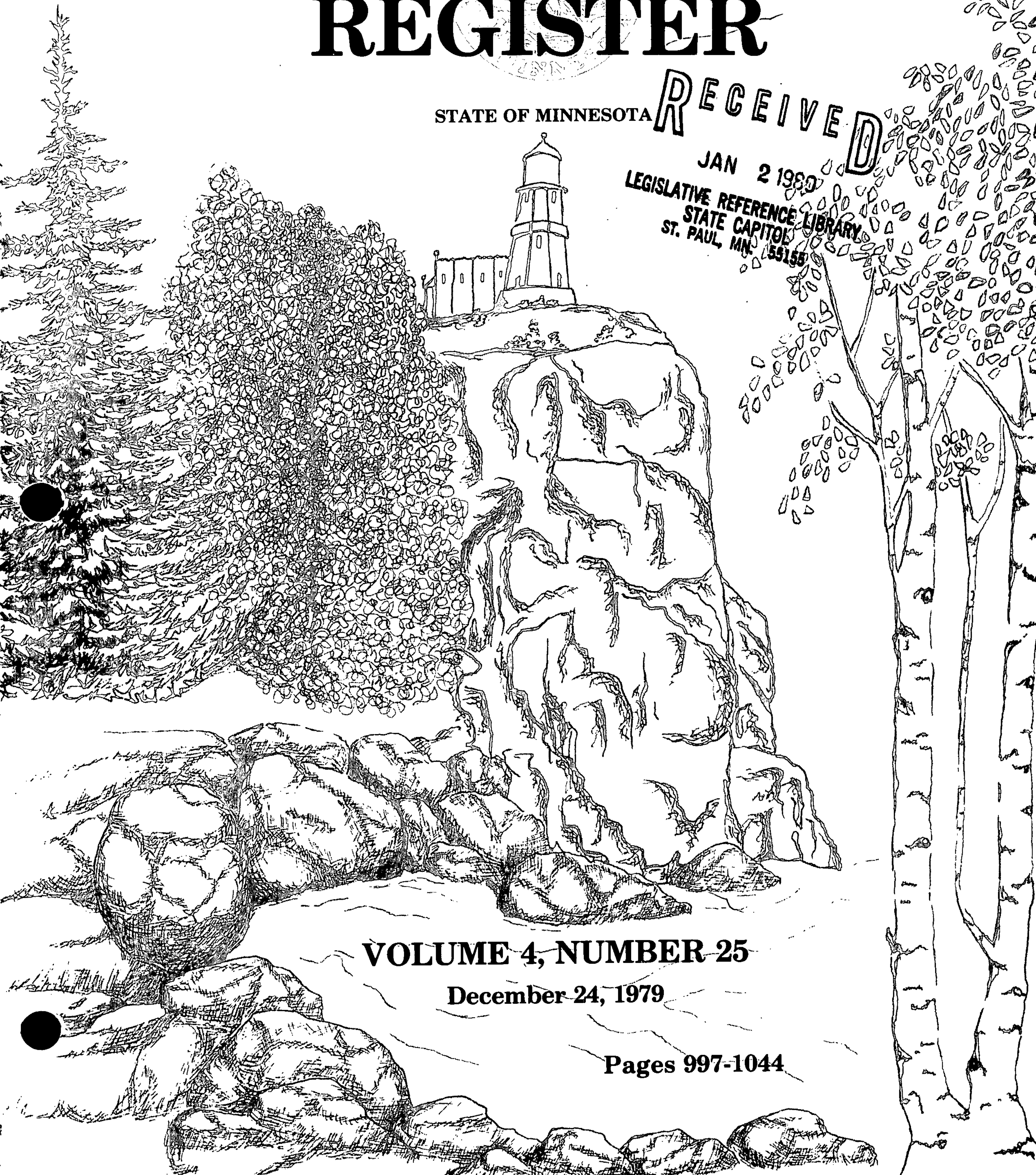
STATE REGISTER

STATE OF MINNESOTA



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December 24, 1979

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Volume 4 Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 4		
26	Monday Dec 17	Friday Dec 21	Monday Dec 31
27	Friday Dec 21	Friday Dec 28	Monday Jan 7
28	Friday Dec 28	Monday Jan 7	Monday Jan 14
29	Monday Jan 7	Monday Jan 14	Monday Jan 21

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

**Notices of Public Hearings on proposed rules are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

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

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MCAR AMENDMENTS AND ADDITIONS

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The *State Register* publishes partial and cumulative listings of all proposed and adopted rules on the following schedule: issue 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; and issue 52, cumulative for 1-52. The listings are arranged in the same order as the table of contents of the MCAR.

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EXECUTIVE ORDERS

Executive Order No. 79-38

Providing for the Disestablishment of the Governor's Council on Motion Picture Production; Repealing Executive Order No. 79-5

I, Albert H. Quie, Governor of the State of Minnesota, by virtue of the authority vested in me by the Constitution and applicable statutes, hereby issue this Executive Order.

WHEREAS, Executive Order No. 79-5 was issued in recognition of Minnesota's increasing popularity as a site for motion picture production and filming; and

WHEREAS, many businesses in the State of Minnesota have been experiencing substantial increased income through the promotion of Minnesota as a site for film production; and

WHEREAS, through the efforts of individuals, corporations and foundations in the private sector, efforts have been undertaken to coordinate the activities of both public and private entities for the promotion of Minnesota as a site for motion picture production; and

WHEREAS, these efforts being conducted in the private sector are designed to carry out the same purposes as the Governor's Council on Motion Picture Production and are likely to achieve the same desirable results for the people and businesses of Minnesota;

NOW, THEREFORE, I order:

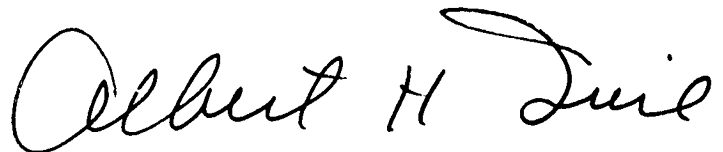
1. The Governor's Council on Motion Picture Production is hereby disestablished.

2. No State funds shall be expended by the Minnesota Department of Economic Development for the support of the Governor's Council on Motion Picture Production.

This Order repeals Executive Order No. 79-5.

Pursuant to Minn. Stat. § 4.035 (1978), this Order shall be effective fifteen (15) days after filing with the Secretary of State and publication in the *State Register*.

IN TESTIMONY WHEREOF, I hereunto set my hand this 29th day of November, 1979.



ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register,* unless a later date is required by statutes or specified in the rule.

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

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

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Health Environmental Health Division

Adopted Amendments to Rules Relating to Food, Beverage and Lodging Establishments, License Fees and Swimming Pools

The rules proposed and published at *State Register*, Volume 3, pages 2055-2061, May 21, 1979 (3 S. R. 2055) relating to food, beverage and lodging establishments, to license fees and to swimming pools, are adopted with the amendments shown below. Note: Proposed amendments to the Clean Indoor Air rules (7 MCAR §§ 1.441-1.445) which were published at 3 S. R. 2051 will be adopted at a future date.

Rules as Adopted

7 MCAR § 1.152 I. Toilets. Every hotel, motel and lodging house shall be equipped with adequate and conveniently located water closets for the accommodation of its employees and guests. Water closets, lavatories and bath tubs or showers shall be available on each floor when not provided in each individual room. Toilet, lavatory and bath facilities shall be provided in the ratio of one toilet and one lavatory for every ten occupants, or fraction thereof, and one bath tub or shower for every twenty occupants, or fraction thereof. ~~The hot water temperature shall not exceed 130° F (≐ 55° C).~~ Toilet rooms shall be well ventilated by natural or mechanical methods. The doors of all toilet rooms serving the public and employees shall be self-closing. Toilets and bathrooms shall be kept clean and in good repair and shall be well lighted and ventilated. Handwashing signs shall be posted in each toilet room used by employees. Every resort shall be equipped with adequate and convenient toilet facilities for its employees and guests. If privies are provided they shall be separate buildings and shall be constructed, equipped, and maintained in conformity with the standards of the Commissioner and shall be kept clean.

J. Water supply. A safe adequate supply of water shall be provided. The water supply system shall be located, constructed and operated in accordance with the rules of the Commissioner. After September 30, 1980, the temperature of hot water which is provided in any public area or guest room, including but not limited to lavatories, bath tubs or showers, shall not exceed 130° F. (approximately 55° C.).

K. Handwashing. All lavatories for public use or furnished in guest rooms at hotels, motels, lodging houses and resorts shall be supplied with hot and cold running water and with soap. ~~The hot water temperature shall not exceed 130° F (≐ 55° C).~~ Scullery sinks should not be used as handwashing sinks.

In the case of separate housekeeping cabins at resorts not supplied with running hot water, equipment shall be provided for heating water in the cabin.

Individual or other approved sanitary towels or warm-air dryers shall be provided at all lavatories for use by employees or the public.

S. Sanitary dispensing of ice. Any lodging establishment which makes ice available in public areas, including but not limited to lobbies, hallways, and outdoor areas, shall restrict access to such ice in accordance with the following provisions:

1. After the effective date of this rule, any newly-constructed lodging establishment which installs ice-making equipment and any existing lodging establishment which installs or replaces ~~its~~ ice-making equipment shall install only automatic dispensing, sanitary ice-making and storage equipment in areas to which the public has access. Any such establishment may install open-type ice bins only if the ice therefrom is dispensed in the manner provided in subpart S.2.

2. After December 31, ~~1982~~ 1984, any existing lodging establishment which has not converted to automatic dispensing ice-making and storage equipment shall no longer permit unrestricted public access to open-type ice bins, and shall dispense ice to guests only by having employees give out prefilled, individual sanitary containers of ice, or by making available prefilled, disposable, closed bags of ice.

7 MCAR § 1.155 ~~F. Effective date. The fees prescribed in 7 MCAR § 1.155 shall apply to all licenses which become effective on or after September 1, 1979.~~

7 MCAR § 1.162 W. Limited Food Service Establishment shall mean an itinerant establishment, or one serving only prepackaged foods (e.g., frozen pizza and sandwiches) which receive only heat treatments.

7 MCAR § 1.165 ~~F. Effective date. The fees prescribed in 7 MCAR § 1.165 A shall apply to all licenses which become effective on or after September 1, 1979.~~

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Health Health Systems Division

Proposed Rules Relating to Life Support Transportation Services

Notice is hereby given that a public hearing in the above-entitled matter will be held in Room 105, at the Minnesota Health Department Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on January 31, 1980, commencing at 9:30 a.m.

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 hearing which is to be included in the hearing record may be mailed to George Beck, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104 (Telephone: (612) 296-8108). Unless a longer period not to exceed 20 calendar days is ordered by the Hearing Examiner at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. The hearing shall be conducted in accordance with the rules of the Office of Hearing Examiners, 9 MCAR § 2.101 *et seq.*

The proposed rules, if adopted, would set standards for the operation of basic life support transportation services, advanced life support transportation services, scheduled life support transportation services, life support transportation services operated on a non-profit basis for special events, and life support transportation services provided by an employer for the benefit of its employees. The rules would set requirements for each of these types of service relating to personnel training and certification, minimum equipment and vehicle standards, and radio communications. The proposed rules address the issues of the establishment of primary service areas, enforcement of the relevant statutes and rules, mutual aid and coverage between and among services, and documentation requirements. Provision is also made for the granting of waivers and variances from the strict application of the rules in specific circumstances, as well as for the special needs created during times of disaster, mass casualty or other public emergency.

Copies of the proposed rules are now available, and one free copy may be obtained by writing to the Section of Emergency Medical Services, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440. Additional copies will be available at the door on the date of the hearing.

The statutory authority of the Minnesota Commissioner of Health to promulgate the proposed rules is contained in Minn. Stat. §§ 144.801-144.8091 (1979 Supp.).

Notice: The proposed rules are subject to change as a result of the rule hearing process. The Commissioner therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the rule hearing process.

Please be advised that pursuant to Minn. Stat. § 10A.03, subd. 1 (1978), lobbyists must register with the State Ethical Practices Board within five days after becoming lobbyists.

" 'Lobbyist' means 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 his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own 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."

Minn. Stat. § 10A.01, subd. 11 (1979 Supp.). The statute provides certain exceptions. Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, at telephone number (612) 296-5615.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a

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summary of all of the evidence which will be presented by the Commissioner at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: Any person may request notification of the date on which the Hearing Examiner's report will be available, after which date the Commissioner may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Commissioner. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the Commissioner (in the case of the Commissioner's submission or resubmission to the Attorney General).

As a number of municipalities and other local public bodies operate, directly or indirectly, services which may be affected by these proposed rules, there may be some fiscal impact on these local agencies if these rules are adopted. However, it is anticipated that the total expenditure for all such local bodies due to these rules would not exceed $100,000 in either of the two years immediately following an adoption of these rules.

December, 1979.

George R. Pettersen, M.D.
Commissioner of Health

Rules as Proposed (all new material)

7 MCAR § 1.601 Definitions.

A. ''Air ambulance'' means an ambulance that is designed and manufactured to travel by air, and includes fixed wing aircraft and helicopters.

B. ''ALS'' means advanced life support transportation service.

C. ''BLS'' means basic life support transportation service.

D. ''Central base of operation'' means a base of operation for a life support transportation service that serves as the coordinating point for other bases of operation of a licensee within a single primary service area.

E. ''Change'' means an action or occurrence by which a situation relevant to licensure has become distinctly and materially different such that it can reasonably be expected that the licensee will not meet the conditions of its current license.

F. ''Change in type of service'' means any change in the schedule of:

1. skills and equipment used in patient care;

2. hours during which service will be available; or

3. group(s) of individuals for whom service will be provided exclusively such that a new type or types of licenses are required.

G. ''Change of base of operation'' means a change involving a relocation of vehicles, related equipment, and personnel housed at one location for housing at another location such that it is no longer possible for the service making the change to meet the conditions of its license regarding its designated primary service area.

H. ''City of the first class'' and ''city of the second class'' have the meanings given to them in Minn. Stat. ch. 410.

I. ''Commissioner'' means Commissioner of Health.

J. ''Communications base'' means the location at which equipment is housed for use in two-way radio communications with ambulances or medical facilities.

K. ''Credentialed'' means registered by the Commissioner pursuant to Minn. Stat. § 214.13.

L. ''Full operating condition and good repair'' means a condition whereby all systems, parts, elements and components are completely workable, operational and reliable.

M. ''Land ambulance'' means an ambulance that is designed and manufactured to travel on land.

N. ''Medical control'' means the direction by physicians of out-of-hospital emergency medical care delivered by non-physicians that is provided directly on the scene or through direct oral communication by radio or telephone, or indirectly through written patient triage, treatment, and transfer guidelines or protocols, and that includes the following:

1. providing advice on training and orientation or personnel,

2. providing advice on upgrading and purchasing equipment,

3. prescribing and maintaining any standing orders,

4. providing triage and transporting guidelines to assure that patients requiring care are transported to appropriate medical facilities for treatment, and

5. assisting with the development and operation of an internal quality assurance mechanism that includes review of services provided.

O. ''Nonbreakable'' means not easily broken and not liable to be broken through normal use and minor abuse such as dropping.

P. ''Osteopath'' means a person licensed to practice osteopathy pursuant to Minn. Stat. §§ 148.11-148.16 prior to 1963 or licensed to practice medicine pursuant to Minn. Stat. ch. 147.

Q. ''Physician'' means a person licensed to practice medicine pursuant to Minn. Stat. ch. 147.

R. ''Registered Nurse'' means a person licensed to practice professional nursing pursuant to Minn. Stat. ch. 148.

S. ''Scheduled advanced life support transportation service'' means an advanced life support transportation service that:

1. restricts the availability of its services to specified periods of time;

2. restricts the availability of its services to a specified group of people; or

3. restricts the type of services it provides to a specified medical category or categories.

T. "Scheduled basic life support transportation service" means a basic life support transportation service that:

1. restricts the availability of its service to specified periods of time;

2. restricts the availability of its services to a specified group of people; or

3. restricts the type of services it provides to a specified medical category or categories.

U. "Scheduled life support transportation service" means basic or advanced life support transportation service that:

1. restricts the availability of its services to specified periods of time;

2. restricts the availability of its services to a specified group of people; or

3. restricts the type of services it provides to a specified medical category or categories.

V. "Single-service" means designed and manufactured to be used once and then disposed of, not to be re-used.

W. "Sterile" means the state of being free from microorganisms.

X. "Telemetry" means the direct transmission of electronic signals indicating measurement of patient physiological parameters.

Y. "Treatment" means the use of the skills or equipment required by these rules for the management and care of an ill or injured person or of a pregnant woman for the purpose of combating disease, minimizing disability, preventing death, or preserving health.

Z. "Variance" means permission to comply in a manner other than that generally specified.

AA. "Waiver" means permission not to comply.

7 MCAR § 1.602 Applications for licensure.

A. Contents of all applications.

1. An application for license renewal, or for licensure of a new service, change in primary service area, change in base of operations, or type of service provided shall be made on a form provided by the Commissioner and shall include, at a minimum, the following categories of information to allow a determination of compliance with the requirements of Minn. Stat. §§ 144.801 *et seq.* and to provide sufficient information for local and regional reviews as prescribed in Minn. Stat. § 144.802:

a. identification, location and pertinent telephone numbers for the proposed service and the name of the individual responsible for accuracy of the application;

b. the address of all bases of operation;

c. the name of the affiliated medical facility, if any, for the service;

d. the location of the communications base and a description of the communications equipment on the licensee's ambulances and at its communications base;

e. the type of action requested (new license, license renewal, change in primary service area, change of base of operations, or change in type of service provided);

f. the type and identification of ownership;

g. the type and identification of the entity responsible for operation if different from ownership;

h. a declaration of proposed primary service area according to the requirements of 7 MCAR § 1.608 F.;

i. back-up coverage, including reserve ambulance(s) owned by applicant, back-up services, and indication of signed mutual aid agreements with neighboring providers;

j. other licensed providers in the primary service area;

k. a description of the population to be served;

l. type of service to be licensed;

m. actual past and estimated future utilization of service;

n. basic actual or estimated financial data, including:

(1) revenue or income,

(2) actual or projected charges,

(3) sources of revenue by type, and

(4) expenses (real and in kind) by category;

o. qualifications of personnel, including:

(1) numbers and credentials of attendants and drivers,

(2) description of staff turnover,

(3) names and addresses of key personnel;

p. a listing and description of all ambulances to be used by the service if licensed; and

q. other information that may be needed by the Commissioner to clarify incomplete or ambiguous information presented in the application.

2. Applicants shall furnish or retain in file documentation of all statements made in application for licensure.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. 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."

B. Contents of applications for licensure of new services, expansions of primary service area, and changes in base of operation or type of service.

1. An application for licensure of a new service or for a change in base of operation, primary service area, or type of service shall include, at a minimum, the following categories of information to allow for a determination of need for the proposed service by local units of government, local boards of health, and Health Systems Agencies, as prescribed in Minn. Stat. § 144.802, subd. 3, and to allow for a determination of the applicability of Minn. Stat. §§ 145.832-144.845, the Minnesota Certificate of Need Law:

a. a description of the proposed new service, change in base of operation, expansion of primary service area, or change in type of service;

b. a justification of the need for the proposed new service or modification in service;

c. a description of the population to be served by the proposed new service or modified service;

d. a description of the geographic features of the primary service area that have a direct bearing on the proposed service or modified service;

e. a statement of all costs associated with the new service, including any capital costs as defined in Minn. Stat. §§ 145.832-145.845, operating costs and projected patient charges for at least one year, and other related information; and

f. other information that may be needed by the Commissioner to clarify incomplete or ambiguous information presented in the application.

C. Contents of applications for life support licensure by health care facilities subject to certificate of need review under Minn. Stat. §§ 145.832-145.845.

1. Applicants for life support licensure that are health care facilities as defined in Minn. Stat. § 145.833, subd. 2, shall submit sufficient information on the forms described in 7 MCAR § 1.602 A. and B. above to allow for a determination of the need for review for a certificate of need as prescribed in Minn. Stat. § 145.834.

2. Applicants for life support licensure that are determined to be subject to certificate of need review by the Commissioner shall provide such additional information as may be required by Minn. Stat. § 145.836; such information shall be submitted on forms provided by the Commissioner and shall meet all criteria specified in rule and statute for certificate of need applications.

7 MCAR § 1.603 Standards for operation of basic life support transportation services.

A. Personnel.

1. Qualifications.

a. No person shall function as an attendant or driver or represent himself or herself as an attendant or driver of a basic life support transportation service (BLS) ambulance unless that person:

(1) possesses a current advanced American Red Cross first aid certificate;

(2) possesses a current emergency care certificate issued by the commissioner pursuant to Minn. Stat. § 214.13;

(3) possesses a current emergency care certificate that complies with the provisions of 7 MCAR § 1.609; or

(4) meets the qualifications of 7 MCAR § 1.604 A. for an advanced life support transportation service ambulance.

b. The requirement set forth in 7 MCAR § 1.603 A.1.a. shall not apply to persons functioning as pilots of air ambulances.

2. Staffing.

a. Each BLS licensee shall employ or otherwise have on staff a minimum of five persons qualified under 7 MCAR § 1.603 A.1.a. and shall maintain:

(1) a current roster, including the name, address and qualification of such persons; and

(2) files documenting personnel qualifications.

b. By July 1, 1985, each licensee shall have a physician medical director responsible for at least:

(1) providing advice on training and orientation or personnel;

(2) providing advice on upgrading and purchasing equipment;

(3) prescribing and maintaining any standing orders;

(4) providing triage and transporting guidelines to assure that patients requiring care are transported to appropriate medical facilities for treatment; and

(5) assisting with the development and operation of an internal quality assurance mechanism that shall include review of services provided.

c. The name and address of the medical director and a written statement signed by the medical director indicating his or her acceptance of the responsibilities as specified in 7 MCAR § 1.603 A.2.b. shall be maintained in the files of the licensee.

d. If a life support transportation service finds it impossible to arrange for an attendant to accompany the driver, the driver may respond to an emergency call without an accompanying attendant, provided that the service shall:

(1) make all reasonable efforts to arrange for an attendant to be present at the site of the emergency and enroute to a health care facility;

(2) document why it was impossible to arrange for an attendant to be present at the site of the emergency and to accompany the driver during transport of the patient and what reasonable efforts were made to arrange for an attendant to be present; and

(3) maintain such documentation in the files of the licensee.

3. Operational requirement. An attendant shall be in the patient compartment while transporting a patient or patients except as allowed by Minn. Stat. § 144.804, subd. 2.

B. Equipment.

1. Minimum standards.

a. All ambulances shall comply with the following standards:

(1) splinting equipment that shall include:

(a) one hinged half-ring lower-extremity splint or one traction splint with ankle harness for fractures of the femur;

(b) two fixation splints each for fractures of the leg or arm;

(c) one short and one long backboard with fixation straps; or one neck splint with fixation straps and one full spine splint with head immobilization gear and fixation straps;

(2) ventilation assistance and airway maintenance equipment that shall include:

(a) one portable oxygen system complying with the following specifications:

(i) high-pressure tank regulated to 50 psi at flowmeter;

(ii) calibrated to deliver to patient two to 15 liters per minute;

(iii) minimum of 20 minutes supply at a rate of 15 liters per minute;

(iv) single service tubing from regulator valve outlet to patient;

(v) single service nasal cannula and single-service inhalation mask;

(vi) one each of infant, child and adult masks for administration of oxygen; and

(vii) capability for use as oxygen source as described in 7 MCAR § 1.603 B.1.a.(2)(c) below.

(b) one oxygen system for use in the ambulance that complies with 7 MCAR § 1.603 B.1.a.(2)(a)(i), (ii), (iv)-(vii); such a system shall be capable of delivering a minimum of 60 minutes supply at a rate of 15 liters per minute;

(c) one clear-domed mask with a 15/22 mm adapter and oxygen inlet port for mouth-to-mask or mechanical-device mask ventilation; or one each of infant, child and adult hand-operated bag-mask resuscitation units, or an oxygen-powered manually cycled valve connected to an oxygen source capable of delivering a minimum of 30 minutes oxygen supply at 15 liters per minute; or one bag-valve mask that shall:

(i) have an inlet port for connection to the oxygen-source tubing,

(ii) be capable of flow rates of 15 liters per minute without malfunctioning,

(iii) be capable of 80% inspired oxygen concentration to the patient at a flow rate of 12 liters per minute from the oxygen source, and

(iv) have a transparent dome so as to allow visualization of the airway.

(d) portable suction apparatus with catheter or oral suction equipment that shall:

(i) use a non-breakable bottle for collection of the aspirated material, and

(ii) be capable of producing a vacuum of 150 mmHg with an air flow rate of 15 liters per minute for a period of at least five minutes (if the power source is oxygen, this requirement shall be in addition to the time requirement for the administration of oxygen to the patient);

(e) one each of oropharyngeal airways in adult, child and infant sizes; and

(f) seizure sticks;

(3) dressings, bandages, and bandaging equipment that shall include, at a minimum:

(a) two universal or multitrauma dressings approximately ten inches by 30 inches;

(b) twelve sterile gauze pads or twelve sterile abdominal pad dressings;

(c) two rolls of adhesive tape;

(d) six soft rolled bandages, approximately six inches wide and five yards long;

(e) twelve triangular bandages; and

(f) bandage shears;

(4) one poison-treatment kit that shall include:

(a) two ounces of syrup of ipecac, and

(b) one quart drinking water in a non-breakable container;

(5) one emergency obstetric kit that shall include:

(a) three sterile towels and two sterile drapes;

(b) bulb syringe;

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(c) four sterile pads or sterile sanitary napkins;

(d) plastic bag or basin;

(e) two sterile cord clamps or ties;

(f) one 18-inch by 25-foot roll of aluminum foil or one aluminum blanket, either of which must be sterile and wrapped;

(g) sterile shears or scalpel; and

(h) single service sterile gloves;

(6) equipment for determination of vital signs that shall include:

(a) one stethoscope, and

(b) one sphygmomanometer with cuff(s) for use with child and adult patients;

(7) a detailed current map for use in locating all points in the primary service area;

(8) extrication equipment that shall include either one twenty-four-inch wrecking bar or a commercial extrication device (K/T tool or similar device); and

(9) other equipment that shall include:

(a) two sheets, two blankets, and one pillow;

(b) emesis container;

(c) one flashlight; and

(d) one fire extinguisher, five-pound dry-chemical type with A:B:C rating.

b. All equipment carried by an ambulance shall be stored so that the patient, attendant and/or driver are not injured or otherwise interfered with in the event of sudden stop or movement of the ambulance during transport.

c. All equipment required by 7 MCAR § 1.603 B.1.a. shall be permanently stored and kept on or in the ambulance unless otherwise provided for in 7 MCAR § 1.603 B.2.

2. Air ambulance equipment.

a. Air ambulances licensed to provide basic life support transportation service shall carry all equipment listed in 7 MCAR § 1.603 B.1.a. with the exception of the equipment in 7 MCAR § 1.603 B.1.a. (8).

b. Air ambulances shall comply with the regulations of the Federal Aviation Administration and the rules of the Minnesota Department of Transportation, Aeronautics Division.

c. Equipment required in 7 MCAR § 1.603 B.2.a. that is not permanently stored on or in an air ambulance shall be kept separate from the air ambulance in a modular pre-packaged form so as to be available for rapid loading and easy access aboard the aircraft at the time of response to a call.

3. Maintenance and sanitation.

a. All equipment shall be maintained in full operating condition and in good repair.

b. All equipment and containers used for storage of equipment shall be kept clean so as to be free from dirt, grease, and other offensive matter.

c. Sheets and pillowcases shall be changed after each use.

d. Single-service equipment shall be wrapped, stored and handled so as to prevent contamination and shall be disposed of after use.

e. Re-usable equipment shall be cleaned after each use so as to be free from dirt, grease and other offensive matter.

f. Equipment soiled or otherwise not free from dirt, grease and other offensive matter, shall be kept in plastic bags or securely covered containers until disposed of or prepared for re-use.

g. Procedures for the periodic performance testing of mechanical equipment listed in 7 MCAR § 1.603 B.1.a.(2) shall be developed, maintained and followed; and records of such performance testing shall be kept in the licensee's files.

C. Ambulance standards.

1. Land ambulances.

a. All new land ambulances purchased by a licensee after June 30, 1981, shall comply with the following standards:

(1) the size of the patient compartment shall be a minimum of 116 inches long and 69 inches wide (wall to wall) and shall be 54 inches high (floor to ceiling);

(2) the door openings to the patient compartment shall be a minimum of 30 inches wide and 42 inches high and the doors to the patient compartment must be operable from inside the ambulance;

(3) the interior storage areas shall provide a minimum of 30 cubic feet of storage space to accommodate all required equipment and other equipment carried and shall be located so as to provide for easy access to all equipment;

(4) the interior lighting in the patient compartment shall include overhead or dome lighting and be designed so that no glare can be reflected to the driver's line of vision while the ambulance is transporting the patient; illumination shall provide a minimum intensity of 40 foot candles at the floor level to allow illumination for administering life support services;

(5) environmental equipment shall include a heater for the patient compartment that shall have a minimum output of 21,000 BTUs;

(6) markings on the ambulance shall include identification of the type of service the ambulance is licensed to provide in letters three inches or larger on the sides of the ambulance;

(7) The ambulance shall:

(a) have an overall height, including roof-mounted equipment except for radio antenna, of 110 inches or less,

(b) have fuel capacity to provide no less than 175-mile range;

(c) have ground clearance of at least six inches when loaded to G.V.W. rating; and

(d) be capable of full performance at ambient temperatures of -30 degrees F to 125 degrees F.

b. Land ambulances that comply with the standards issued by the Department of Transportation in Federal Specifications KKK-1822 for Ambulance Emergency Medical Care Vehicle (dated January 2, 1974 and amended June 25, 1975), with the exception of sections 3.14, 3.15, and 3.16, are deemed to comply with the standards contained in this section.

c. All ambulances purchased by a licensee on or before June 30, 1981, shall substantially comply with the standards contained in this section as determined by the commissioner according to the following considerations:

(1) size of patient compartment to allow adequate space for administering life support services;

(2) dimensions of door openings to patient compartment and operation of doors to patient compartment to allow for easy access;

(3) design and location of interior storage areas to allow for adequate storage and easy access;

(4) design and operation of interior lighting in patient compartment to allow adequate illumination for administering life support services.

(5) design and operation of environmental equipment to allow for proper heating;

(6) design, contents and location of markings on the ambulance to allow for easy and correct identification by the public; and

(7) design, operation and suspension to allow for safe and stable transport.

2. Air ambulances.

a. Air ambulances shall comply with the regulations of the Federal Aviation Administration and the rules of the Minnesota Department of Transportation, Aeronautics Division.

3. Standards for ambulances other than land or air ambulances.

a. Ambulances other than land or air ambulances shall substantially comply with 7 MCAR § 1.603 C.1.a. as determined by the commissioner according to the considerations set forth in 7 MCAR § 1.603 C.1.c.(1)-(7).

4. Restraining devices.

a. All ambulances shall be equipped with restraining devices for the cot and all seating places in the patient compartment for patient and attendant.

5. Maintenance and sanitation.

a. Each ambulance shall be maintained in full operating condition and in good repair and documentation of such maintenance shall be kept in the licensee's file.

b. The interior of the ambulance, including all storage areas, shall be kept clean so as to be free from dirt, grease, and other offensive matter.

c. If an ambulance has been used to transport a patient that is known or should be known by the attendant or driver to have a contagious disease (other than a common cold liable to be transmitted from person to person through exposure or contact), surfaces in the interior of the ambulance and surfaces of equipment that come in contact with such patient shall, immediately after each use, be cleaned so as to be free from dirt, grease and other offensive matter and be disinfected so as to prevent the presence of a level of microbiologic agents injurious to health.

D. Communications.

1. Compliance. All BLS services shall comply with these communication standards by June 30, 1981.

2. Standards and radio frequency assignments.

a. Ambulances shall have a two-way Very High Frequency (VHF) mobile radio, with Continuous Tone Coded Squelch System (CTCSS), capable of operating on at least two VHF high-band radio-frequency (r-f) channels.

b. Each BLS service shall have a communications base that has a two-way VHF base radio, with CTCSS, capable of operating on at least two VHF high-band r-f channels.

c. Ambulances and their communication bases shall use Channel One of the mobile and base radios as the main operating channel for routine communications as provided in 7 MCAR § 1.603 D.2.d. and shall use Channel Two for statewide communications.

d. Ambulances and communications bases shall operate Channel One at the radio-frequency assigned to the district within which the communications base is located as follows:

(1) Agassiz district (Kittson, Roseau, Lake of the Woods, Marshall, Beltrami, Polk, Pennington, Red Lake, Clearwater, Hubbard, Norman and Mahnomen Counties) shall have Channel One r-f of 155.325 MHz;

(2) Arrowhead district (Koochiching, St. Louis, Lake, Cook, Itasca, Carlton and Aitkin Counties) shall have Channel One r-f of 155.355 MHz;

(3) Min-Dak district (Clay, Becker, Wilkin,

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Otter Tail, Grant, Douglas, Stevens, Traverse and Pope Counties) shall have Channel One r-f of 155.355 MHz;

(4) Central district (Cass, Wadena, Crow Wing, Todd, Mille Lacs, Isanti, Pine, Chisago, Kanabec, Morrison, Stearns, Benton, Sherburne, and Wright Counties) shall have Channel One r-f of 155.385 MHz;

(5) Southwest district (Swift, Kandiyohi, Meeker, Lac qui Parle, Chippewa, Yellow Medicine, Renville, McLeod, Lincoln, Lyon, Redwood, Pipestone, Murray, Cottonwood, Rock, Nobles, Big Stone and Jackson Counties) shall have Channel One r-f of 155.400 MHz;

(6) South Central district (Sibley, LeSueur, Nicollet, Brown, Watonwan, Blue Earth, Waseca, Martin and Faribault Counties) shall have Channel One r-f of 155.355 MHz;

(7) Southeastern district (Rice, Goodhue, Wabasha, Steele, Dodge, Olmsted, Winona, Freeborn, Mower, Fillmore and Houston Counties) shall have Channel One r-f of 155.385 MHz; and

(8) Metropolitan district (Anoka, Hennepin, Ramsey, Washington, Carver, Scott and Dakota Counties) shall have Channel One r-f of 155.325 MHz or shall comply with 7 MCAR § 1.604 D.2.a.-e.

e. The CTCSS tone operation on Channel One of the mobile radio shall be the same as the CTCSS tone operation of the base radio.

f. Ambulances and communications bases shall operate Channel Two at an r-f of 155.340 MHz and shall use a CTCSS tone of 210.7 Hz for channel two.

g. Ambulances and communications bases shall communicate by telephone and other alternative means of communication rather than radio communications when radio communications are not necessary and when readily available.

h. Mobile telephone services shall not be acceptable as an alternative to the required two-way radio operation.

3. Equipment performance. All communications equipment shall be capable of transmitting and receiving clear and understandable voice communications to and from the licensee's communications base and all points within the licensee's primary service area.

4. Equipment maintenance. All communication equipment shall be maintained in full operating condition and in good repair, and documentation of such maintenance shall be kept in the licensee's file.

7 MCAR § 1.604 Standards for operation of advanced life support services.

A. Personnel.

1. Qualifications and training requirements.

a. No person shall function as an attendant or represent himself or herself as an attendant of an advanced life support transportation service (ALS) ambulance unless that person:

(1) is credentialed to provide paramedic services, or

(2) has successfully completed the written examination and the practical examination approved by the commissioner according to the provisions of 7 MCAR § 1.604 A.2. and fulfills the continuing education requirements set forth in 7 MCAR § 1.604 A.3.

b. No person shall function as a driver or represent himself or herself as a driver of an ALS ambulance unless that person:

(1) possesses a current emergency care certificate issued by the commissioner pursuant to section Minn. Stat. § 214.13;

(2) possesses a current emergency care certificate that complies with the provisions of 7 MCAR § 1.609; or

(3) meets the requirements of 7 MCAR § 1.604 A.1.a.

c. The requirement set forth in 7 MCAR § 1.604 A.1.b. shall not apply to persons functioning as pilots of air ambulances.

2. Written and practical examinations.

a. A written examination for attendants of ALS ambulances shall test for competency in the subject areas identified below in order to be approved by the commissioner:

(1) role, responsibilities and training of paramedics,

(2) human systems and patient assessment,

(3) shock and fluid therapy,

(4) general pharmacology,

(5) respiratory system,

(6) cardiovascular system,

(7) central nervous system,

(8) soft tissue injuries,

(9) musculoskeletal system,

(10) medical emergencies,

(11) obstetric/gynecological emergencies,

(12) pediatrics and neonatal,

(13) management of the emotionally disturbed patient,

(14) rescue techniques, and

(15) telemetry and communications.

b. A practical examination for attendants of ALS ambulances shall test for competency in the subject areas identified below in order to be approved by the commissioner:

(1) trauma management including primary and secondary assessment, treating of trauma victims and setting priorities for BLS and ALS management;

(2) cardiology including electrocardiogram interpretation and treatment and related questions;

(3) cardiac arrest, including intubation, intravenous therapy, administration of intravenous medication, and defibrillation;

(4) cardiopulmonary resuscitation (CPR) including one- and two-person CPR, obstructed airway care, and infant resuscitation; and

(5) fracture immobilization.

c. Examiners for practical examinations shall be physicians or nurses with the exception that persons who qualify as attendants under 7 MCAR § 1.604 A.1.a. or drivers under 7 MCAR § 1.604 A.1.b. may serve as examiners for the competencies specified in 7 MCAR § 1.604 A.2.b.(4) or (5).

d. Written and practical examinations shall be administered by the commissioner or by a designated representative.

e. The National Registry of Emergency Medical Technicians Examination for Emergency Medical Technician-Paramedics as of the effective date of these rules is deemed to comply with 7 MCAR § 1.604 A.2.a.-c.

3. Continuing education requirements.

a. Continuing education requirements for persons qualifying as ALS ambulance attendants pursuant to 7 MCAR § 1.604 A.1.a.(2) are as follows:

(1) successful completion every two years of 48 hours of refresher training in the subject areas listed in 7 MCAR § 1.604 A.2.a.(1)-(15);

(2) successful completion every year of a course in CPR; up to four hours of a course of such instruction, if successfully completed, may be applied as partial fulfillment of the 48 hours required every two years; and

(3) successful completion every two years of instruction in advanced cardiac life support; up to sixteen hours of a course or such instruction, if successfully completed, may be applied as partial fulfillment of the 48 hours required every two years.

b. Continuing education courses taken to fulfill the requirements of 7 MCAR § 1.604 A.3.a. shall be approved in writing by the licensee's physician medical director; documentation of such approval shall be maintained in the licensee's file.

c. Successful completion of the National Registry of EMT-Paramedics continuing education requirements for EMT-Paramedic re-registration shall be deemed to be complete fulfillment of the continuing education requirements set forth in 7 MCAR § 1.604 A.3.a.

4. Staffing requirements.

a. Each ALS service shall have on staff a minimum of:

(1) five persons meeting the qualifications of attendants set forth in 7 MCAR § 1.604 A.1.a.; or

(2) three persons meeting the qualifications of attendants set forth in 7 MCAR § 1.604 A.1.a. and three persons meeting the qualifications of drivers set forth in 7 MCAR § 1.604 A.1.b.

b. In addition, each ALS service shall maintain:

(1) a current roster, including the names and addresses of all current attendants and drivers, and

(2) files documenting current personnel qualifications.

c. Each licensee shall have a physician medical director responsible for at least the responsibilities set forth in 7 MCAR § 1.603 A.2.b.(1)-(5).

d. The staffing requirements for BLS services as set forth in 7 MCAR § 1.603 A.2.c.-d. shall be applicable to ALS services.

e. Each ALS service shall have a formal affiliation with a medical facility capable of providing medical control for patient care by means of immediate two-way voice communication 24 hours a day, seven days a week. The name and address of the affiliated medical facility and a statement signed by the administrator of the medical facility and the medical director of the ALS service documenting the terms of the formal affiliation shall be maintained in the files of the licensee.

5. Operational requirement. An attendant shall be in the patient compartment while transporting a patient or patients except as allowed by Minn. Stat. § 114.804, subd. 2.

B. Equipment.

1. Minimum standards.

a. Equipment standards for BLS ambulances set forth in 7 MCAR § 1.603 B.1.a. through B.2.c. shall be applicable to ALS ambulances.

b. In addition to compliance with the equipment standards in 7 MCAR § 1.604 B.1.a., all ALS ambulances shall be required to have the following equipment:

(1) advanced cardiac care equipment that shall include one portable cardioscope and defibrillator;

(2) airway maintenance equipment that shall include one esophageal obturator airway;

(3) equipment for intravenous therapy and the administration of intravenous medication;

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(4) medications and medication administration equipment and supplies; and

(5) one set inflatable anti-shock trousers.

c. All equipment or supplies specified in 7 MCAR § 1.604 B.1.b.(3) and (4) and any additional equipment and supplies used to provide advanced life support shall be specified in writing by the medical director and documented in the licensee's files.

d. Medications shall be securely stored according to written procedures developed and maintained by the licensee's medical director and shall comply with applicable rules of the Minnesota Board of Pharmacy.

2. Maintenance and sanitation.

a. The maintenance and sanitation requirements for BLS services set forth in 7 MCAR § 1.603 B.3.a.-b. shall be applicable to ALS services.

b. Procedures for the periodic performance testing of airway maintenance and electronic equipment shall be developed, maintained and followed; and records of such testing shall be kept in the licensee's files.

C. Compliance with ambulance standards. All ALS ambulances shall comply with 7 MCAR § 1.603 C.

D. Communications.

1. Compliance. All ALS services shall comply with these communication standards by June 30, 1981.

2. Standards and radio frequency assignments.

a. Ambulances and their communications bases that operate telemetry shall have, as a minimum:

(1) one two-way Ultra High Frequency (UHF) mobile radio, with CTCSS, capable of operating of ten UHF voice and telemetry r-f channels, or

(2) one two-way UHF mobile radio, with CTCSS, capable of operating on eight UHF voice and telemetry channels and one UHF or one VHF mobile radio, with CTCSS, capable of operating of two dispatching r-f channels.

b. Ambulances and their communications bases that do not operate telemetry shall comply with 7 MCAR § 1.604 D.2.a. or 7 MCAR § 1.603 D.2.a.-b.

c. Ambulances and their communication bases using VHF shall comply with 7 MCAR § 1.603 D.2.c.-f.

d. Ambulances and communications bases using UHF for dispatching or routine communications shall use the following radio frequencies for such functions:

(1) 462.950 MHz or 467.950 MH for the mobile radio and 462.950 MHz for the base radio; and

(2) 462.975 MHz or 467.975 MHz for the mobile radio and 462.975 MHz for the base radio.

e. Ambulances and communications bases shall use only the following radio frequencies for medical control:

(1) 468.000 MHz or 463.000 MHz for mobile radio and 463.000 MHz for base radio;

(2) 468.025 MHz or 463.025 MHz, for mobile radio and 463.025 MHz for base radio;

(3) 468.050 MHz or 463.050 MHz for mobile radio and 463.050 MHz for base radio;

(4) 468.075 MHz or 463.075 MHz for mobile radio and 463.075 MHz for base radio;

(5) 468.100 MHz or 463.100 MHz for mobile radio and 463.100 MHz for base radio;

(6) 468.125 MHz or 463.125 MHz for mobile radio and 463.125 MHz for base radio;

(7) 468.150 MHz or 463.150 MHz for mobile radio and 463.150 MHz for base radio; and

(8) 468.175 MHz or 463.175 MHz for mobile radio and 463.175 MHz for base radio.

f. Ambulances and communications bases shall have the capability of communicating on the statewide VHF radio frequency specified in 7 MCAR § 1.603 D.2.f. Documentation of such capability shall be kept in the licensee's file.

g. Ambulances and communications bases shall comply with the provisions of 7 MCAR § 1.603 D.2.e., g., and h.

3. Equipment performance. Communications equipment shall comply with 7 MCAR § 1.603 D.3.

4. Equipment maintenance. Communications equipment shall comply with 7 MCAR § 1.603 D.4.

7 MCAR § 1.605 Standards for the operation of scheduled life support transportation services.

A. General standards.

1. Scheduled life support transportation services shall be either basic or advanced life support transportation services.

2. Scheduled basic life support transportation services shall comply with the provisions of 7 MCAR § 1.603 and scheduled advanced life support transportation services shall comply with provisions of 7 MCAR § 1.604 except as follows: Scheduled basic and advanced life support services shall be exempt from those provisions that would specifically prohibit the operation of a basic or advanced life support transportation service as scheduled service in accordance with 7 MCAR § 1.605.

B. Declaration of and adherence to schedule.

1. An applicant for licensure as a scheduled life support transportation service shall declare at the time of application the specific schedule of its intended restrictions as to time, group served, and type(s) of service provided.

2. A licensed scheduled life support transportation service shall provide only the declared schedule of services approved by the commissioner in the granting of the license pursuant to Minn. Stat. § 144.802. Any change in this schedule is subject to the provisions of Minn. Stat. § 144.802.

C. Primary service area. An applicant for licensure as a scheduled life support transportation service shall comply with 7 MCAR § 1.608 F., with the exception of 7 MCAR § 1.608 F.1.c.

7 MCAR § 1.606 Life support transportation services operated by a nonprofit entity and limited exclusively to providing service by contract for special events and meetings. Life support transportation services operated by a nonprofit entity and limited exclusively to providing service by contract for special events and meetings are scheduled life support transportation services and shall comply with the provisions of 7 MCAR § 1.605.

7 MCAR § 1.607 Life support transportation services provided for an employer for the benefit of its employees. Life support transportation services that are operated by or for an employer for the benefit of its employees are scheduled life support transportation services and shall comply with provisions of 7 MCAR § 1.605.

7 MCAR § 1.608 General provisions.

A. Waivers.

1. Application for waiver. A life support transportation service may apply to the commissioner for a time-limited waiver of any of these rules. Such a waiver will be granted if the applicant affirmatively substantiates that:

a. the rule or rules in question do not address a problem of significance to the public in relation to the applicant's service;

b. the application of the rule or rules would impose an undue burden upon the applicant; and,

c. the granting of a waiver will not adversely affect the public health or welfare.

2. Renewal, reporting, and revocation.

a. A waiver may be renewed upon re-application in conformance with the process described in 7 MCAR § 1.608 A.1.

b. A waiver may be revoked if a material change in the circumstances justifying its granting occurs.

c. Any life support transportation service that has been granted a waiver shall immediately notify the Department of Health in writing of any such material change in circumstances.

B. Variances.

1. Application for variance. A life support transportation service may apply to the commissioner for a time-limited variance from any of these rules. Such a variance will be granted if the applicant specifies alternative practices or measures equivalent or superior to those prescribed in the rule or rules in question and affirmatively substantiates that:

a. the rationale for the rule or rules in question can be met or exceeded by the specified alternative practices or measures;

b. the application of the rule or rules would impose an undue burden upon the applicant; and,

c. the granting of the variance will not adversely affect the public health or welfare.

2. Compliance. Any life support transportation service that is granted a variance shall comply with the alternative practices or measures specified in its successful application for the variance.

3. Renewal, reporting, and revocation.

a. A variance may be renewed upon re-application in conformance with the process described in 7 MCAR § 1.608 B.1.

b. A variance may be revoked if a material change in the circumstances justifying its granting occurs.

c. Any life support transportation service that has been granted a variance shall immediately notify the Department of Health of any such material change in circumstances.

C. Disasters.

1. These rules shall not apply to life support transportation services provided during time of disaster, mass casualty or other public emergency.

2. The Commissioner reserves the right to determine whether a disaster, mass casualty or other public emergency is occurring or has occurred so as to cause these rules to be nonapplicable.

D. Advertisement.

1. No life support transportation service may advertise itself, allow itself to be advertised, or otherwise hold itself out as providing services of a type different from those life support transportation services that it is licensed to provide under these rules.

2. All life support transportation services shall observe designated primary service areas as prescribed in 7 MCAR § 1.605 C. or 7 MCAR § 1.608 F. in conducting or allowing any form of advertisement for its service(s).

E. Enforcement provisions.

1. Inspections. Life support transportation services shall not hinder the inspection activities of authorized agents of the commissioner pursuant to Minn. Stat. § 144.803.

2. Correction order. Violation of any of these rules or of the provisions of Minn. Stat. §§ 144.801-144.808 shall consti-

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tute grounds for the issuance of a correction order. Any life support transportation service that is issued a correction order shall correct the violation within the time period specified in the correction order.

3. Time periods for correction of violations.

a. Violations of these rules or of Minn. Stat. §§ 144.801-144.808 that create a risk of serious harm to patients of the life support transportation service shall be corrected within time periods ranging from 0 to 14 days as specified by the Commissioner or authorized agent.

b. All other violations of these rules or of Minn. Stat. §§ 144.801-144.808 shall be corrected within time periods ranging from 15 to 120 days as specified by the Commissioner or authorized agent.

4. Noncompliance. If, upon re-inspection, it is determined that a life support transportation service has not complied with the provisions of a correction order, such noncompliance shall constitute grounds for the initiation of suspension, revocation or non-renewal proceeding pursuant to Minn. Stat. § 144.803.

F. Primary service area.

1. Designation of primary service area.

a. An applicant for licensure as a service shall, at the time of application for new service, for a change in type of service or base of operation, or for an expansion of primary service area, declare the primary service area that it intends to serve as a primary provider of life support transportation service and for which it seeks designation. Such a primary service area shall contain one or more bases of operation.

b. In applying for initial designation of a primary service area or an expansion of a primary service area, an applicant shall affirmatively substantiate the reasonableness of the primary service area for which designation is sought according to the following considerations:

(1) the average and maximum probable response times in good and severe weather from its proposed base of operations to the most distant boundary in its proposed primary service area; or, if the applicant's primary service area is to contain more than one base of operation, the average and maximum probable response times in good and severe weather from each base of operation to the most distant point covered by that base of operation;

(2) the projected distances to be traveled to provide such service;

(3) the specific type(s) of service to be provided;

(4) the applicant's current status as a licensed provider of life support transportation services to the population of that area; and

(5) the applicant's intention to be responsible to the general population of the declared primary service area or to be a specified group of persons as a primary source of the life support transportation service for which it requests licensure.

c. The maximum primary service areas designated, as measured from a base of operation, shall not exceed:

(1) eight miles or distance equivalent to ten minutes travel time at maximum allowable speeds in good weather, whichever is greater, for proposed primary service areas that include any portion of a city of the first and second class; or

(2) twenty-five miles or distance equivalent to 30 minutes travel time at maximum allowable speeds in good weather, whichever is greater, for proposed primary service areas that do not include any portion of a city of the first or second class.

d. Licensees that have declared primary service areas in licensure applications current as of June 30, 1980, shall have those declared primary service areas designated in licensure beginning July 1, 1980, provided:

(1) that such primary service areas are consistent with 7 MCAR § 1.608 F.;

(2) that no change in primary service area base of operations, type or schedule of services, schedule of patients to be served, or schedule of availability has been made by the licensee since the receipt of the current effective license; and

(3) that licensees are eligible for licensure beginning July 1, 1980.

Licensees that do not meet criteria set forth in 7 MCAR § 1.608 F.1.d.(1)-(3) comply with the provisions of 7 MCAR § 1.608 F.1.a.-c.

2. Observance of primary service areas.

a. No life support transportation service shall regularly provide its services within an area other than its primary service area(s).

b. Nothing in 7 MCAR § 1.608 F.2.a. shall prohibit a life support transportation service from responding to a request for service in any location in the state when it can reasonably be expected that:

(1) such a response is required by the immediate medical need of an individual, and

(2) no other licensed life support transportation service is capable of or available for immediate and appropriate response.

3. Air life support transportation services. 7 MCAR § 1.608 F.1.c. shall not apply to life support transportation services provided by air ambulances.

G. Mutual aid.

1. Life support transportation service other than scheduled services shall have written agreements with at least one other life support transportation service for coverage during times when the licensee's ambulances are not available for service in its primary service area. Such agreements shall specify the duties and responsibilities of the agreeing parties.

2. A copy of each mutual aid agreement shall be maintained in the files of the licensee.

H. Compliance with approved local ordinances. Life support transportation services that are subject to local ordinances, rules or regulations that have been approved by the Commissioner pursuant to Minn. Stat. § 144.804, subd. 5, shall comply with the provisions of such ordinances, rules or regulations.

7 MCAR § 1.609 Emergency care course and emergency care refresher course approval.

A. Emergency care course.

1. Application for initial course approval.

a. Application for initial approval of an emergency care course shall be made on a form provided by the Commissioner, and shall include information so as to permit a complete evaluation of whether the applicant meets the requirements for course approval as specified by 7 MCAR § 1.609 A.3.-7. The information provided on the application shall include the following:

(1) course content;

(2) the length of course and course schedule;

(3) the number of times per year the course will be given;

(4) the number of trainees anticipated per year;

(5) identification of source materials, text books, references and equipment to be used;

(6) name, address and qualifications of physician medical advisor;

(7) names and addresses and qualifications of physician, nurse and lay instructors;

(8) name and address of affiliated hospital;

(9) admission requirements of trainees; and

(10) other information as the Commissioner may require to clarify incomplete or ambiguous information presented in the application.

b. Applicants shall furnish or retain in file documentation of all statements made in application for licensure.

c. The approval of an emergency care course shall expire two years from the date of approval unless renewed according to the requirements of 7 MCAR § 1.609 A.2.

2. Application for renewal of course approval.

a. Applications for renewal of emergency care course approval shall be made on a form provided by the Commissioner and shall specify any changes from the information provided for initial approval, and other information as the Commissioner may require to clarify incomplete or ambiguous information presented in the application.

b. An applicant for renewal shall have given the emergency care course at least two times during the previous biennial approval period.

3. Course personnel.

a. Each course shall have a physician medical advisor, who shall be present for a minimum of three (3) hours during each course.

b. A minimum of fourteen (14) hours of the curriculum shall be taught by a physician or physicians.

c. Instructors shall be physicians, nurses, or others qualified as specified in 7 MCAR § 1.603 A.1.a.(2)-(4).

d. Documentation including the name, address, and qualifications of the medical advisor, and each of the instructors shall be maintained in the files of the applicant.

e. At least one instructor shall be required for every nine (9) students in the practical skill sessions and at least one instructor shall be required for every one hundred (100) students in the classroom didactic sessions.

4. Course content.

a. An emergency care course shall have a total of not less than 81 hours of instruction with a minimum of 60 hours classroom didactic and a minimum of 10 hours clinical experience.

b. The following subjects shall be included in the course content:

(1) role, responsibilities and equipment of BLS ambulance attendant;

(2) ambulance operation;

(3) communications;

(4) emergency room procedures;

(5) airway obstruction and cardiopulmonary resuscitation;

(6) mechanical aids to breathing and pulmonary resuscitation;

(7) determination of vital signs;

(8) introduction to intra-venous therapy;

(9) bleeding;

(10) shock;

(11) wounds, dressings, bandages and bandaging;

(12) fractures of upper and lower extremities;

(13) injuries to chest, abdomen and pelvis, face, eye, head, neck, spine and genitalia;

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(14) medical conditions including poisons, stings, bites, unconscious state, stroke, heart attack, epilepsy, acute abdomen, intestinal bleeding, communicable disease, diabetes, and dyspnea;

(15) medical conditions due to environmental factors including burns, cold, heat, radiation, electrical hazards, water accidents, and explosions;

(16) emergency childbirth;

(17) care of the pediatric patient;

(18) care of the disturbed and unruly patient;

(19) emergency care of the drug abuser; and

(20) extrication and rescue techniques.

5. Equipment and supplies.

a. Courses shall have student and instructor texts and current reference sources in emergency care.

b. Courses shall have standard teaching aids consisting of such items as projectors, screens, films, slides and other equipment and material used by the instructor to facilitate learning.

c. Courses shall use emergency care equipment of the following types so as to train each student as a BLS ambulance attendant:

(1) splinting equipment;

(2) ventilation assistance and airway maintenance equipment;

(3) dressings, bandages and bandaging supplies;

(4) emergency obstetrical kit;

(5) poison treatment kit;

(6) burn treatment supplies;

(7) equipment for determination of vital signs; and

(8) extrication and rescue equipment.

6. Testing. In order to complete an approved emergency care course successfully, each student shall pass the written and the practical examinations approved by the Commissioner and administered by the Commissioner or a designated representative.

7. Test approval.

a. The written and the practical examinations that test for competency in the subjects specified in 7 MCAR § 1.609 A.4.b. are eligible for approval by the commissioner.

b. The written portion of the National Registry of Emergency Medical Technicians Examination for Emergency Medical Technicians-Ambulance as of the effective date of these rules is deemed to comply with 7 MCAR § 1.609 A.7.a.

B. Emergency care refresher course.

1. Applications for initial course approval shall comply with 7 MCAR § 1.609 A.1.-7., with the exception of 7 MCAR § 1.609 A.3.b. and A.4.

2. Course content.

a. A refresher course shall provide a total of not less than 20 hours of instruction and four hours of testing.

b. The content of a refresher course shall include the subjects listed in 7 MCAR § 1.609 A.4.b.

C. Issuance of certificates.

1. Persons successfully completing an emergency care course shall be issued a certificate by the commissioner or a designated representative.

2. The certificate shall expire two years from the date of issuance and may only be renewed for a period of two years on successful completion of a refresher course.

D. Course audit. Approved applicants shall cooperate with and in no way hinder the audit activities of authorized agents of the Commissioner.

E. Enforcement. Failure to comply with the provisions of 7 MCAR § 1.609 A.3.-D. shall constitute grounds for disapproval or nonrenewal.

7 MCAR § 1.610 Documentation.

A. Documentation requirements for licensees.

1. Personnel records and documentation shall include:

a. current roster and documentation of qualifications of attendants and drivers required in 7 MCAR § 1.603 A.2.a. and 7 MCAR § 1.604 A.4.b.;

b. name and address of and signed statement by the medical director required in 7 MCAR § 1.603 A.2.c. and 7 MCAR § 1.604 A.4.d.;

c. documentation of reasonable efforts to arrange for second attendants under special curcumstances as required in 7 MCAR § 1.603 A.2.d.(2)-(3) and 7 MCAR § 1.604 A.4.d.; and

d. Continuing education course approval required by 7 MCAR § 1.604 A.3.b.; and

e. the name and address of the affiliated medical facility and signed statement required by 7 MCAR § 1.604 A.4.e.

2. Equipment records and documentation shall include:

a. performance testing of equipment required in 7 MCAR § 1.603 B.3.g. and 7 MCAR § 1.604 B.2.b.;

b. any written approval of the medical director of the advanced life support equipment and supplies required in 7 MCAR § 1.604 B.1.c.; and

c. any written procedures for secure storage of medications required in 7 MCAR § 1.604 B.1.d.

3. Ambulance records and documentation shall include maintenance of ambulance required in 7 MCAR § 1.603 C.5.a. and 7 MCAR § 1.604 C.

4. Communications records and documentaion shall include:

a. maintenance of communications equipment as required in 7 MCAR § 1.603 D.4. and 7 MCAR § 1.604 D.4.; and

b. communications capability as required in 7 MCAR § 1.604 D.2.f.

5. Other records and documentation shall include:

a. licensure application information required in 7 MCAR § 1.602;

b. a copy of mutual aid agreements required in 7 MCAR § 1.608 G.2.;

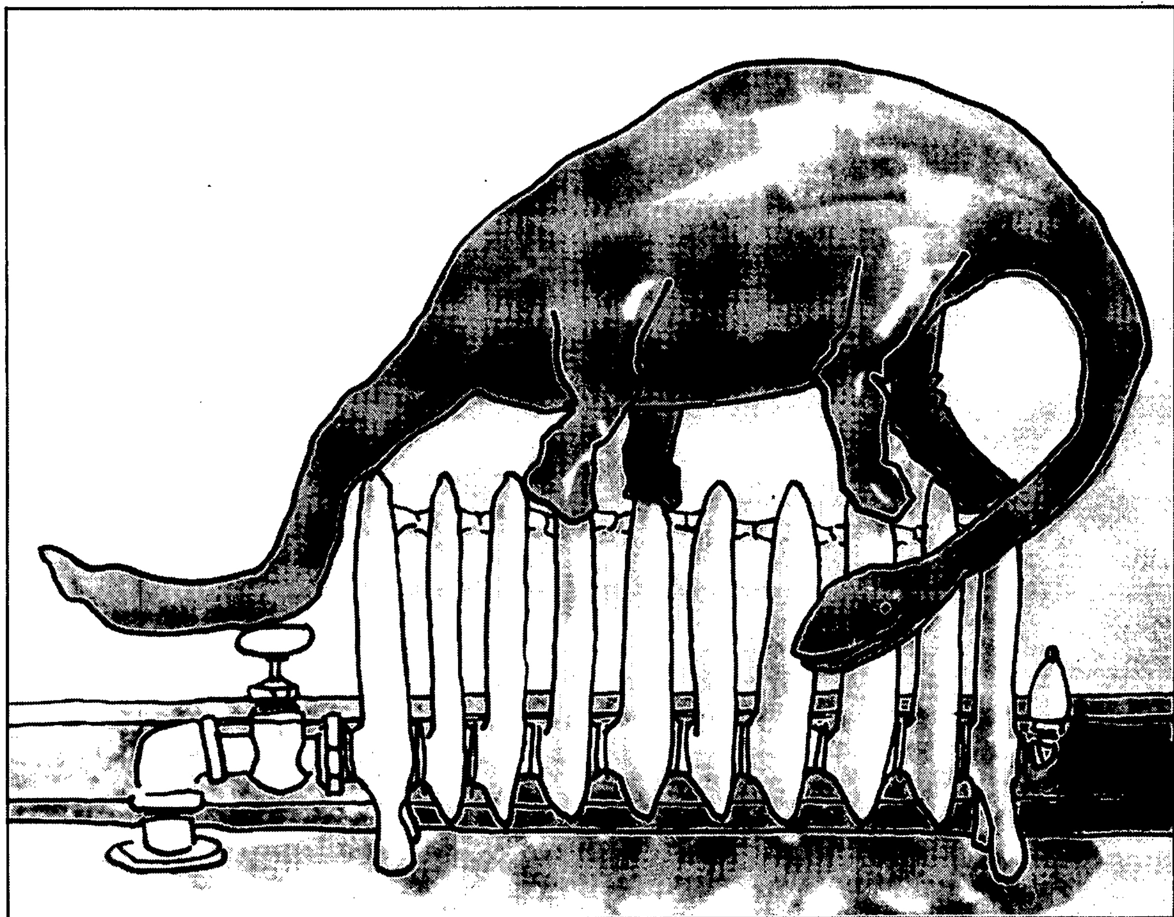
c. copies of all pertinent correspondence between the Department of Health to the licensee; and

d. trip reports for every run in which patient care was offered to be provided or provided, so as to meet the reporting requirements of Minn. Stat. § 144.807.

B. Documentation requirements for approved emergency care and refresher courses. Approved emergency care and refresher courses shall comply with the following documentation requirements:

1. approval application information required in 7 MCAR § 1.609 A.1.b., and

2. the names, addresses and qualifications of the physician medical advisor and instructors required in 7 MCAR § 1.609 A.3.c.



"Dinosaur on the Radiator" is the title of a new audio visual presentation available from The Science Museum of Minnesota. The show's title came from a comment by a 4-year-old girl who told the museum she would like to take a dinosaur home and that she would "keep it on my radiator." The 10-minute presentation relates the history and development of the Science Museum since the opening of its new building in 1978. It is available without charge to all organizations. Call (612) 221-9423.

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Department of Public Welfare

Social Services Bureau

Proposed Rule 12 MCAR § 2.209 Governing Day Care for Children and Proposed Repeal of 12 MCAR § 2.162 Governing Allocation of Title XX Funds to County Welfare Boards

A public hearing concerning the above-entitled matter will be held at the Minnesota Historical Society Building, 690 Cedar Street (corner of Central), Weyerhaeuser Room, Second Floor, St. Paul, Minnesota, on January 28, 1980 commencing at 9:00 a.m. The proposed rule 12 MCAR § 2.209 or repeal of 12 MCAR § 2.162 may be modified as a result of the hearing process. Therefore, if you are affected in any manner by either of these 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 ask questions and make comments. Statements may be made orally or written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to the Hearing Examiner, Harry Seymour Crump, 1745 University Avenue, Room 300, St. Paul, MN 55104 (612) 296-8111, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be avilable for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimum charge.

12 MCAR § 2.209 is a new rule. It governs the administration and provision of day care services by local social service agencies for children and their families. The procedures established in this rule are consistent with those already established by state and federal governments. Day care service is defined as the less than 24-hour-a-day service which provides care for children as a substitute for or supplement to parental care for a planned period of time.

The primary reasons for the Department of Public Welfare's proposal of this rule are to fulfill the Commissioner's responsibility to: 1) develop needed day care resources that will provide care for children while their parents are at work or in training; 2) maintain or improve the quality of day care provided to children so that each child will grow and develop to his fullest potential in a nurturing and protective setting; and, 3) to assure that the delivery of the day care services will meet federal regulations, including the Federal Interagency Day Care Requirements (FIDCR) and "In-Home" day care standards in order to qualify for Title XX funds as provided in the Social Security Act.

The rule has an introductory section and four (4) major service standards and/or procedures. They are: 1) Resource Development; 2) Regulations; 3) Service Delivery; and, 4) Training. The introductory section of the rule contains the statement of purpose, statute and federal regulation authority and a section on definition of terms as they are used in this rule. The section on resource development gives procedures for establishing, maintaining and functioning of Child Care Advisory Committees (CCACs); the development of direct and indirect day care service providers and the necessary support systems; planning and coordination of day care resources and services; and the use of funds for the development of day care resources. The section on day care regulations includes procedures for licensing and certifying family day care homes; establishes standards for in-home day care providers and training requirements for family day care and in-home day care providers; and the right of the provider to appeal a denial or revocation of a license or certificate if he/she feels that the action of the agency is not justified. The section on service delivery establishes standards which assure young children and their parents that the day care placement will be in an environment that will meet each child's developmental as well as health and safety needs. The section on training includes standards for the provision of training for the direct day care service providers and establishes training standards for the local social service agency staff who are responsible for the licensing, planning, training and delivery of day care services.

12 MCAR § 2.162 governs the allocation of Title XX funds in Minnesota. The rule contains a definition of terms relevant to the allocation of funds, a description of the allocation procedure, the formula to be used for allocation of funds, and the procedure for reallocation of unused funds.

The statutory authority for 12 MCAR § 2.209 is: Minn. Stat. §§ 256.01, 256.011, 256E.02, 256E.05, and 15.0412, subd. 3; Public Laws 93-647 and 94-401; 45 CFR §§ 228.13 and 228.42.

The statutory authority for 12 MCAR § 2.162 (Minn. Stat. § 393.07) has been superseded by the passage of Chapter 324, The Community Social Services Act, which establishes an allocation formula in law. The allocation formula in Chapter 324 was implemented effective October 1, 1979.

The expenditure for implementation of 12 MCAR § 2.209 is estimated at $289,050 annually or $578,100 biannually. Of these costs, $188,000 ($94,000 annually) are additional costs

currently not operational in most local public bodies. These costs are for the training of family day care and in-home day care providers and local social service agency day care staff. Seventy-five percent (75%) of these costs are reimbursable under Title XX staff development monies. The local match of twenty-five percent (25%) is an eligible expense of state day care dollars now in the county agency. A detailed "Estimate of Expenditures" may be obtained by writing to Estelle Griffen, Department of Public Welfare (address listed below).

The repeal of 12 MCAR § 2.162 will not result in additional expenditures for local public bodies.

Copies of the proposed rule 12 MCAR § 2.209 are now available and at least one free copy may be obtained by writing to Estelle Griffen, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-3910. John Brenneman, (612) 296-3979 (same address), will provide free copies of the repealed 12 MCAR § 2.162. Additional copies of both rules will be available at the hearing. If you have any questions on the content of the proposed rule 12 MCAR § 2.209, contact Estelle Griffen, and contact John Brenneman with questions on 12 MCAR § 2.162.

Any person may request notification of the date on which the hearing examiner'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. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 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 Minn. Stat. § 10A.01, subd. 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 *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

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

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

December 4, 1979

Arthur E. Noot
Commissioner of Public Welfare

Rule as Proposed

12 MCAR § 2.209 Day care for children.

A. Introduction.

1. This rule governs the administration and provision of day care services by local social service agencies for children and their families.

2. The authority for this rule and for the administration of day care services for children is found in: Minn. Stat. §§ 256.01, 256.011, 256E.02, 256E.05, and 15.0412, subd. 3; Public Laws 93-647 and 94-401; and 45 CFR §§ 228.13 and 228.42.

3. Definitions.

a. Child — A person 14 years of age or younger.

b. Child development training — Training by an accredited institution or courses approved by the local social service agency designed to maintain or improve the quality of care for children.

c. Certification — The action taken by the state or county agency to indicate that a day care service provider meets federal day care requirements.

d. Certified day care provider — A direct day care service provider who has received certification by the state or county agency.

e. Commissioner — The Commissioner of Public Welfare.

f. Day care resource — Any person or entity providing direct or indirect day care services.

g. Day care service — The less than 24-hour-a-day service which provides care for children as a substitute for or supplement to parental care for a planned period of time.

h. Direct day care service provider — A person or entity who provides direct care for children.

i. Indirect day care service provider — A person or entity which provides support services to direct day care service providers, including training, planning and coordination, toy lending libraries, health services which are intended to improve the quality of care for children.

j. In-home day care — Day care services in the child's own home.

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k. Lead agency — An agency designated by the Commissioner as having primary responsibility for the local Child Care Advisory Committee.

l. Local Child Care Advisory Committee (CCAC) — A citizen's group approved by the Commissioner to advise the local social service agency on day care services.

m. Local social service agency — County Board of Commissioners or other agency designated by the county board as responsible for social services.

n. State agency — Minnesota State Department of Public Welfare.

B. Resource development.

1. Planning and coordinating day care resources and development — To insure a system of planning and coordinating among multidisciplined persons and entities that affect day care services, including both direct and indirect day care service providers, the social service agency or combination of agencies shall establish and/or maintain a local Child Care Advisory Committee (CCAC).

a. The Child Care Advisory Committee.

(1) The local CCAC shall serve no less than one county but may, by agreement of the County Boards of Commissioners or Human Services Boards, encompass two or more contiguous counties within the boundaries of one Governor's Economic Region.

(2) Composition of a CCAC. The membership of the CCAC shall be no fewer than seven persons and shall be representative of the racial minorities, ethnic groups, socioeconomic groups and geographical area served. The membership shall be volunteer and will serve without compensation but may be reimbursed for expenses. The membership shall include:

(a) One-third (1/3) parents who use day care services;

(b) Providers of direct day care services. The providers who are recruited and selected shall reflect the varying kinds of day care resources in the area. Wherever feasible, it shall include at least one person from each kind of direct day care service provider in the county or geographic area.

(c) Indirect service providers, including local social service agencies and/or boards, health services, early childhood educators, public schools and community groups.

(3) Responsibilities of a CCAC. The local CCAC shall cooperate with the social service agency to achieve the following:

(a) Coordination among day care resources, public and private service agencies and persons;

(b) Public information and parent education regarding the developmental needs of children;

(i) The CCACs shall develop a public education and information program to communicate to the community the need for day care resources and services as identified in a needs study or assessment.

(ii) The CCACs shall advise the local social service agency regarding tools and stratagems to communicate to parents needing day care services the importance of quality care and child development experiences during the child's early years.

(c) Identification of local day care needs;

(d) Community interest in the development of needed day care resources and services;

(e) Coordination and planning for training of day care providers and parents;

(f) Funding plans for the development of day care resources, implementation of a sliding fee for day care services and the use of Title XX funds for providing direct services to eligible children; and

(g) Other day care activities as the CCAC and/or lead agency deems necessary and appropriate.

(4) Organizational structure. Each CCAC shall have an organizational plan (bylaws and charter) to govern the activities of the committee and to perpetuate its membership through a democratic process. Where no organizational plan currently exists or has not been approved by the Commissioner, the CCAC shall prepare one for its operational use. The organizational plan of each CCAC shall be submitted to the Commissioner for approval within one year after the CCAC is formed and functioning or within one year after the promulgation of this rule, whichever is later.

b. The lead agency.

(1) Lead agency designation. The commissioner shall biannually designate a local social service agency or other community agency to serve as the lead agency for the local CCAC.

(a) Single county — If the CCAC area encompasses only one county, the lead agency is the social service agency unless the Commissioner designates an alternate;

(b) Multi-County — If the CCAC area encompasses more than one county, the Commissioner shall designate one county or community agency to serve as the lead agency for that geographic area. The following procedures shall be followed in the determination of a lead agency:

(i) The Commissioner shall issue an announcement to all local social service agencies in that CCAC area of intent to designate a lead agency for the local CCAC and solicit their recommendation for this designation.

(ii) The Commissioner shall direct that any recommendations from the local social service agencies be made within 45 days after the issuance of the announcement.

(iii) After the 45-day recommendation period, the Commissioner shall designate a lead agency and notify all of the agencies and the CCAC chairperson of that decision within 30 days following the recommendation or the end of the 45 days recommending period.

(2) Lead agencies' responsibilities.

(a) Coordinate and supervise CCAC functioning. The lead agency shall work with the CCAC as a representative of all local social service agencies in the geographic area served by the CCAC.

(i) Planning the CCAC's activities. On an annual basis, the lead agency shall plan with the local social service agencies in the CCAC area to establish priorities for determining the CCAC calendar of advisory activities.

(ii) Communicate to CCAC and local social service agencies. The lead agency shall communicate with the CCAC regarding the local social service agencies plans and decisions for delivering day care services each planning year. The lead agency shall communicate the CCAC recommendations to each local social service agency being served.

(iii) Coordination of resources for the CCAC. The lead agency shall serve as the recipient of financial and service resources from all social service agencies for distribution to the CCAC to maintain its functioning.

(iv) Monitoring of the CCAC. The lead agency shall annually, or at shorter intervals if needed, monitor the activities of the local CCAC according to criteria established in the CCAC's charter and bylaws.

(b) Development of the CCAC. To develop or redevelop a local CCAC the Commissioner shall inform the lead agency or other designate of the need to facilitate the establishment or reestablishment of a new CCAC.

(i) Notification. Within 30 days after notification by the Commissioner, the lead agency or designated agency shall notify, by written announcement, all licensed child care providers and, by public notice, all other interested persons in the geographic area of its intent to reorganize or redevelop the local CCAC.

(ii) Within 60 days of the Commissioner's request, the lead agency shall convene a public meeting of the child care community (providers, support services and parent recipients of day care services) and temporarily preside at such meeting until the persons present elect their own leadership and establish a working agenda.

(iii) When a new or reestablished CCAC has been organized, the county board(s) (or human service board(s) where such boards have responsibility for social services) board(s) within the geographic service area shall review and recommend to the Commissioner approval or disapproval of the CCAC applicant within 60 days of the applicant's request for approval. Reasons for approval or disapproval shall be stated in writing to the applicant and the Commissioner.

(iv) When the applicant CCAC has the approval (disapproval) of the county board(s) or human service board(s), it shall apply to the Commissioner for recognition as the CCAC for the geographic service area.

(v) The Commissioner shall recognize or withhold recognition of the applicant within 45 days of the receipt of the application. If recognition is withheld, the Commissioner shall inform the applicant and lead agency of the deficiencies and identify conditions to be met.

(c) Provide resources. The lead agency shall provide resources (money and services), consultation, technical assistance and other needed support as mutually agreed upon by the functioning CCAC and the lead agency on behalf of all local social service agencies being served.

2. Development of day care resources. The local social social service agency shall recruit day care resources to meet the community's day care needs.

a. There shall be diversity in kinds of day care resources developed.

(1) There shall be diversity in direct day care service providers.

(a) There shall be diversity in the type of direct day care service resource (in-home, family day care, group family day care, center); ages of children served (infants, toddlers, preschool, school-age); number of children to be served; and program that meets individual children's needs (e.g., enrichment, children with special needs).

(b) There shall be diversity in location of direct day care service provider resources including all major geographic areas where the service is needed so that the services are accessible to all parents and children who need it.

(c) There shall be diversity in programs to include day care provider resources that meet developmental, ethnic, cultural, and bilingual language needs.

(2) There shall be diversity in indirect day care resources to support and improve the quality of day care services.

(a) There shall be resources that directly support the day care service delivery such as: toy lending libraries; health and social services, program facilitators, substitute providers and periodic training programs.

(b) There shall be ongoing support service providers who provide professional expertise and training to all direct and indirect service providers who lack skills in working with the kinds of children and parents being served.

b. Planning and coordination. Each social service agency shall provide or purchase planning and coordination services to ensure a system of information and referral of direct

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day care service providers to other community services; consultation and technical assistance to providers seeking funding from existing resources; coordination between direct day care service providers, day care resources and community and governmental agencies, needs assessments, and planning for training activities.

c. Funds for development. Potential day care providers shall be informed about funds available to them for meeting startup costs or licensure requirements.

C. Day care regulations. The local social service agency shall provide the following services to individuals and groups that plan to be licensed and/or certified as day care providers.

1. Licensing.

a. Group day care centers.

(1) The local social service agency shall refer any inquiry on establishing a new group day care center to the Licensing Division of Public Welfare for licensure as defined in 12 MCAR § 2.003.

(2) The local social service agency shall refer all operating unlicensed day care centers to the Licensing Division of Public Welfare.

b. Family day care homes. The local social service agency shall inform all inquiries regarding family day care licensure of the standards as defined in 12 MCAR § 2.002 and provide the necessary consultation and inspections pursuant to the requirements in the licensure standards. If the applicant meets the family day care licensing requirements, the local social service agency shall recommend the home to the state agency for state licensure.

2. Certification. All day care providers that care for children whose day care services are paid for with federal funds must be certified as meeting federal requirements for receipt of such funds.

a. Group day care centers. The Licensing Division of the state agency is responsible for certification of group day care centers.

b. Family day care homes.

(1) The local social service agency is responsible for certification of family day care homes and group family day care homes that meet federal requirements (Federal Interagency Day Care Requirements (FIDCR) and federal regulations).

(2) The local social service agency shall provide information regarding certification to each family day care or group family day care provider and provide consultation and services to those who wish to be certified to care for children placed by the social service agency. If they meet the federal requirements, the agency shall certify them and shall recertify them annually. If, at any time, after certification, the local social service agency determines that a family day care provider does not meet the requirements for certification, the local social service agency shall revoke the certification.

(3) Records shall be maintained by the county agency on forms developed by the state agency as documented evidence that the home meets certification requirements.

c. In-home day care providers.

(1) The local social service agency is responsible for certification of in-home day care providers and shall certify those providers who meet the provider's standards set out below. If, at any time, after certification, the local social service agency determines that the provider does not meet these standards, the local social service agency shall revoke certification.

(2) The following providers need not meet the certification requirements to receive payment from federal funds:

(a) Providers who provide day care three hours or less in a 24-hour period.

(b) Providers who give less than 30 days of care in any 365-day period.

(3) The following standards are established by the state agency as meeting the federal requirements for in-home day care providers:

(a) Provider's standards.

(i) The provider shall be at least 18 years of age. A waiver of this standard may be granted by the local social service agency to a younger person (other than a child) who possesses sufficient maturity to assure compliance with standards of care required by this rule and who has an adult on call for emergency assistance. In any event, there shall be no more than two preschool children placed in the care of a person under 18 years at any one time.

(ii) The provider shall have experience and demonstrated competence in caring for children.

(iii) The provider shall supply evidence to the local agency that he/she has had a negative intradermal tuberculin test or chest X-ray within the past year. If the test is negative, they need not have one thereafter. If the test is positive, the provider must have a chest X-ray each year for five years.

(iv) The provider shall supply a statement from his/her physician dated within six months prior to the application, and annually thereafter, that the applicant has received a physical examination and is receiving all necessary continuing medical treatment to assure that he/she remains physically capable of caring for young children.

(v) The in-home provider shall not have any of the following conditions unless the agency staff believes that the condition will not adversely affect the care of children.

(aa) Has committed an act of child battering, child abuse or molesting;

(bb) Uses alcohol or drugs, such that its effects are detrimental to the children during the hours they are in care, or has an uncontrolled addiction to drugs or alcohol, either currently or within the past 12 months;

(cc) Has had own child(ren) in foster care within the previous 12 months, unless the primary reason for such placement was the physical illness of the parent, the mental retardation of the child or a temporary foster placement of an infant being relinquished for adoption;

(dd) Has demonstrated behavior patterns which include acts of violence to persons of any age or negligence toward the applicant's own children.

(vi) The in-home provider shall provide nutritionally sound meals that follow the family's feeding plan, observing hours and kinds of food as planned by parent(s).

(vii) The in-home day care provider shall plan and establish a learning environment appropriate for the family and age level of the child. Materials, activities, and space shall be used to provide the child with opportunities to develop to his fullest potential physically, emotionally, socially, intellectually and psychologically.

(b) Service standards.

(i) In-home day care providers shall care for no more than the following number of children (including their own children) at any one time:

(aa) Five children if all are of preschool age (0-5 years).

(bb) Six children if one or more of the children are of school age (6-14 years).

(ii) The in-home provider shall provide care for no more than 12 hours per day. A waiver of this standard may be granted by the local agency for a family emergency or other circumstances until the parent or agency has had the opportunity to plan more comprehensive care for the child(ren). The waiver shall not exceed a period of five days for any one situation or circumstance.

(4) Each certified in-home day care provider shall be recertified annually.

(5) Records shall be maintained by the local social service agency or form developed by the state agency as documented evidence that the in-home providers meet certification requirements.

d. Training. Each certified family day care or in-home day care provider shall participate in a minimum of four (4) hours of child development training within the first three months of service and 16 hours of child development training annually thereafter or qualify as exempt from training for three years on the basis of qualifying for a credential on Minnesota's competency-based assessment program for family day care providers.

e. Appeal of certification denial, nonrenewal or revocation. The local social service agency shall promptly notify by certified mail any applicant or day care provider whose certification is denied, revoked, or not renewed by the local social service agency. This notification shall state the grounds for such action and shall inform the applicant or provider of his/her right to appeal the action. Any applicant or provider whose certification is denied, revoked or not renewed may appeal to the Commissioner by mailing written notice of appeal to the Commissioner within 20 days after receipt of denial, revocation, or nonrenewal. Upon receiving a timely written notice of appeal, the Commissioner shall give the applicant or provider reasonable notice and opportunity for a prompt hearing in accordance with Minn. Stat. §§ 15.0418-15.0422.

D. Service delivery. The local social service agency must meet the following standards in providing services to all Social Service clients where day care is a needed service:

1. The local social service agency shall maintain a staff to fulfill the responsibilities described in this rule.

2. The local social service agency shall make available supportive services for children in direct day care resources to assure quality of care for children in the facility or home.

3. The local social service agency shall maintain an accurate resource file on all day care/child development services and resources in the geographic area to be served.

4. The local social service agency shall make available services to assist parents in planning for the day care placement of their children to assure services that meet the children's individual needs.

a. The local social service agency shall inform the parent(s) about the eligibility requirements for free day care services and sliding fee rates for those not eligible for free services but eligible for partial pay for services on a sliding fee schedule.

b. The local social service agency shall plan with the parents to develop the child's service plan as a basis for selecting a certified day care or provider that has a program and environment that meets the children's individual developmental needs.

c. The following procedures shall be used to select the day care providers for children needing day care services.

(1) The local social service agency shall recommend at least two certified resources or providers that meet the child's programmatic needs and the parents' transportation needs.

(2) The parent(s) shall be given the opportunity for a preplacement visit with each day care provider recommended by the agency.

(3) The parent(s) shall be given an opportunity to recommend to the local social service agency which day care

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he/she wishes to use for the care of the children or may recommend an alternative that more nearly fits the family and children's needs.

(4) The local social service agency shall make available day care services in the day care resource (center, family day care home or in-home provider) selected and agreed upon by the agency, the parent(s) and provider, based on the assessed needs of the child as documented in the service plan for the child.

d. The local social service agency placement worker shall visit the child(ren) at least once annually to assure that the child is making progress toward the goals in his/her service plan.

e. The local social service agency shall provide health and dental assessments for each child placed in day care as part of a casework plan and assist parents of these children in making arrangements for treatment as recommended by the person(s) making the assessment(s).

E. Training.

1. Provider training.

a. The local social service agency shall assume responsibility for the maintenance and/or improvement of the quality of day care services provided by all family day care and in-home day care providers.

b. The local social service agency shall make available a minimum of twenty-four hours of child development training annually. The training provided shall include courses such as: family life, human growth and development, child rearing, child nutrition, first aid and child care program skills.

c. On an annual basis, the local social service agency shall make available a competency-based assessment for each family day care provider who makes application for an assessment.

2. Social service agency staff training. The local social service agency shall make available child development training for staff responsible for day care services.

a. All day care licensing staff shall complete six hours of child development training each year.

b. All new day care licensing staff shall complete six hours of training in the licensing process within six months of their employment on this assignment. This training shall be in addition to the child development training as identified in a. above.

c. Placement workers who work with families in planning day care services shall be given the opportunity to participate in the child development training.

d. Each day care licensor who wishes to improve his/her skills in assessing the competency of a family day care provider shall be given the opportunity to participate in a competency-based training program.

~~12 MCAR § 2.162 Allocation of Title XX funds to county welfare and human services boards.~~

~~A. Introduction.~~

~~1. This rule governs the method by which the Department of Public Welfare determines the amount of funds under Title XX of the Social Security Act that county welfare and human services boards may receive in reimbursement for social services expenditures made during each program year. The Department of Public Welfare's authority to promulgate this rule is contained in Minn. Stat. § 393.07, subds. 1, 2, and 3 (1976).~~

~~2. The federal financial participation governed by the rule is limited to Minnesota's share of the amount authorized and appropriated by Congress each year to carry out the programs of Title XX less an amount equal to the state administrative expenses, special projects, and state-administered purchase of service contracts as determined by the Commissioner of Public Welfare or mandated by the Minnesota State Legislature.~~

~~3. In the event the Congress authorizes and appropriates any additional funds to carry out the general purposes of specialized purposes of Title XX of the Social Security Act, the Department of Public Welfare shall use the method established in Sections B., C., and D. of this rule to determine the amount of such additional federal financial participation for which each local social services agency may claim reimbursement during the program year or years for which such funds are intended.~~

~~4. This rule does not govern Title XX funds authorized and appropriated by the Congress for staff development and Southeast Asian Refugee Programs.~~

~~5. Definitions.~~

~~a. Allocation: The amount of Title XX funds, determined by the formula in part C. of this rule, that a local social services agency may receive in reimbursement for social services expenditures in a program year.~~

~~b. Commissioner: Minnesota Commissioner of Public Welfare.~~

~~c. Comprehensive Annual Services Program (CASP) Plan: The State Social Services Plan, which is a compilation of all the local social services plans, and which meets the state plan requirements of Title XX of the Social Security Act.~~

~~d. County Welfare Board: Board established under the provisions of Minn. Stat. § 393.01.~~

~~e. Federal Financial Participation: Federal monies available through Title XX of the Social Security Act to be used in payment for social services.~~

~~f. Formula: The method by which Title XX funds are allocated to local social services agencies.~~

~~g. General Allocation: The general purpose Congressional appropriation for Title XX of the Social Security Act.~~

~~h. Human Services Board: Board established under the provisions of Minnesota Statute 402, Human Services Act.~~

~~i. Joint County Welfare Board: A single welfare board established by agreement between two or more county boards of commissioners pursuant to Minn. Stat. § 393.01, subd. 7, County Welfare Board Joint Exercise of Powers.~~

~~j. Local Social Services Agency: Local agency under the authority of the county welfare or human services board which is responsible for social services.~~

~~k. Program Year: The period from October 1 of a given calendar year through September 30 of the following calendar year.~~

~~l. Social Services: Those services which are included in the Minnesota Comprehensive Annual Services Program (CASP) Plan.~~

~~m. State Agency: Minnesota Department of Public Welfare.~~

~~n. Supplemental Allocation: Any specific purpose Congressional appropriation for Title XX of the Social Security Act.~~

~~o. Title XX: The Title of the Social Security Act known as "Grants to States for Services" that was established by Public Law 93-647, as amended.~~

~~p. Title XX Earnings: The federal share of Title XX expenditures reported to the Department of Public Welfare by a local social services agency for reimbursement of direct delivery costs, purchased services, and allocated administrative costs.~~

~~B. Allocation procedures.~~

~~1. The total amount of Title XX funds to which the formula in part C. of this rule shall be applied, shall be determined by subtracting from the total general or supplemental Title XX funds an amount equal to the state administrative expenses, special projects, and state administered purchase of service contracts as determined by the Commissioner of Public Welfare or mandated by the Minnesota State Legislature.~~

~~2. By April 1 of each year, the State Agency shall advise each local social services agency of the amount of its allocation for the program year beginning the following October 1.~~

~~3. Counties administratively organized under a multicounty human services board or joint county welfare board may receive an allocation equal to the sum of the allocations each separate county is entitled to under this formula, if separate data is routinely reported to the State Agency, or an allocation based on combined data, if such is routinely reported to the State Agency.~~

~~4. The formula in part C. of this rule becomes effective as of January 1, 1979. The first computation shall be for the period of January 1, 1979, through September 30, 1979. For every program year thereafter, the full program year applies.~~

~~5. Protection factor. This section of the rule provides a protection factor for counties whose allocations will be reduced as a result of the implementation of the rule, identifies the source of funds for the protection factor and specifies the method of calculation of the protection factor.~~

~~a. For the period of January 1, 1979, through September 30, 1979 (3/4 of the program year), no county shall receive a reduction greater than 7.5% of the previous full program year's allocation. For the period of October 1, 1979, through September 30, 1980, no county shall receive a reduction greater than 10% of the previous year's allocation. For the period of October 1, 1980, through September 30, 1981, no county shall receive a reduction greater than 10% of the previous year's allocation. Thereafter, no reduction percentages apply.~~

~~b. No county shall receive less than the smaller of the amount calculated pursuant to the formula in part C. of this rule or the amount allocated for the period October 1, 1977, through September 30, 1978.~~

~~c. The monies required to provide the protection granted in paragraphs B. 5.a. and B. 5.b. of this rule will be obtained by reducing the allocation to all counties not covered by this protection. The reduction shall be a common percentage computed by dividing the total protection amounts determined in paragraphs B. 5.a. and B. 5.b. by the total allocations to the nonprotected counties derived from the formula in part C.~~

~~C. Formula.~~

~~1. The method by which the State Agency determines each county's Title XX allocation shall be a formula comprised of the following factors:~~

~~a. County Public Assistance Factor: A mathematical value which represents an unduplicated count of the county's total population receiving Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Minnesota Supplemental Aid (MSA), and Medical Assistance (MA), in proportion to the state's total population receiving public assistance through these programs, as determined by the latest available data from the Department of Public Welfare. The term "unduplicated count" means that each recipient is counted only once even if receiving assistance under more than one of the programs listed above.~~

~~b. County Population Factor: A mathematical value which represents the county's total population in proportion to the state's total population, as determined by the latest available data from the State Demographer's Office.~~

~~c. Expenditure Factor: A mathematical value which represents the county's total reported Title XX earnings (purchase of service, direct delivery costs and allocated administrative costs) in proportion to the total of all counties' reported Title XX earnings, as determined by the latest available data from the State Department of Public Welfare.~~

~~d. Equalization Aid Factor: A mathematical value based upon the index for each county derived from the Equaliza-~~

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~~tion Aid Formula which is a mathematical formula comprised of the following factors: welfare recipient rate per 1,000, per capita income, per capita taxable value, and per capita expenditures for welfare less salary expenditures. This factor is computed as follows:~~

~~(1) Counties are ranked in inverse order on each of the four factors from 87 to 1.~~

~~(2) The rankings for each county are totaled to determine the total combined points for each county.~~

~~(3) The index (total combined points) for each county is divided by the sum of the indicies for all counties in the state to establish a relative rank ratio for each county.~~

~~(4) The net county welfare costs, less salary expenditure, is divided by the sum of the net county welfare costs, less salary expenditures, for all counties in the state to establish a relative size ratio for each county.~~

~~(5) The relative rank ratio (No. 3) is multiplied by the relative size ratio (No. 4) for each county to establish an adjusted rank ratio.~~

~~(6) The adjusted rank ratio (No. 5) for each county is divided by the sum of the adjusted rank for all counties to establish an index which is used in the allocation formula (Item B).~~

~~2. The relative weight given to each factor shall be as follows;~~

~~a. 40% to County Public Assistance Factor.~~

~~b. 20% to County Population Factor.~~

~~c. 20% to Expenditure Factor.~~

~~d. 20% to Equalization Aid Factor.~~

~~3. The allocation formula shall be computed as follows:~~

~~a. An index shall be derived for each county consisting of the four factors with the relative weights assigned in C 2.~~

~~b. The index for each county shall be divided by the sum of the indicies for all counties in the state to establish a ratio for each county.~~

~~c. The Title XX funds allocated to the counties shall be multiplied by the ratio for each county to establish the allocation for each county.~~

~~D. Reallocation procedures.~~

~~1. To fully utilize Title XX funds, including supplemental funds available to the State of Minnesota, the Department of Public Welfare shall reallocate all surplus funds initially allocated to local social services agencies.~~

~~2. Each county welfare or human services board shall certify to the Commissioner of Public Welfare within 30 days of the close of the quarter ending December 31.~~

~~a. The portion of the initial allocation they expect to earn during the program year.~~

~~b. The amount of federal financial participation they could earn above their initial allocation.~~

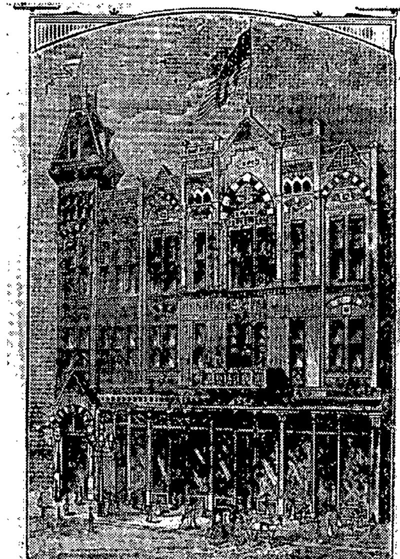
~~3. If board certification is not received by the Commissioner by January 31, Title XX reimbursement shall be withheld from delinquent counties until such time as certification is received.~~

~~4. Based on these certifications, the Commissioner of Public Welfare shall determine the surplus and reallocate all projected surplus funds to counties which certify that they can earn more federal financial participation than provided for in the initial allocation.~~

~~5. Funds shall be reallocated in the same proportion as the formula provided for in part C. of this rule up to the amount each local social services agency certifies it can earn above its allocation, and excluding those local social services agencies unable to earn their allocation.~~

~~6. At the close of the program year, the Commissioner of Public Welfare shall make a final reallocation of surplus funds based on the formula in part C. of this rule.~~

~~7. No county with reimbursable earnings less than its allocation shall be considered for reallocation funds.~~



ELEGANCE greeted patrons of Stillwater's Grand Old Opera House when they went to see performers such as John Philip Sousa and John L. Sullivan. Construction of the $75,000 building began in 1879. The theater had gas fixtures, steam heat, and a huge pipe organ onstage. In December, 1902, a fire broke out and destroyed the structure despite efforts of Stillwater and St. Paul firefighters. (Courtesy of Minnesota Historical Society and Stillwater Public Library)

Department of Public Welfare
Executive Division

Proposed Rule Governing the Use of Aversive and Deprivation Procedures

A public hearing concerning the proposed rule will be held at Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, on January 23, 1980, commencing at 9:30 a.m. and continuing until all interested persons have had an opportunity to be heard.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and/or written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to the Hearing Examiner, Natalie L. Gaull, 1745 University Avenue, Room 300, St. Paul, MN 55104 (612) 296-8114, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. ch. 245 (licensing), 246.252, 252A, 253A (right to treatment), 254A, and 256.

It is the purpose of this rule to provide uniform standards regarding the use and application of aversive procedures and deprivation of goods and/or services (behavior modification techniques) which are used in conjunction with treatment on educational programs and to ensure adequate professional supervision of such techniques.

It is also the purpose of this rule to permit the use of aversive or deprivation procedures only when other techniques have been used and materially failed to improve the client's behavior. Aversive and deprivation procedures must always be part of a comprehensive treatment plan based on positive programming procedures and may not be used outside of such a plan. Further, aversive and deprivation procedures shall be categorized by level of intensity, including Mild, Moderate and Intense procedures. Staff of the facility who plan and supervise implementation of such procedures must meet the qualifications specified in this rule.

This rule is intended to supersede and replace all former Minnesota Department of Public Welfare guidelines for behavior modification services. The rule applies to all agencies, hospitals, institutions, community-based residential facilities, schools and programs licensed by or operated by the Department of Public Welfare. It applies to all such procedures regardless of the treatment or educational framework within which they are used and is not limited to methods specifically identified as behavior modification, behavior therapy, or their derivations.

The rule establishes standards for utilization of aversive and deprivation procedures, including (1) skill certification for staff; (2) levels of skill in aversive and deprivation procedures; (3) competencies required at the Mild, Moderate and Intense levels of treatment; (4) informed consent requirements; (5) withdrawal of consent; (6) client participation in treatment decisions; (7) priority of positive programming procedures; (8) individual case review for each use of aversive or deprivation procedure; (9) implementation of procedures in context of a total habilitative positive treatment program; (10) physician consultation for meal deprivation; (11) physician consultation for electric shock in aversive programs; and (12) local review committee authorization.

Responsibilities, authority and composition of the local review committees are specified.

Responsibility for monitoring compliance will rest with the licensing division of the state agency. The Commissioner shall make provision for consultation regarding the rule and its implementation.

Procedures for filing complaints alleging a violation of this rule are outlines, including the appeal process in the event of a contested case.

The agency estimates that there will be no cost to local bodies in the State to implement the rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Ronald C. Young, M.D., Medical Director, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-3058. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule, contact Dr. Young.

Notice is hereby given that twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be availa-

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ble for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimum charge.

Any person may request notification of the date on which the hearing examiner'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. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 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 Minn. Stat. § 10A.01, subd. 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 *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

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

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

December 4, 1979

Arthur E. Noot
Commissioner of Public Welfare

Rule as Proposed (all new material)

12 MCAR § 2.039 Conditions for the use of aversive and deprivation procedures.

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15. **State agency.**
16. **Time-out.**

12 MCAR § 2.039 Conditions for the use of aversive and deprivation procedures.

A. Introduction.

1. Statement of purpose.

a. It is the purpose of this rule to provide uniform standards regarding the use and application of aversive procedures and deprivation of goods and/or services in order to protect the rights, welfare, safety and dignity of the client and to ensure adequate professional supervision of such procedures and services.

b. It is the purpose of this rule to permit the use of aversive or deprivation procedures only when other techniques have been used and materially failed to improve the client's behavior. Aversive and deprivation procedures must always be part of a comprehensive treatment plan based on positive programming procedures and may not be used outside of such a plan. Further, aversive and deprivation procedures shall be categorized by level of intensity, including Mild, Moderate and Intense procedures (see C.2. and C.6.). Staff of the facility who plan and supervise implementation of such procedures must meet the qualifications as specified in B.1.a.

2. Statement of applicability.

a. This rule supersedes and replaces all former Minnesota Department of Public Welfare guidelines for behavior modification services. The rule applies to the use of aversive procedures and deprivation of goods and/or services in all agencies, hospitals, institutions, community-based residential facilities, schools and programs licensed by or operated by the Department of Public Welfare. This rule applies to all such procedures regardless of the treatment or educational framework within which they are used and is not limited to methods specifically identified as behavior modification, behavior therapy, or their derivations.

B. Policy.

1. Standards for utilization of aversive and deprivation procedures.

a. Skill certification for staff. Aversive and deprivation procedures shall be supervised by and carried out under the direction of staff of the facility who are knowledgeable and experienced in the theory, ethical considerations and application of behavior modification techniques. Outside consultants do not satisfy this requirement. The agency director is responsible for maintaining a current list of staff members who are authorized to use aversive and deprivation procedures at each level (Mild, Moderate, and Intense) and will make available upon request by a representative of the state agency a file of their professional qualifications.

(1) Appropriate skill certification for staff members using Mild procedures must be authorized in writing by the agency director prior to implementation of any procedures controlled by this rule.

(2) Appropriate skill certification for staff members using Moderate and Intense procedures must be authorized in writing by the agency director upon the recommendation of the local review committee and prior to implementation of any procedures controlled by this rule (B.1.1.).

b. Levels of skill in aversive and deprivation procedures: An individual may be considered expert at three levels in the implementation of aversive and deprivation procedures. These levels match the levels of intensity of treatment procedures identified as Mild, Moderate, and Intense. Under no circumstances will an expert under the definitions of this rule be permitted to approve as a review committee member any treatment procedure which is not authorized by his level of competency. Further, no staff member shall design and implement a treatment program utilizing aversive and/or deprivation procedures which are more intense than would be authorized by that staff member's level of competency.

c. Competencies required at the Mild, Moderate, and Intense levels of treatment. These levels of competency are identified to ensure appropriate staff competency in relation to the three levels of aversive and deprivation procedures.

(1) An expert in the use of Mild aversive and/or deprivation procedures shall qualify to use these procedures by demonstrating knowledge in the following areas:

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(a) Measurement. Defines and illustrates observational recording techniques. Identifies variables which may prevent appropriate evaluation of treatment effects.

(b) Ethics. Is familiar with current ethical standards and practices.

(c) Law. Identifies Federal and State laws and legal precedents as they affect the conduct of educational-treatment activities and thoroughly understands rule 12 MCAR § 2.039.

(d) Programming. Demonstrates familiarity with current literature on application of aversive and deprivation procedures; lists the essential steps in designing and conducting behavior change activities directed toward altering a behavioral excess or deficit; identifies variables which may contraindicate specific treatment procedures; is familiar with positive programming procedures, as well as the procedures which are controlled by this rule; is familiar with basic learning principles and the procedures which have been derived from them; and is familiar with procedures for arranging contingent relationships between responses which must be taught or changed and consequences which are available in the natural environment.

(2) An expert in the use of Moderate aversive and/or deprivation procedures shall qualify to use those procedures by demonstrating knowledge and/or skills in the following areas:

(a) All skills required for Mild aversive and deprivation procedures.

(b) Measurement. Identifies problem behaviors in relation to events, situations, or things which regularly precede or follow the problem behavior, and identifies direction of desired behavior change; conducts reliable measurement of problem behaviors; and selects a measure and develops a scoring method (data sheet design, instrument selection, procedure, instructions, etc.) for a specified problem behavior, including identification of relevant collateral behaviors.

(c) Ethics. Incorporates ethical standards in program design, implementation, communication, and evaluation.

(d) Law. Identifies Federal and State laws and legal precedents as they affect the conduct of educational-treatment activities.

(e) Programming. Writes a proposal for behavior change (i.e., habilitative/educational) program; prepares written report of treatment effects based on treatment data and case record; devises at least two alternatives at each level of intensity of intervention and given a set of behavioral (client) problem situations, specifies appropriate and realistic program goals in the form of treatment objectives.

(f) Communication. Written, oral, and graphic.

(3) An expert in the use of Intense aversive and deprivation procedures shall qualify to use these procedures by demonstrating the knowledge and skills required at the Mild and Moderate levels of treatment intensity and, in addition, demonstrating proficiency in the following areas:

(a) Safety. Knowledge of current regulations and utilization of the Federal Drug Administration approved aversive stimulation devices including types of available instrumentation and knowledge of dangers and side effects associated with the operation of apparatus; familiarity with variables which contraindicate use of Intense aversive procedures.

(b) Supervision. Identifies administrative procedures which relate to implementation of treatment programs; outlines training procedures, staff schedules, treatment monitoring procedures, and relevant personnel policies and union contracts, including personnel performance and review procedures.

d. Informed consent requirements. Except when a client is a minor, or a ward under State or private guardianship, or an individual not competent to give informed consent, informed written consent shall be required of any client prior to the use of any aversive or deprivation procedures.

(1) In the case of a minor client, informed written consent shall be obtained from at least one of his parents, or if his parents cannot be contacted, from persons in this order: guardian or custodian.

(2) In the case of an individual under general guardianship or guardianship of the person, informed written consent shall be obtained from his guardian.

(3) In the case of an individual under State guardianship where parental rights have not been terminated, informed written consent shall be obtained from his parent or a near relative in this order: spouse, brother, sister or adult child. If such parent or near relative fails to respond within fourteen (14) days of receiving a registered mail request for written consent to the use of aversive or deprivation procedures, the Commissioner may give written consent to such procedures.

(4) In the case of a person under State guardianship where parental rights have been terminated, consent shall be obtained from the local social service agency.

(5) For any individual of questionable competence, as judged by the agency director, informed written consent shall be obtained from the parent or from a near relative in this order: spouse, brother, sister or adult child.

e. Withdrawal of consent. Consent granted pursuant to this section may be withdrawn at any time by written revocation and if so withdrawn, the use of aversive or deprivation procedures shall be terminated immediately.

f. Client participation in treatment decisions. The criteria provided herein regarding informed client consent constitutes the minimum procedures required. Accordingly, they shall not be construed as discouraging the involvement of all clients to whatever extent feasible in the development and implementation of their individual treatment plans.

g. Priority of positive programming procedures. Aversive and deprivation procedures classified as Moderate or Intense may be used only in those facilities having highly skilled staff as outlined in B.1.c., a properly appointed and functioning local review committee as described in section B.2., and having otherwise complied with the provisions of this rule relating to the administration of Moderate and Intense procedures. Before Moderate or Intense procedures may be used, adequate data shall be available to establish that milder techniques based on positive programming procedures (C.13.) or positive programming procedures in conjunction with Mild aversive or deprivation approaches have been tried and have failed to materially alter the client's behavior.

Intense procedures may be used only if a client presents a clear and present danger to his own physical safety or the physical safety of others. In such instances, Intense procedures can be used only after it has been documented that less intense procedures have been tried and have failed to materially improve the client's behavior.

h. Individual case review required for each use of aversive or deprivation procedure. In those instances where documented treatment efforts based on positive reinforcement have not been efficacious in treating the problem in question, the interdisciplinary team (in the case of Mild procedures) or the local review committee (in the case of Moderate and Intense procedures) may grant permission for the use of aversive techniques in the treatment program of a specific client. Categorical approval of the use of aversive techniques for any class of client problem is not permitted under this rule.

i. Procedures must be implemented in context of a total habilitative positive treatment program. When implemented, aversive or deprivation procedures shall always be part of a written, comprehensive, positively-oriented individual treatment program stated in objective behavioral terms and shall never be used as punishment, for the convenience of staff, or as a substitute for a positively based program. Even in the case of clients who present a clear and present danger to themselves or others, the use of aversive procedures shall be in the context of a total treatment program which emphasizes the development of habilitative responses, not merely the reduction of maladaptive responses.

j. Meal deprivation requires physician consultation. Techniques involving deprivation or withdrawal of meals shall be implemented only with the written approval of a licensed physician who will review the health-related aspects of the individual's program on an ongoing basis.

k. Local review committee authorization must be obtained. The use of Moderate or Intense aversive or deprivation techniques shall be in accordance with the duties and responsibilities of the local review committee as outlined hereafter.

l. Electric shock in aversive programs requires physician consultation. Aversive procedures involving the use of electric shock techniques (not to be confused with electroconvulsive therapy) shall be used only after a physical examination by a licensed physician certifies that such procedures will not jeopardize the client's physical well-being or health.

2. Responsibilities, authority and composition of local review committees.

a. Local review committee shall ensure that applicable sections of this rule are followed. The local review committee shall be responsible for approving, monitoring, and evaluating all Moderate and Intense aversive or deprivation procedures utilized by its agency. The local review committee shall also be responsible for advising the agency director as to whether the standards and requirements provided in this rule are followed.

b. Committee approval required prior to implementation of treatment. The use of Moderate or Intense aversive or deprivation techniques with any client or patient shall receive prior written approval by the local review committee. In determining whether or not to approve any aversive or deprivation procedure for a client, the local review committee shall be presented the client's individual treatment plan which must include:

(1) A description of the nature, frequency, and duration of the behavior sought to be modified.

(2) A description of positive programming techniques previously used in an attempt to improve the client's behavior and a quantitative record of any resulting behavioral changes.

(3) The behavioral outcome expected from the use of aversive or deprivation procedures.

(4) Possible injuries or side effects which may result from the proposed aversive or deprivation procedure.

(5) The date for staff review and proposed date of termination of the procedure including the date of maximum number of treatments when the procedure will be terminated if the program is not successful.

(6) The consent required by this rule and, when necessary under this rule, the written approval of a physician.

c. Committee shall monitor treatment in progress. The local review committee shall monitor the ongoing use and results of all Moderate and Intense aversive or deprivation procedures in order to ensure that those procedures are carried out as originally approved. The local review committee may order the discontinuance of any aversive or deprivation procedure at any time. Subsequent to such action, the procedure shall not be resumed until the committee has again granted written approval.

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d. Treatment staff shall provide regular reports on progress. The staff responsible for implementing Moderate and Intense aversive or deprivation procedures shall provide reports to the local review committee summarizing the records (which must be kept on a daily basis) of all procedures used and results obtained for the period of time the aversive or deprivation procedures continue to be used. Programs at the Intense level shall be reviewed by the committee at least monthly. Records must be in an objective, quantitative, clear form permitting evaluation of client data by any informed, interested party. Further, the local review committee shall have unrestricted access to all data, records and reports relating to the procedures used. Access to such data, records and reports relating to the treatment of individual clients shall be controlled and governed by applicable state law and federal regulations ensuring privacy or confidentiality.

e. Committee shall keep written minutes of meetings. The local review committee shall keep written minutes of all its meetings and shall provide the agency director with a copy of those deliberations.

f. Committee shall review qualifications of staff who design and supervise implementation of aversive and deprivation programs. The local review committee shall review the qualifications, background and experience of staff who are responsible for the design and implementation of Moderate and Intense aversive or deprivation procedures in order to ensure that such staff are knowledgeable and experienced in the theory, ethical considerations and application of behavior modification techniques of the type being considered for clients of that agency.

g. Local review committee status and composition.

(1) The local review committee shall be a standing committee and shall be appointed by the agency director and be accountable to him/her.

(2) The local review committee shall include at least the following:

(a) Expert in behavior modification techniques/staff member. A staff member who is knowledgeable and experienced in the theory and ethical application of behavior modification techniques and who meets the competency criteria appropriate to the level of intensity of the treatment program being reviewed by the committee.

(b) Advocate. The patient/client advocate or in the case of agencies or facilities without such employees, an individual who clearly represents the client's interests, rights and general welfare. (An appropriate member of the facility's advisory committee for mental illness, mental retardation or chemical dependency may satisfy this requirement.)

(c) Staff member who works directly with residents. At least one additional staff member of the agency or facility who works directly with that agency's clients.

(d) Administrative staff member. At least one representative of the administrative staff of the agency (e.g., chief executive officer, administrator, program director, medical director).

(e) Client or former client. A client or former client of the agency or a parent or guardian of a client or former client of the agency.

(f) Expert in behavior modification/consultant. At least one individual who is knowledgeable and experienced in the theory and application of behavior modification techniques who meets the competency criteria required for the level of intensity of the treatment program which is being reviewed by the committee and who is not paid by the agency or facility for services other than participation in the review process.

(g) Attorney (recommended). Whenever possible, an attorney familiar with the rights of handicapped persons (e.g., the lawyer on the local review board).

(3) One committee serving several small programs. Where small facilities, such as group homes, day activity centers or small residences find it impractical to form a review committee serving a single facility, a consortium of such small facilities may be served by a single review committee so long as the committee is a standing committee, rotates meetings amongst facilities, and each facility carrying out aversive and deprivation procedures has on its staff a person qualified to implement and supervise the procedures which are reviewed and approved by the committee.

(4) Meeting schedule. When any clients are involved in aversive or deprivation procedures, the local review committee shall meet at least bi-monthly and, whenever possible, monthly.

(5) Emergency actions. Initiation of Mild or Moderate aversive and deprivation procedures may be tentatively approved by the resident advocate, the parent or former client, and the expert staff member. Ratification of such action must be made by the whole committee within fourteen (14) days. Intense procedures may not be initiated by emergency action.

3. Role of the state agency.

a. State agency responsible for monitoring implementation of the rule: Responsibility for monitoring compliance with this rule rests with the licensing division of the state agency. Additionally, the Commissioner or his/her designee may periodically require that data and reports relating to the effective implementation of this rule be filed with his/her office.

b. Consultation regarding implementation will be available. The Commissioner shall make provision for consultation regarding this rule and its implementation.

4. Complaints.

a. File with local review committee. Any client, or the parent, relative or advocate of a client in a facility that uses aversive or deprivation procedures may file a complaint with the agency director alleging a violation of this rule. The agency

director shall direct the client advocate or equivalent member of the agency staff to investigate the complaint. If the investigation shows a probable violation of this rule, the agency director shall review the complaint and report the findings and conclusions to the Commissioner.

b. Appeal process. A complainant shall be entitled to a copy of the investigation report, as well as a copy of any report sent to the Commissioner. If the complainant disagrees with either report,, he/she may request a hearing according to contested case procedures under Chapter 15 of the Minnesota Statutes.

C. Definitions. For the purpose of this rule, the following terms shall have the meanings provided herein.

1. "Agency director." The administrative person responsible for directing a facility or agency (Chief Executive Officer in state hospitals).

2. "Aversive procedures." The contingent application of noxious or painful stimuli.

For the purposes of this rule, aversive procedures are further classified according to three levels of intensity, Mild, Moderate and Intense. Procedures included in these levels are as follows:

a. Mild.

(1) Overcorrection not requiring manual guidance.

(2) Manual guidance where there is not active resistance by the client.

b. Moderate.

(1) Any Mild aversive procedures applied for more than 15 minutes per day.

(2) Painful or unpleasant body contact (specifically designed to change certain target behaviors, e.g., striking, slapping, spanking, pinching, cold baths or showers, physically enforced overcorrection, or the use of physical restraint or face masks for purposes of aversive conditioning).

(3) Unpleasant (e.g., bitter) tasting foodstuffs.

(4) Applications of noxious substances which include, but are not limited to, bad tastes, bad smells, splashing with cold water.

(5) Sudden noises or procedures which elicit startle responses such as reactions of alarm or fear.

(6) Manual guidance where there is active resistance by the client.

c. Intense.

(1) Electric shock (except medically administered electroconvulsive therapy).

(2) All other aversive procedures not included in the Mild and Moderate categories above.

3. "Commissioner." The Commissioner of the Minnesota Department of Public Welfare.

4. "Contingent." A specific, planned connection between a client's behavior and consequences arranged for the therapeutic benefit of the client. The consequences will occur if, and only if, the preceding behavior occurs and then they must follow.

5. "Contingent observation." Contingent observation is a positive programming procedure. The behavioral sequence is as follows: The client exhibits an incorrect or inappropriate behavior. The teacher/therapist immediately takes the client aside, describes the inappropriate behavior and instructs the client to sit down and watch the desired behavior being emitted by others. Either other clients or the teacher/therapist may demonstrate the correct behavior. The client is then asked to express an intention to behave appropriately. Anything other than a positive response by the client is interpreted as an indication that additional observation is appropriate. When ready, the client returns to participation in the ongoing activity and as soon as appropriate behavior occurs, the teacher/therapist provides positive descriptive feedback.

6. "Deprivation procedures." Withdrawal or delay of goods, services, and/or activities to which the client would ordinarily be entitled. Facilities and/or treatment programs retain the right to specify items of personal property which can be brought into the residential or treatment areas. However, once an item is approved and brought into the living area, it cannot then be taken from the client and sold or traded back to the client without being considered deprivation. Goods and/or services to which the client is ordinarily entitled under licensing standards include, but are not necessarily limited to, the following:

a. A personal living area including private bed, bedding and space for personal property.

b. A nutritionally sound diet balanced over each 24-hour period and available during at least three eating periods which are spaced throughout the normal waking hours (i.e., not less than 10 hours between the first and last eating period on any given day).

c. The opportunity to spend time out-of-doors during each week.

d. Access to water and bathroom facilities at frequent intervals.

e. The opportunity and free time to meet with staff, visitors, friends, relatives, advocate, etc. in private, including telephone conversations and written correspondence. (In state operated facilities, deprivation of visitors, telephone use or

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written correspondence must be approved by the head of the hospital as medically necessary.)

f. The right to reasonable use of personal possessions such as tobacco, cigarettes, toys, books, radios, toiletries, mail and jewelry, and the right to control access to those possessions.

g. An adequate allowance of neat, clean and seasonable clothing from which the client may select items appropriate to the activities he or she may be engaged in.

h. Optimal independence in health, hygiene and grooming practices.

i. The right to possession, control and access to legitimate earnings and allowances.

j. Access to normal environmental and social contacts. (Deprivation of these contacts may be established only through "time-out" procedures conducted in accordance with this rule.

For the purposes of this rule, deprivation procedures are further classified according to three levels of intensity, Mild, Moderate and Intense. Procedures included in these levels are as follows:

(1) Mild.

(a) Deprivation of, or contingent access to, goods, services and/or activities to which the client would ordinarily be entitled. (Exceptions: The deprivation of food, drink, or other substances and activities necessary to maintain health and life support are classified as "Intense" procedures.)

(b) Time-out from positive reinforcement by removal from view or the room.

(2) Moderate.

(a) Extinction procedures that may constitute a risk to the client's physical well being, such as ignoring a client's failure to comply with a diabetic diet.

(b) Time-out which is implemented using manual guidance to overcome active resistance of the client.

(3) Intense. Deprivation of food, water, oxygen, medications, or similar life or health support substances and activities.

7. "Extinction." Planned non-attention to specific undesirable behaviors. For example, allowing undesirable behaviors to become weaker by removing the attention or other positive consequences which have maintained the behavior. Extinction procedures are classed as positive programming procedures except when the behavior which is targeted is health threatening. If the behavior may constitute a risk to the client's physical well being, then the extinction procedure is classified as a Moderate intensity deprivation procedure and all appropriate controls, reviews and staff competency requirements are in effect.

8. "Informed consent." Knowing and willful consent based upon a thorough explanation by the staff member supervising the procedure or a knowledgeable member of the interdisciplinary team of the nature of the procedure (including the techniques to be employed), the anticipated behavioral outcome or consequences of the procedure, and all known risks involved.

9. "Intensity of aversive and deprivation procedures." The aversive and deprivation procedures defined in C.2. and C.6. are classified according to the intensity of the procedures. These levels are identified: Mild, Moderate, and Intense. Higher staff competencies and special review committee procedures are required for those facilities wishing to use Moderate and/or Intense procedures as compared to those facilities using only Mild procedures (see B.2.a. and f.).

10. "Manual guidance." The term guidance refers to any procedure in which the teacher/therapist provides physical assistance, support or guidance to a client in order to get the client to perform an act or skill. Examples of guidance are physical assistance in walking, the use of a toothbrush, eating utensils, etc. Each individual treatment program using manual guidance should include plans for reducing the assistance required so as to increase the client's independence.

Manual guidance where the client offers only passive resistance is classified as a Mild aversive procedure. Active resistance by the client as defined in C.11. causes the procedure to be classified at the Moderate level of intensity of aversive procedures.

11. "Overcorrection." Requiring a client to repair damage caused by a problem behavior and then to practice a behavior which is more appropriate than the behavior which caused the initial damage. It is the second step, of continuing the practice of appropriate behavior beyond the point where restoration or restitution is accomplished, which gives rise to the term overcorrection.

These procedures are classed as Mild aversive procedures as long as they can be accomplished without the use of manual guidance. If it is necessary to use physical controls to implement the overcorrection procedures, then the treatment falls into the Moderate level of treatment intensity.

The elements which may be part of an overcorrection program are as follows:

a. "Restoration." Requiring a client who has exhibited behaviors such as throwing furniture around, writing on the wall, or otherwise defacing or rendering portions of the environment unusable, to repair or restore the area to its original condition.

b. "Restitution." Requiring a client who has exhibited behaviors which adversely affect others in his environment, such as striking, stealing, etc., to apologize, replace the stolen article, or otherwise demonstrate socially responsible behaviors which make up for the injury or loss caused by the client.

c. "Incompatible behaviors." Acts, behaviors or responses which cannot occur at the same time as other responses which are targeted for modification. For example, being helpful and cooperative is incompatible with being assaultive, working

at a reading assignment in the classroom is incompatible with daydreaming, defying the teacher's instructions, talking out, wandering around the room, etc.

d. "Positive practice." Requiring a client to repeat restoration or restitution behaviors until the damage caused by the inappropriate behavior is repaired and in better condition than before the inappropriate behavior occurred.

e. "Massed practice." A response reduction technique in which a client is required to repeat a response a number of times after the client would prefer to stop.

12. "Positive programming procedures." Positive programming procedures involve the use of positive reinforcement alone or in combination with benign response reduction techniques and/or instructional procedures.

a. "Benign response reduction procedures." A general class of treatment techniques which includes exclusion time-out for periods of less than five minutes, contingent observation, social disapproval and extinction.

b. "Instructional procedures." Prompting or providing cues, giving instructions and/or warnings, demonstrating, modeling, suggesting alternatives, graduated guidance, removing provocating or tempting situations, etc. Instructional procedures are not regulated by the provisions of this rule.

c. "Positive reinforcement." Any consequence of a client's behavior which, when systematically and regularly presented following that response, makes it more likely that the behavior will recur. Such behavioral and consequent relations must be stated in objective, quantifiable terms. The delivery of positive reinforcement is considered a positive programming procedure and is excluded from committee review under this rule so long as the consequences being delivered do not involve contingent access to goods and services to which the client is entitled (see C.7.). Frequency, quantity or quality of positive reinforcement may be varied as necessary.

d. "Social disapproval." Social feedback procedures such as frowning, head shaking, hand signals, etc. and/or verbal feedback indicating incorrect acts including statements such as "No," "Please don't do that," "That is wrong," etc. Social disapproval should be behavior specific and avoid the verbal and psychological abuse implicit in disapproving of a person rather than disapproving of an act or behavior.

13. "Punishment." The use of any aversive and/or deprivation procedure which is not part of an approved treatment plan.

14. "Seclusion and restraint." Procedures used for the purpose of protecting the patient/resident from harming himself or others. Each usage of these procedures must be specifically authorized and supervised by the patient/resident's physician. Seclusion and restraint for protective purposes is to be distinguished from "time-out" and other aversive and deprivation procedures used in a behavior modification treatment plan.

a. "Seclusion (or separation)." Involuntary removal from social contact with others and confinement in a separate room from which access is blocked from the outside.

b. "Restraint." Any physical device or chemical agent which limits the normal movement of body or limbs.

15. "State agency." Minnesota Department of Public Welfare.

16. "Time-out." Exclusion, for a brief period of time, of a client from ongoing activities and sources of reinforcement. It is an abbreviation for the procedure called "Time-out from Positive Reinforcement." The procedure differs from both seclusion and extinction although in common use confusion frequently exists. Whenever possible, "time-out" is implemented by eliminating sources of reinforcement without removing the individual from the area in which the problem behavior occurred.

a. "Exclusion time-out" for periods of five minutes or less is considered a benign response reduction technique.

b. "Seclusion time-out" and longer periods of "exclusion time-out" are considered Mild aversive procedures if they can be implemented by the use of instructions. If it is necessary to use physical control to use these procedures, they are considered to be Moderately aversive.

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SUPREME COURT

Decisions Filed Friday, December 14, 1979

Compiled by John McCarthy, Clerk

49903/388 Edward G. Novak, Acting Commissioner of Public Safety, State of Minnesota, Petitioner, vs. The Honorable John J. Kirby, Judge of the Municipal Court of Ramsey County, Supreme Court.

The Ramsey County Municipal Court has authority to stay the revocation of drivers licenses pursuant to Minn. Stat. § 169.121, subd. 5 (1978).

Petition for writ of prohibition denied. Sheran, C. J. Dissenting, Otis and Peterson, JJ.

49090/491 State of Minnesota vs. Nathanial Molin, Appellant, Hennepin County.

Trial court did not err in evidentiary rulings or its instructions, evidence of defendant's guilt was sufficient to sustain the verdict, and evidence of defendant's disposition for violence was sufficient to justify imposition of extended term under dangerous offender act.

Affirmed. Sheran, C. J.

49260/478 State of Minnesota vs. Steven Arthur Hjerstrom, Appellant. Hennepin County.

Although the trial court erred in admitting testimony concerning parts of a statement defendant made to police when arrested because the potential of the evidence for unfair prejudice outweighed its limited probative values, a retrial is unnecessary because it is extremely unlikely that the testimony played a substantial role in influencing the jury to convict the defendant.

While a prosecutor generally may not use a defendant's postarrest silence to impeach the defendant's exculpatory testimony at trial; here the defendant tried to show that the police were not interested in hearing his version of what happened and the prosecutor therefore was properly permitted to show that, once at the stationhouse, the police unsuccessfully tried to obtain a complete statement from defendant concerning his version of what happened.

Affirmed. Rogosheske, J.

49039, 49040, 49041/489 State of Minnesota vs. Leonard Lloyd Rudolph, Ralph J. Miles, Milburn L. Miles. Crow Wing County.

Evidence of defendants' guilt of illegal shining for wild animals, Minn. Stat. § 100.29, subd. 10 (1976), was legally sufficient.

Minn. Stat. § 100.29, subd. 10 (1976), which, with certain exceptions, makes it a gross misdemeanor to shine for wild animals, is not unconstitutionally vague as applied to defendants.

Trial court did not commit prejudicial error in excluding certain evidence which defendants contended bore on question of whether the purpose of their shining was to spot wild animals.

Affirmed. Rogosheske, J.

49383/343 Old Republic Insurance Company as Assignee of Northwestern National Bank of Minneapolis, Appellant, vs. Irwin B. Meshbesher, etc., et al. Dakota County.

In order to avoid individual liability on a note pursuant to Minn. Stat. § 336.3-403 (1) and (2) (b), defendant must show that the debt was one the corporation had power to incur and one which he had authority to incur on behalf of the corporation as well as evidence indicating an understanding between the parties that defendant signed the note in a corporate representative capacity.

We reverse the district court's findings as a consideration of the entire evidence leaves this court with a definite and firm conviction that a mistake was made.

Reversed and remanded. Kelly, J. Took no part, Todd, J.

49363/361 Walter Coudron, et al, Appellants, vs. Fred Johnson, et al, individually and in their capacity as members of the Minnetonka Police Civil Service Commission. Hennepin County.

An action brought by unsuccessful candidates to challenge the validity of a promotional civil service examination administered by the Minnetonka Police Civil Service Commission was properly dismissed where the record established the commission's compliance with Minn. Stat. §§ 419.06 (9) and 419.09 (1978).

Affirmed. Kelly, J. Took no part, Otis, J.

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

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Education Vocational-Technical Division

Notice of Request for Proposals for Long Range Plan for Post-Secondary Vocational Education

The Program Improvement and Information Section, Vocational-Technical Education Division, Department of Education is seeking proposals to conduct a study of the post-secondary area vocational-technical education to determine the status of the system, to determine the idealistic or optimum system, and to make recommendations on realistic changes that approaches the ideal or optimum. This study shall also include recommendations for the accomplishment and responsibility of obtaining change in the system. This study shall include but not be limited to an examination of the following areas: facilities, equipment, instructional programs, instructional support, student services, staffing, funding, decision making, and external impact. Recommendations shall be provided through 1990. A final report is required by December 1, 1980.

The amount of the contract is estimated to be $60,000, including expenses. Proposals must be received by 4:00 p.m., January 18, 1980. The formal Request for Proposals may be requested and inquiries should be directed to:

Dr. Melvin E. Johnson, Director
Program Improvement and Information Section
Vocational-Technical Education Division
Department of Education
Room 548, Capitol Square Building
Saint Paul, MN 55101
(612) 296-2421

Notice of Request for Proposals for Industrial Arts State of the Art Study

The Vocational-Technical Education Division, Department of Education is seeking proposals for the conduct of a state of the art study for industrial arts/secondary vocational industrial occupations. The study is to address similarities and differences of industrial arts programs in relation to secondary vocational industrial occupations. Major topics to be addressed should include at least the following: a) program objectives: b) student needs: c) classroom activity: d) sources of funding: e) teacher preparation and licensure: and f) program approval. The formal Request for Proposals may be requested and inquiries should be directed to:

Dr. Melvin E. Johnson, Director
Program Improvement & Information Section
Division of Vocational-Technical Education
Department of Education
Capitol Square Building
550 Cedar Street
Saint Paul, MN 55101
(612) 296-2421

The amount of the contract is estimated to be $10,000 including expenses. Proposals must be received by 4:00 p.m., January 18, 1980.

OFFICIAL NOTICES

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

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

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that a vacancy has occurred in a multi-member state agency, pursuant to Minn. Stat. § 15.1597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul, MN 55155; (612) 296-7876. Application deadline is Tuesday, January 8, 1980.

Family Farm Advisory Council has 4 vacancies open immediately. Prescribed restrictions to membership include: 1 member a livestock farmer, 1 member an officer from a commercial lending institution, 1 member an officer from a farm credit association, and 1 member an agriculture economist. Members serve 3 year terms. Meetings are monthly. The council assists farmers in obtaining credit to purchase farm real estate by guaranteeing loans and deferring interest payments. Appointing authority is the Commissioner of Agriculture. Members receive $35 per diem plus expenses. For more information contact Doug Kuehnast, (612) 296-8435.

Higher Education Facilities Authority has one vacancy open immediately for a member from the first congressional district. The authority assists institutions of higher education in the construction, financing, and refinancing of projects. Meetings are held monthly. The Governor is the appointing authority for the four year terms. Members receive $35 per diem. For additional information: Joseph LaBelle, (612) 296-4690.

Energy Agency

Notice Regarding MN State Plan for Dept. of Energy, Phase II Grant Programs

The Minnesota State Plan for the Department of Energy, Phase II Grant Programs for Schools and Hospitals for Buildings Owned by Units of Local Government and Public Care Institutions has been approved.

January 4, 1980 is the application deadline for the first Federal program cycle of the Institutional Buildings Grants Program under the National Energy Conservation Policy Act. Phase II applications for grants for maxi-audits (technical assistance) and energy conservation measures from schools and hospitals and applications for maxi-audits (technical assistance) from units of local government and public care institutions are due by January 4, 1980. Amendments to applications will be accepted until January 15, 1980. Institutions must compete for federal grant awards of 50% of the costs of their projects and provide non-federal matching funds for the other 50%. Some hardship grant awards of up to 90% federal funding will be available. There will be two more grant program cycles after this one for schools and hospitals. There will be one more program cycle for units of local government and public care institutions.

The State of Minnesota will provide funds for mini-audits and maxi-audits of buildings owned by public schools, cities and counties through a similar grants program concurrent with the federal programs. The application deadline for the state program is April 1, 1980.

The following chart illustrates the eligibility groups and types of funding available through the federal and state program.

Table 1: Programs and eligible institutions

Eligible Institutions	Federal Programs			State Program	
	Mini	Maxi	ECM	Mini	Maxi
GROUP I public schools hospitals owned by cities and counties	●	●	●	●	●
GROUP II private nonprofit schools and hospitals	●	●	●		
GROUP III government buildings and public care institutions owned by cities and counties	●	●		●	●
GROUP IV government buildings owned by townships and American Indian tribes private, nonprofit public care institutions	●	●			

For more information on eligibility, program participation and materials, call (612) 297-2103 or write to Minnesota Energy Agency, Conservation Division.

Department of Health Emergency Medical Services Section

Notice of Filing of Application by Divine Redeemer Hospital for Licensure to Operate Life Support Transportation Service

On December 11, 1979, a complete application for a license to operate a proposed life support transportation service with bases of operation at

Ridges Health Center, South 138th St. and Nicollet Blvd., Burnsville, and

Apple Valley Fire Department #1, 15000 Hayes Road, Apple Valley, MN.

submitted by Divine Redeemer Hospital, was received by the epartment of Health. This notice is given pursuant to Minn. Stat. § 144.802 (1979), which requires that the commissioner shall publish the notice, at the applicant's expense, in the *State Register* (December 24, 1979) and in a newspaper in the municipality in which the service would be provided, or if no newspaper is published in the municipality or if the service would be provided in more than one municipality, in a newspaper published at the county-seat of the county or counties in which the service would be provided. Each municipality, county, community health service agency and any other person wishing to comment on this application to the Health Systems Agency (The Metropolitan Health Board), shall do so before the close of business on January 23, 1980.

After a public hearing has been held in one of the municipalities in which the service is to be provided, the Health Systems Agency (The Metropolitan Health Board), shall recommend that the commissioner either grant or deny a license or recommend that a modified license be granted. The Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days after receiving the recommendation, the commissioner shall grant or deny the license to the applicant.

Any objections to or statements of support for this application pursuant to Minn. Stat. § 144.802 may be made in writing to Bobbie Droen, Metropolitan Health Board, 300 Metro Square Building, 7th and Robert, St. Paul, Minnesota 55101.

ERRATA

1. The rules of the Department of Personnel published at *State Register*, Volume 4, Number 6, pp. 117-139, August 13, 1979 contained an error. Rule 2 MCAR § 2.108 at 4 S.R. 125 should read as follows:

2 MCAR § 2.108 Suspension. An appointing authority may suspend an employee without pay for just cause.

Any permanent employee who is suspended for thirty days or less shall, before the action is taken, be presented with a statement in writing setting forth the reasons for the suspension. The employee may use the grievance procedure in 2 MCAR §§ 2.175-2.178, including appeal to the commissioner.

Any permanent employee who is suspended for more than thirty days shall, at least five days before the effective date of the suspension, be presented with a statement in writing setting forth the reasons for the suspension. A copy of the statement shall be immediately submitted to the commissioner. Any permanent employee ~~who is~~ suspended without pay for more than thirty days may appeal to the Personnel Board within thirty days after the effective date of ~~such action~~ the suspension.

No seniority shall be acquired during the period of suspension.

If it is proved to the appointing authority's satisfaction that the employee was unjustifiably suspended, any employment rights and benefits that the employee would have if the suspension had not occurred will be returned to that employee.

2. The proposed temporary rules of the Department of Commerce, Insurance Division, published at *State Register*, Volume 4, Number 23, pp. 953-961, December 10, 1979 contained several errors. Please note the following changes:

At 4 S.R. 954, in **4 MCAR § 1.9288 A.,** line 1, change "1.929 H." to read "1.9292 H."

At 4 S.R. 956, in **4 MCAR § 1.9291 H.**, line 1, change "than" to read "that."

At 4 S.R. 956, in **4 MCAR § 1.9292 A.**, line 4, change "plan or operation" to read "plan of operation."

At 4 S.R. 958, in **4 MCAR § 1.9292 M.**, line 7, change "1.9283" to read "1.9285."

At 4 S.R. 958, in **4 MCAR § 1.9292 N.**, line 4, change "1.9283" to read "1.9285."

At 4 S.R. 958, in **4 MCAR § 1.9293 F.**, line 2, change "premium" to read "premiums."

At 4 S.R. 959, in **4 MCAR § 1.9293 K.**, line 4, delete "on" after "subdivision."

At 4 S.R. 959, in **4 MCAR § 1.9294 I.**, line 3 and line 6, change "1.9283" to read "1.9285."

At 4 S.R. 960, **Appendix II.**, line 3, add "by" after "provided."

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