the person's primary care physician within 90 days prior to the development of the individual habilitation plan that includes the use of a controlled procedure. The report must:

(1) indicate diagnosed conditions that could influence the person's behavior, limit the range of procedures that may safely be used with that person, or necessitate particular care in implementing a specific procedure with that person;

(2) indicate that the target behavior does not appear to be directly attributable to a condition requiring medical attention;
and

(3) indicate any recent changes in the person's medication.

C. A baseline measurement of the behavior of concern that provides a clear description of the behavior and the degree to which it is being expressed. The description must be detailed enough to provide a basis for comparing the behavior before use of a procedure to control it with the behavior after use of a procedure to control it so that the effectiveness of the procedure can be evaluated.

D. A summary of what has been considered or attempted to change elements in the person's environment that could be influencing the person's behavior. This summary must include an analysis of the person's current residence and day program and must specifically address the question of whether a change in these services appears to be warranted.

E. An analysis of whether the behavior identified for reduction or elimination represents an attempt by the person to communicate with others or serves as a means to control the person's environment.

F. A summary of previous interventions used to modify the target behavior and of the factors believed to have interfered with the effectiveness of those interventions.

The information in items A to F must be retained in the person's permanent record for at least five years after implementation of a controlled procedure.

Subp. 3. **Review of service plan.** The case manager shall ensure that any service needs identified by the assessment information in subpart 2 are included in the individual service plan required by part 9525.0085.

Subp. 4. **Review and content standards.** An individual habilitation plan that proposes the use of controlled procedures shall include the elements in items A to I.

A. Objectives designed to develop the adaptive behavior of the person for whom the plan is made. These objectives must include positive programs designed to increase aspects of the person's behavior that are incompatible with or that provide an alternative to the behavior identified for reduction or elimination.

B. The objective to be accomplished by implementing the procedure, including the change expected in the target behavior and the anticipated time frame for achieving the change.

C. A detailed description of the procedure, including where and under what circumstances the procedure will be used.

D. A detailed description of the ways in which implementation of the procedure will be monitored, by whom, and how frequently. This description must specify how staff implementing the procedure will be trained and supervised. Direct on-site supervision of the procedure's implementation must be provided by the professional staff responsible for the procedure.

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E. A description of any discomforts, risks, or side effects that it is reasonable to expect.

F. A description of the method to be used and data to be collected in evaluating the effectiveness of the proposed procedures and in monitoring any expected side effects.

G. A description of the plan for maintaining and generalizing the positive changes in the person's behavior that may occur as a result of implementing the procedure.

H. The date when use of the controlled procedure will terminate unless, before that date, continued use of the procedure is authorized by the expanded interdisciplinary team. The projected termination date shall be no more than 90 days after the date on which use of the procedure was authorized. Reauthorization for use of the procedure can be given at 90-day intervals if evaluation data on the effectiveness of the procedure support continuation. Informed consent must be obtained every 90 days under part 9525.2780.

I. Any other information needed to comply with the requirements for an individual habilitation plan as specified in part 9525.0105.

Subp. 5. Monitoring the individual habilitation plan. Monitoring the proposed controlled procedure shall be completed as adopted in the individual habilitation plan and in accordance with part 9525.0115.

Subp. 6. Documentation of informed consent. Except in situations governed by part 9525.2770, by part 9525.2730, subpart 3, or by part 9525.2780, subpart 6, evidence that informed consent has been obtained from a person or individual authorized to give consent must be added to the person's individual habilitation plan before a controlled procedure is implemented.

9525.2770 EMERGENCY USE OF CONTROLLED PROCEDURES.

Subpart 1. Standards governing emergency use. Implementing a controlled procedure without first meeting the requirements of parts 9525.2750, 9525.2760, and 9525.2780 is permitted only when the criteria and requirements in subparts 2 to 5 are met.

Subp. 2. Criteria for emergency use. Emergency use of controlled procedures will be deemed to comply with parts 9525.2700 to 9525.2810 only when it is documented that:

A. immediate intervention was needed to protect the person or others from physical injury or to prevent severe property damage;

B. the procedure used was the least intrusive intervention possible to react effectively to the emergency situation;

C. use of a controlled procedure initiated on an emergency basis stops ten working days after the date the procedure was first implemented unless it can be documented that efforts to meet the requirements of parts 9525.2750, 9525.2760, and 9525.2780 are in process. In no case shall emergency use of a controlled procedure continue more than 30 days beyond the date when the procedure was first implemented. At the end of the 30 days, use of the procedure shall continue only if the requirements of parts 9525.2750, 9525.2760, and 9525.2780 have been met.

Subp. 3. Authorization of emergency use. The emergency use of a controlled procedure must be authorized by the individual identified in the facility's policy on emergency use in subpart 4. Emergency use of faradic shock is prohibited by part 9525.2730, subpart 3, and shall not be authorized by a facility.

Subp. 4. Written policy on emergency use. The facility must have a written policy on emergency use of controlled procedures that specifies:

A. any controlled procedures the facility does not allow to be used on an emergency basis;

B. the staff member or staff members who must authorize emergency use;

C. the internal procedures that must be followed for emergency use;

D. how the facility will monitor and control emergency use;

E. the training a staff member must have completed before being assigned by the facility to implement a controlled procedure under emergency conditions; and

F. that the standards in part 9525.2750, subpart 1, items F, G, H, and I must be met when controlled procedures are used on an emergency basis.

Subp. 5. Reporting and review of emergency use. Any emergency use of a controlled procedure must be reported and reviewed as specified in items A to D.

A. Within five working days after an emergency use of a controlled procedure, the facility staff member in charge at the time of the emergency use shall report in writing to the person's case manager the following information about the emergency use:

(1) the controlled procedure that was used;

(2) the time implementation began and the time it was completed;

- (3) the behavioral outcome that resulted;
- (4) why the procedure used was judged to be necessary to prevent injury or severe property damage;
- (5) an assessment of the likelihood that the behavior necessitating emergency use will recur; and
- (6) the names of the persons who authorized the procedure and approved the report.

B. Within ten working days after the date of the emergency use reported in item A, the case manager shall confer with members of the interdisciplinary team to:

- (1) discuss the incident reported in item A and the person's subsequent behavior;
- (2) determine whether the behavior necessitating emergency use of a controlled procedure should be identified in the individual habilitation plan for reduction or elimination; and

- (3) schedule an expanded interdisciplinary team meeting within 20 working days after the emergency use if it is determined that the behavior should be identified in the individual habilitation plan for reduction or elimination.

C. A copy of the report in item A and a summary of the expanded interdisciplinary team's decision under item B must be added to the person's permanent record.

D. If the emergency use involved manual restraint, mechanical restraint, or use of time out exceeding 15 minutes at one time or a cumulative total of 30 minutes or more in one day, the case manager shall send a copy of the report in item A to the regional review committee within ten working days after the case manager receives it.

9525.2780 REQUIREMENTS FOR OBTAINING INFORMED CONSENT.

Subpart 1. **Definition.** For purposes of this part, "a substantial change" in the use of a controlled procedure for which informed consent is in effect means a change in the use of that procedure which:

- A. intensifies the level of intrusiveness of the procedure; or
- B. expands the behaviors with which the procedure is to be used beyond the behavior or behaviors specified when consent was originally given.

Subp. 2. **When informed consent is required.** Except in situations governed by subpart 6, by part 9525.2770, or by part 9525.2730, subpart 3, the case manager shall obtain or re-obtain written informed consent before implementation of:

- A. a controlled procedure for which consent has never been given;
- B. a controlled procedure for which informed consent has been given more than 90 days before the proposed date of implementation;
- C. a substantial change in a controlled procedure for which consent is presently in effect.

If the case manager is unable to obtain written informed consent, the procedure shall not be implemented except as provided in subpart 6.

Subp. 3. **Authority to give consent.** Individuals authorized to give informed consent are specified in items A to E.

A. If the person has a legal guardian or conservator authorized by a court to give consent for the person, consent is required from the legal guardian or conservator.

B. If the person is a child, consent is required from at least one of the child's parents, unless the child has a legal guardian or conservator as specified in item A. If the parents are divorced or legally separated, the consent of the parent with legal custody is required, unless the separation or marriage dissolution decree otherwise delegates authority to give consent for the child.

C. If the commissioner is the legal guardian or conservator, consent is required from the county representative designated to act as guardian on the commissioner's behalf. Failure to consent or refuse consent within 30 days of the date on which the procedure requiring consent was authorized by the expanded interdisciplinary team shall be considered a refusal to consent. The county representative designated to act as guardian must not be the same individual who is serving as case manager.

D. If the person is an adult who is capable of understanding the information required in subpart 4 and of giving informed consent, informed consent is required from the person.

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

E. If the person is an adult who has no legal guardian or conservator and who is not capable of giving informed consent, the case manager shall petition a court of competent jurisdiction to appoint a legal representative with authority to give consent, and consent is required from the legal representative.

Subp. 4. **Information required as a condition of obtaining informed consent.** The case manager shall provide the information specified in items A to J to the individual authorized to give informed consent. Consent obtained without provision of the information required in items A to J is not considered to be informed consent. The case manager shall document that the information in items A to J was provided orally or in writing and that consent was given voluntarily. The information shall be provided in a nontechnical manner and in whatever form is necessary to communicate the information effectively, such as in the person's or the authorized individual's native language if the person or the authorized individual does not understand English or in sign language if that is the person's or the authorized individual's preferred mode of communication, and in a manner that does not suggest coercion.

- A. A baseline measurement of the target behavior.
- B. A detailed description of the proposed procedures and explanation of the procedures' function.
- C. A description of how the procedures are expected to benefit the person, including the extent to which the target behavior is expected to change as a result of implementing the procedures.
- D. A description of any discomforts, risks, or other side effects that it is reasonable to expect.
- E. Alternative procedures that have been attempted, considered, and rejected as not being effective or feasible.
- F. The expected effect on the person of not implementing the procedures.
- G. An offer to answer any questions about the procedures, including the names, addresses, and phone numbers of people to contact if questions or concerns arise.
- H. An explanation that the person or the individual authorized to give consent has the right to refuse consent.
- I. An explanation that consent may be withdrawn at any time and the procedure will stop upon withdrawal of consent, except as provided in subpart 6.
- J. An explanation that:
 - (1) consent is time-limited and automatically expires 90 days after the date on which consent was given; and
 - (2) informed consent must again be obtained in order for use of a procedure to continue after the initial 90-day period ends.

Subp. 5. **Consent for a substantial change in procedures.** If the expanded interdisciplinary team authorizes a substantial change in a procedure for which informed consent is in effect, the change shall not be implemented unless the case manager first obtains written informed consent for the substantial change by meeting the requirement in subpart 4.

Subp. 6. **Conditions governing implementation when consent is refused or withdrawn.** If consent is refused or withdrawn by the individual or person authorized to give consent, and the person is not committed under Minnesota Statutes, chapter 253B, the procedures for which consent is refused or withdrawn shall not be implemented. If consent is refused or withdrawn by the individual or person authorized to give consent and the person is committed under Minnesota Statutes, chapter 253B, to a treatment facility as defined in Minnesota Statutes, section 253B.02, subdivision 19, the procedure shall not be implemented unless the requirements in items A and B are met.

A. The case manager submits to the head of the treatment facility as defined in Minnesota Statutes, section 253B.02, subdivision 8:

- (1) the individual habilitation plan containing the information required under part 9525.2760; and
- (2) documentation that implementing the procedure for which consent is refused or withdrawn has been approved by the expanded interdisciplinary team and the facility review committee.

B. The head of the treatment facility determines that the procedure shall be implemented.

Subp. 7. **Appeals.** The decision of the head of the treatment facility under subpart 6 may be appealed pursuant to part 9525.0135 by following the procedure in Minnesota Statutes, section 256.045. Implementation of a controlled procedure authorized by the head of the treatment facility under subpart 6 must be suspended while the appeal is pending. If a court orders the use of faradic shock under part 9525.2730, subpart 3, the action of the court is not appealable under parts 9525.2700 to 9525.2810.

9525.2790 REGIONAL REVIEW COMMITTEES.

Subpart 1. **Appointment.** As mandated by Minnesota Statutes, section 245.825, the commissioner shall appoint at least two regional review committees to monitor parts 9525.2700 to 9525.2810. The commissioner will establish additional committees if required by the number of procedures received for review and the level of effort required to ensure timely and thorough review.

Subp. 2. **Membership.** Membership on the regional review committees shall include representation from:

- A. facilities governed by parts 9525.2700 to 9525.2810;
- B. parents or guardians of persons with mental retardation and related conditions;
- C. other concerned citizens, none of whom is employed by or has a controlling interest in a facility governed by parts 9525.2700 to 9525.2810; and
- D. the department.

Subp. 3. **Duties and responsibilities.** Regional committees shall:

- A. meet at least quarterly to review the reports on use of time out, mechanical restraint, and manual restraint required by parts 9525.2750 and 9525.2770 and act on those reports according to procedures established by the commissioner;
- B. meet or confer as necessary if a case manager requests the authorization required in part 9525.2740, subpart 2; and
- C. act as directed by the commissioner to:
 - (1) review compliance with parts 9525.2700 to 9525.2810 and make recommendations to the commissioner;
 - (2) provide technical assistance in achieving compliance; and
 - (3) review statewide use of aversive and deprivation procedures in relationship to the use of less intrusive alternatives and to the use of psychotropic medication.

9525.2800 REPORTING POSSIBLE NONCOMPLIANCE.

If an individual has reason to believe that a facility governed by parts 9525.2700 to 9525.2810 is not in compliance with parts 9525.2700 to 9525.2810, the concern or complaint may be reported as described in items A and B. Reporting a concern or complaint under this part does not meet the requirements governing mandated reporting of maltreatment of minors under Minnesota Statutes, section 626.556, and rules adopted under that statute or mandated reporting of maltreatment of vulnerable adults under Minnesota Statutes, section 626.557 and parts 9555.8000 to 9555.8500.

A. Concerns or complaints about any facility governed by parts 9525.2700 to 9525.2810 may be reported to: The Commissioner, Department of Human Services, Centennial Office Building, 658 Cedar Street, Saint Paul, Minnesota 55155.

B. Concerns or complaints about intermediate care facilities for persons with mental retardation and related conditions in addition to being reported to the commissioner under item A may also be directed to: The Minnesota Department of Health, Office of Health Facility Complaints, 717 Delaware Street S.E., Minneapolis, Minnesota 55440.

9525.2810 PENALTY FOR NONCOMPLIANCE.

If a licensed facility governed by parts 9525.2700 to 9525.2810 does not comply with parts 9525.2700 to 9525.2810, the commissioner may take enforcement action pursuant to Minnesota Statutes, sections 245.781 to 245.812 and 252.28, subdivision 2.

OFFICIAL NOTICES

Pursuant to the provisions of Minnesota Statutes 2 14.10, 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.

Hazardous Substance Injury Compensation Board

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Compensation for the Value of Household Labor

Minnesota Statutes 1986, Sections 115B.25-115B.37 establish a Hazardous Substance Injury Compensation Fund ("Fund") to be administered by the Hazardous Substance Injury Compensation Board ("Board"). The Fund will provide compensation for certain

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OFFICIAL NOTICES

personal injuries and damage to property which may result from the release of hazardous substances into the environment.

Notice is hereby given that the Board is seeking information or opinions from sources outside the agency in preparing to propose the adoption of the rule governing the value of household labor lost due to an injury or disease which is compensable by the Fund. The adoption of the rule is authorized by Minnesota Statutes, section 115B.34 which requires the Board to establish a schedule for compensation on the value of household labor.

The State Hazardous Substance Injury Compensation Board requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Virginia Reiner
Executive Director
Hazardous Substance Injury Compensation Board
2700 University Avenue West, #115
St. Paul, Minnesota 55114

Oral statements will be received during regular office hours over the telephone at 612/642-0455 and in person at the above address.

All statements of information and opinions shall be accepted until February 25, 1987. Any written material received by the State Hazardous Substance Injury Compensation Board shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 13 January 1987

Virginia L. Reiner, Executive Director
Hazardous Substance Injury Compensation Board

Department of Human Services

Outside Opinion Sought Concerning Case Management Amendment to Adopted Rule Governing Administration of Community Social Services

Notice is hereby given that the Department of Human Services is seeking information or opinions from sources outside the Department in preparing an amendment to adopted administrative rule part 9550.0010 to 9550.0092 governing the administration of community social services. The amendment would specifically deal with the matter of giving the county of financial responsibility the authority and responsibility to provide case management services for clients placed in a county other than the county of financial responsibility. The amendment would also provide counties with specific options in the carrying out of this responsibility. Authority for this amendment is contained in Minnesota Statutes 256E.05, subd. 1.

All interested or affected persons or groups are invited to submit statements of information or comment orally to:

J. Philip Peterson
County Administration Section
Community Social Services Division
Department of Human Services
4th Floor—Centennial Office Building
658 Cedar
St. Paul, MN 55155
Telephone: (612) 296-3978

All statements of information and comment(s) shall be accepted until further notice. All written material received by the Department shall become part of the rule record.

Department of Human Services Mental Retardation Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Revision of Minnesota Rules, Parts 9525.0210 to 9525.0430 Governing Residential Programs and Services for Mentally Retarded Persons

Notice is hereby given that the State Department of Human Services is seeking information or opinions from sources outside the

agency in preparing proposed amendments to Minnesota Rules, parts 9525.0210 to 9525.0430 governing Residential Programs and Services for Mentally Retarded Persons. Amendment of the rule parts is authorized by Minnesota Statutes, section 252.28 which permits the agency to establish rules and program standards governing residential facilities and services for persons with mental retardation or related conditions.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Martha O'Toole, Rulemaking, Department of Human Services, Centennial Office Building, Fourth Floor, St. Paul, Mn 55155. Oral statements will be received during regular business hours over the telephone at 297-1490 and in person at the above address.

All statements of information and opinions shall be accepted until further notice. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is amended.

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is February 17, 1987.

CHARITABLE GAMBLING CONTROL BOARD has 1 vacancy open for a member. The board shall regulate legal forms of gambling to prevent their commercialization, to ensure integrity of operations and to provide for the use of net profits only for lawful purposes. Members must have been residents of Minnesota for at least five years. Not more than six members may belong to the same political party. At least four members must reside outside of the seven county metropolitan area. Members are appointed by the Governor. Members receive \$35 per diem plus expenses. Members must file with the Ethical Practices Board. For specific information contact the Charitable Gambling Control Board, 1821 University Ave., Room N-475, St. Paul 55104-3383; (612) 642-0555.

BOARD OF TEACHING has 1 vacancy open for a member of the public who is or is a former member of a local school board. The board establishes rules governing education, licensing and relicensing of teachers. Members are appointed by the Governor. Members must file with the Ethical Practices Board. Members receive \$35 per diem plus expenses. Monthly meetings, Capitol Square Bldg., St. Paul. For specific information contact the Board of Teaching, 608 Capitol Square Bldg., 550 Cedar St., St. Paul 55101; (612) 296-2415.

BOARD OF PRIVATE DETECTIVE AND PROTECTIVE AGENT SERVICES has 1 vacancy open for a public member. The board licenses private detectives and protective agents. Members are appointed by the Commissioner of Public Safety. Members must file with the Ethical Practices Board. Monthly meetings, 1246 University Ave., St. Paul. Members receive \$35 per diem plus expenses. For specific information contact the Board of Private Detective and Protective Agent Services, 1246 University Ave., St. Paul 55104; (612) 642-0775.

STATE CONTRACTS

Pursuant to the Provisions of Minn. Stat. § 15.0412, subd. 6, an agency must make reasonable effort to publicize the availability of any 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

Contracts and Requisitions Open for Bid

Call 296-6152 for Referral to Specific Buyers.

Commodity for Bid	Bid Closing Date at 2 pm	Department or Division	Delivery Point	Requisition #
Patrol Cars—Rebid	Jan. 28, 1987	Various	Various	Sch. 1130
Sound System	Jan. 28, 1987	Giants Ridge	Biwabik	43-000-07689
Mowing Machines	Jan. 28, 1987	Natural Resources	St. Paul	29-000-45385
Plant Mix Bituminous	Jan. 28, 1987	Transportation	Duluth	79-100-B
Plant Mix Bituminous	Jan. 28, 1987	Transportation	St. Cloud	79-350-B
Move	Jan. 28, 1987	Teachers Retirement Assn.	Same	69-000-70052
Tractor with Crawler	Jan. 28, 1987	Natural Resources	Various	29-000-45187
Spray Finishing System	Jan. 28, 1987	Correctional Facility	Stillwater	78-620-00105
Mini Computers	Jan. 28, 1987	Various	Various	Price-Contract
Spray Booth	Jan. 28, 1987	Correctional Facility	Stillwater	78-620-00104
Sign Holder	Jan. 29, 1987	Transportation	Morris	79-450-00457
Sign Stand	Jan. 29, 1987	Transportation	Willmar	79-800-03055
Plant Mix Bituminous	Jan. 29, 1987	Transportation	Rochester	79-600-B
Fixture, Luminaire	Jan. 29, 1987	Transportation	St. Paul	79-000-73737
Sign Lights	Jan. 29, 1987	Transportation	Same	79-000-73735
Leading Edge Computer	Jan. 29, 1987	State University	St. Cloud	26-073-19357
Toshiba Computer	Jan. 29, 1987	Transportation	St. Paul	79-000-73700
Measuring Tapes & Rules	Jan. 29, 1987	Various	Various	Price-Contract
Plant Mix Bituminous	Jan. 29, 1987	Transportation	Windom	79-750-B
Partitions & Screens	Jan. 30, 1987	Transportation	Same	79-000-73665
Office Automation	Jan. 30, 1987	Education	St. Paul	Price-Contract
Addendum #1—Preventative	Jan. 30, 1987	Administration: Plant Mgmt.	St. Paul	02-307-51294
Maint. contract for Trane Chillers				
Carpeting & Install	Feb. 2, 1987	Transportation	St. Paul	79-000-71899
Steel Flanged Channel Sign Posts	Feb. 2, 1987	Transportation	Various	Sch.-168-SP
Manifest Systems	Feb. 3, 1987	Revenue	St. Paul	67-450-62519
Photocopy Machine Purchase	Feb. 3, 1987	Jobs & Training	Duluth	21-200-14624
Laerdal Resusci Annies and Related Repair	Feb. 3, 1987	Various	Various	Various
Plant Mix Bituminous	Feb. 3, 1987	Transportation	Virginia	79-150-B
Hot Plant Bituminous	Feb. 3, 1987	Transportation	Willmar	79-800-B

Higher Education Coordinating Board

Notice of Request for Proposals for Contractual Services to Develop an Automated Financial Aid Delivery System

The Minnesota Higher Education Coordinating Board (HECB) is requesting proposals from a system consultant to develop an automated financial aid delivery system to be piloted with the post-secondary institutions in the State University System during the 1987-88 academic year.

Scope of the Project

Review the specification and develop a financial aid delivery system to be piloted in six State University System Campuses.

Project Start and Completion Dates

The Contract will become effective February 27, 1987 and will end April 15, 1987 subject to satisfactory completion.

Project Costs

It is anticipated that the cost of this project will not exceed \$35,000.00 for professional services and expenses.

Those interested in receiving requests for proposals should contact:

Arlon J. Hauptert
 Director of Administrative Services
 400 Capitol Square Building
 550 Cedar Street
 St. Paul, Minnesota 55101
 (612) 296-9685

Proposals will be accepted until 4:00 p.m. February 14, 1987.

Minnesota Historical Society

Notice of Contract Availability for Services for Cultural Resource Survey

It is anticipated that the Minnesota Historical Society will require the services of a qualified contractor to complete a history/architecture reconnaissance level cultural resource survey of Sibley County. The time period is approximately 3/15/87-6/30/87; project estimate is approximately \$8,000.00.

The survey will be conducted in conformance with "Supplemental Information For County History/Architecture Surveys", available for inspection by appointment at the Ft. Snelling History Center. The survey will include a specified number of National Register nominations. The qualified contractor will be responsible for all aspects of survey work including enlisting and documenting the assistance of identified local organizations.

Required Qualifications:

1. A graduate degree in history, architectural history, art history, historic preservation, or closely related field; or a bachelor's degree in history, architectural history, art history, historic preservation or closely related field plus one of the following:
 - a) At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or
 - b) Substantial contribution through research and publication to the body of scholarly knowledge in the field of history or American architectural history.
2. A valid Minnesota driver's license.
3. Experience in conducting cultural resource history/architecture identification, evaluation, and registration activities in conformance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation. Preference will be given to those qualified contractors who have more extensive experience with comprehensive survey work in rural areas and/or in the upper Midwest.
4. Preparation of a National Register nomination form for a property that has been successfully placed on the Register within the last five years.
5. Experience in working with volunteer organizations.

Contractor qualifications, amount of bid, and quality of proposal will be considered in making the award.

STATE CONTRACTS

Qualified contractors should send proposal (including a dollar bid and a project implementation plan), not to exceed two pages in length, resume, and completed National Register nomination form to: Mark Schwartz, Contract Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, Minnesota 55101, no later than the close of the business day (5:00 p.m.), February 6, 1987. Late proposals will not be accepted.

Award of these contracts is contingent upon the availability of federal funds. This solicitation for proposals does not obligate the Society to complete these projects, and the Society reserves the right to cancel solicitation if it is considered to be in the Society's best interests. The Society also reserves the right to reject or accept any or all proposals and to waive any irregularities therein.

NON-STATE PUBLIC CONTRACTS

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

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

Metropolitan Council

Request for Proposal for Upgrading an IBM 4361 Computer System

The Metropolitan Council is requesting a proposal for upgrading an IBM 4361 computer system. The existing system is being upgraded from a Model ML4 to a ML5 processor and the 3370 disk drives are being replaced by a 3880/3380 control unit and disk drives. Provisions provide for a separate proposal on the central processor upgrade, the control unit and disk drives or a combined proposal.

Specifications for this upgrade may be obtained by contacting Roy Larson, Informations Systems Manager, at 291-6480. Specifications are available January 23, 1987.

Proposals for Upgrading an IBM 4361 Computer System will be accepted by the Metropolitan Council until 1:00 p.m., on February 9, 1987.

All Proposals shall be addressed to:

Metropolitan Council
300 Metro Square Building
St. Paul, Minnesota 55101
ATTN: Purchasing Officer

The Metropolitan Council reserves the right to reject any or all proposals, and to waive any minor irregularities and deviations from the specifications.

Jon Elam, Acting Executive Director
Metropolitan Council

STATE GRANTS

In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grant funds available through any agency or branch of state government. Although some grant programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself.

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

Department of Public Service: Energy Division

Notice of Alternative Energy Small Grant Program Opportunities

The Minnesota Department of Public Service/Energy Division is accepting small grant applications for Alternative Energy (AE) projects from qualified organizations considering projects that would utilize energy sources that are indigenous to Minnesota. These resources include solar radiation, wind, biomass, hydropower, and municipal solid waste (MSW). The grants may be used to perform feasibility studies, monitor performance, and/or publicize qualifying projects.

Requests for Alternative Energy grants need not approach, but shall not exceed \$7,500.

Applications must be received by the Minnesota Department of Public Service/Energy no later than 9:00 am, Tuesday, February 17, 1987.

Copies of AE grant guidelines and application forms are available from:

Paul Helgeson
Manager, Alternative Energy Engineering
Minnesota Department of Public Service
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
612/297-2546

SUPREME COURT DECISIONS

Decisions Filed Friday 16 January, 1987

Compiled by Wayne O. Tschimperle, Clerk

C6-86-2 *Jostens, Inc. v. CNA Insurance/Continental Casualty Company, petitioner, Appellant. Court of Appeals.*

Issue of whether insured properly provided insurer with notice of lawsuit was previously decided on appeal.

Court of Appeals erred in not allocating damages according to terms of insurance policy.

Court of Appeals erred in calculating prejudgment interest prior to period when insurer could ascertain liability under indemnity policy.

Affirmed in part, reversed in part. Amdahl, C.J.

Concurring specially, Kelley, J.

Took no part, Coyne, J.

C7-86-543 *State of Minnesota, petitioner, Appellant v. Craig Scott Mortland. Court of Appeals.*

When severe aggravating circumstances are present, thereby allowing a durational departure greater than two times the maximum presumptive sentence duration, the only absolute limit on sentence length is that provided by the legislature for the offense.

Affirmed as modified. Amdahl, C.J.

Took no part, Wahl, J.

Orders

C7-82-467 *In the Matter of the Application for the Reinstatement of William A. Peters, an Attorney at Law of the State of Minnesota. Supreme Court.*

Reinstated. Amdahl, C.J.

Subscription Services

The Minnesota Documents Division offers several subscription services of activities, awards, decisions and special bulletins of various Minnesota state agencies.

Use the handy order form on the back of the *State Register* to order. Simply fill in the subscription code number, include your name, address and zip and your check made out to the State of Minnesota (PREPAYMENT IS REQUIRED) and send it in. We'll start your subscription as soon as we receive your order, or whenever you like.

Subscription	Cost	Code Number
Career Opportunity Bulletin, 1 year	\$ 20.00	90-3
Career Opportunity Bulletin, 6 mos.	\$ 15.00	90-4
Human Services Informational and Instructional Bulletin	\$100.00	90-6
Human Services Bulletin List	\$ 20.00	90-7
LRL (Legislative Reference Library) Checklist	\$ 75.00	90-8

Subscription	Cost	Code Number
PERB (Public Employee Relations Board) Awards	\$260.00	90-9
PERB (Public Employee Relations Board) Decisions	\$ 60.00	90-10
Minnesota Statutes Subscription Includes the complete 10-volume set of Minnesota Statutes 1986 and the 1987 Supplement	\$135.00	18-8
State Register, 1 year	\$130.00	90-1
State Register, 3 mos. trial Can be converted to a full subscription for \$90 at end of trial	\$ 40.00	90-2
Tax Court/Property Decisions	\$210.00	90-11
Workers Compensation Decisions, unpublished subs run Jan-Dec; can be prorated	\$320.00	90-12
Workers Compensation Decisions Vol. 38 (limited quantity)	\$ 89.50	
Vol. 39.	\$ 95.00	90-13

TO ORDER: Prepayment required to start your subscription. Send to Minnesota Documents Division, 117 University Avenue, St. Paul, MN 55155. (612) 297-3000 VISA/MasterCard orders accepted. Please include daytime phone.

Publication editors: As a public service, please reprint this ad in your publication as is, reduced, enlarged, or redesigned to suit your format. Thank you.

Minnesota Manufacturers' Directory 1986-87

NEW: In the directory this year are two titles (where applicable) Chief Engineer and Data Processing Manager.



UPDATED: Name, address, phone number, staff size, sales volume, market area, year of establishment, type of firm, C.E.O., Sales or Marketing Manager, Purchasing Manager and four major manufactured products. Code #40-2, \$68.50.

REVISED: There are more than 7,000 changes to the 7,068 entries



TO ORDER: Please include 6% sales tax and \$1.50 postage and handling. Prepayment required. Send to Minnesota Documents Division, 117 University Avenue, St. Paul, MN 55155. (612) 297-3000. VISA/MasterCard orders accepted. Please include daytime phone.

Publication editors: As a public service, please reprint this ad in your publication as is, reduced, enlarged, or redesigned to suit your format. Thank you.

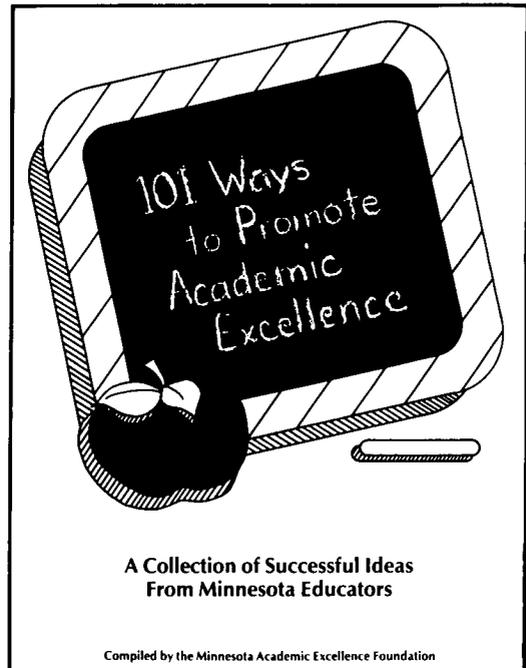
Minnesota: national leader in education

101 Ways to Promote Academic Excellence

A collection of nuts-and-bolts methods educators have successfully used to foster academic achievement. These are techniques that directly help students, can be replicated easily, are cost-effective, and that work in meeting public education's great challenge: helping every single child learn. Code #5-1, \$4.50.

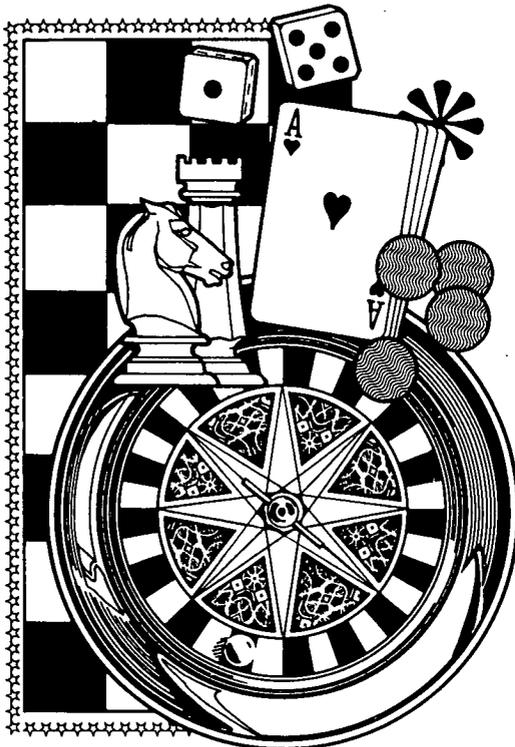
Education Directory, 1986-87

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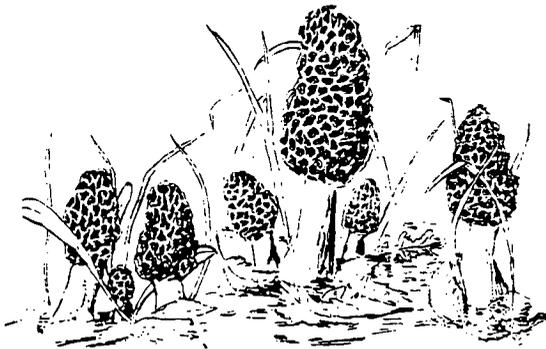
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