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VOLUME 5, NUMBER 11

September 15, 1980

Pages 403-454



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 5			
12	Monday Sept 8	Monday Sept 15	Monday Sept 22
13	Monday Sept 15	Monday Sept 22	Monday Sept 29
14	Monday Sept 22	Monday Sept 29	Monday Oct 6
15	Monday Sept 29	Monday Oct 6	Monday Oct 13

*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.

The *State Register* is published by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$120.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$2.25 per copy.

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

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

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NOTICE

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

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION**. Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The **PROPOSED RULES** section contains:

- Proposed new rules (including Notice of Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The **ADOPTED RULES** section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All **ADOPTED RULES** and **ADOPTED AMENDMENTS TO EXISTING RULES** published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted **TEMPORARY RULES** appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

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

Issues 1-13, inclusive

Issue 39, cumulative for 1-39

Issues 14-25, inclusive

Issues 40-51, inclusive

Issue 26, cumulative for 1-26

Issue 52, cumulative for 1-52

Issue 27-38, inclusive

The listings are arranged in the same order as the table of contents of the MCAR.

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PROPOSED RULES

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.

Public Hearings on Agency Rules September 22-27, 1980		
Date	Agency and Rule-Matter	Time & Place
Sept. 25	Natural Resources Department Boat and Water Safety Rules Hearing Examiner: Phyllis Reha	7:00 p.m., Minnesota Historical Society Bldg., Weyerhaeuser Rm., 640 Cedar St., St. Paul, MN
Sept. 30	Health Department Mineral Explorers and Exploratory Borings; Water Well Construction and the Use of Plastic Casing Hearing Examiner: Richard Luis	9:30 a.m., Rm. 105, Health Dept. Bldg., 717 Delaware St. S.E., Minneapolis, MN

Department of Economic Security Office of Economic Opportunity

Proposed Rule Governing the Minnesota Economic Opportunity Grant Program

Notice of Hearing

Notice is hereby given that a public hearing on the above-entitled matter will be held pursuant to Minn. Stat. §§ 15.0411-15.0417, and 15.052 and 8 MCAR §§ 2.101-2.112, in Room 715, American Center Building, 150 E. Kellogg Blvd., St. Paul, Minnesota, on October 27, 1980 commencing at 10 a.m.

All interested or affected persons will have an opportunity to participate concerning the proposed rule captioned above. Statements may be made orally and 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 Jon Lunde, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner

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PROPOSED RULES

may keep the record open for a longer period not to exceed twenty (20) calendar days. All such statements will be entered into and become part of the record. Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit statements or exhibits, it is requested that at least three (3) copies be furnished. The proposed rule may be modified as a result of the rule process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the hearing process.

The agency has estimated that there will be no cost to local public bodies in the state to implement the rule for its duration within the meaning of Minn. Stat. § 15.0412, subd. 7.

If adopted, the rule proposed by the Commissioner of Economic Security will result in a permanent rule for the solicitation and awarding of grants to community action agencies. The proposed rule includes sections that define terms, govern the allocation of funds to eligible agencies for fiscal year 1981, outline the state's role in the granting process, set conditions for the denial or termination of grant awards, clarify grantee responsibilities, set conditions for waiver of application deadline, set requirements for grantee reporting and provide for grantee appeals. Such funds are to be used to fund the activities of such agencies which are consistent with the federal Economic Opportunity Act under the Minnesota Economic Opportunity Grant Program (Proposed code number 8 MCAR § 4.0011). The authority of the commissioner to adopt such rules is contained in Minn. Stat. § 15.0412, subd. 3 (1978).

Copies of the proposed rule are now available and one free copy may be obtained by writing to the Minnesota Department of Economic Security, Office of Economic Opportunity, Room 690 American Center Building, 150 E. Kellogg Blvd., St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

Notice is hereby given that twenty-five (25) days prior to the hearing, a statement of need and reasonableness will be available for review at the Department of Economic Security, Office of Economic Opportunity and at the Office of Administrative Hearings. This statement of need and reasonableness will include a summary of all 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 this statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

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 rule for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted to the Attorney General by the agency. If you desire to be notified, 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.

In addition, please be advised the Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. A lobbyist is defined in Minnesota 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* 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, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

September 15, 1980

Rolf Middleton,
Commissioner of Economic Security

Rule as Proposed

8 MCAR § 4.0011 Grants to community action agencies through the Minnesota economic opportunity grant program.

A. Purpose. This rule, adopted pursuant to Minn. Stat. § 15.0412 and Laws of 1979, ch. 336, § 3, is designed to establish a procedure for the granting of funds to Community Action Agencies, herein titled the Minnesota Economic Opportunity Grant Program under Laws of 1979, ch. 336, § 3.

B. Definition of terms. The following terms used in this rule shall have the meaning given them.

1. "Act" means Laws of 1979, ch. 336, § 3.
2. "Applicant" means any eligible community action agency in Minnesota which applies for a Minnesota Economic Opportunity Grant.

3. "Community action activity" means any activity undertaken by a community action agency which is consistent with the purpose of the Economic Opportunity Act of 1964, Part B, § 221 (a), as amended, which provides:

"The Director may provide financial assistance to community action agencies for the planning, conduct, administration and evaluation of community action programs and components. Those components may involve, without limitation, other activities and supporting facilities designed to assist participants including the elderly poor—

1. to secure and retain meaningful employment;
2. to attain an adequate education;
3. to make better use of available income;
4. to provide and maintain adequate housing and a suitable living environment;
5. to undertake family planning, consistent with personal and family goals, religious and moral convictions;
6. to obtain services for the prevention of narcotics addiction, alcoholism, and the rehabilitation of narcotic addicts and alcoholics;
7. to obtain emergency assistance through loans or grants to meet immediate and urgent individual and family needs, including the need for health services, nutritious food, housing and employment-related assistance;
8. to remove obstacles and solve personal and family problems which block the achievement of self-sufficiency;
9. to achieve greater participation in the affairs of the community; and
10. to make more frequent and effective use of other programs related to the purpose of this title.

The Director may also provide financial assistance to other public and private nonprofit agencies to aid them in planning for the establishment of a community action agency."

4. "Community action agency" means any agency which has received, and currently holds, official designation as a community action agency by the director of the federal Community Services Administration according to the Economic Opportunity Act of 1964, Part A, § 210 (a), as amended, which provides:

"A community action agency shall be a State or political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or a public or private nonprofit agency or organization which has been designated by a State or such a political subdivision or combination or such subdivisions, or an Indian tribal government, which—

1. has the power and authority and will perform the functions set forth in section 212, including the power to enter into contracts with public and private nonprofit agencies and organizations to assist in fulfilling the purposes of this title, and
2. is determined to be capable of planning, conducting, administering and evaluating a community action program and is currently designated as a community action agency by the Director.

A community action program is a community based and operated program—

1. which includes or is designed to include a sufficient number of projects or components to provide, in sum, a range of services and activities having a measurable and potentially major impact on causes of poverty in the community or those areas of the community where poverty is a particularly acute problem;
2. which has been developed, and which organizes and combines its component projects and activities, in a manner appropriate to carry out all the purposes of this title; and
3. which conforms to such other supplementary criteria as the Director may prescribe consistent with the purposes and provisions of this title."
5. "Commissioner" means the Commissioner of the Department of Economic Security or his or her authorized representative.
6. "Department" means the Department of Economic Security.
7. "Grant" means a contract for the release of funds to an applicant, to be used for the purpose(s) described in the application.
8. "Grantee" means any community action agency in Minnesota which receives funds from the Minnesota Economic Opportunity Grant Program.

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."

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9. "Grant guidelines" means the document prepared by the Department of Economic Security which is consistent with these rules and which details the requirements for grant application and the reporting of fiscal, program, and cumulative client data information relating to the Minnesota Economic Opportunity Grant Program.
10. "Minnesota Economic Opportunity Grant Program" means the name given to the activities authorized by Laws of 1979, ch. 336, § 3.
11. "Poor person" means a member of a household whose gross annual family income falls below the poverty income guidelines as issued annually by the federal Community Services Administration.
12. "State match" means that program, operated from state fiscal years 1976 through 1979, that distributed a legislative appropriation annually to community action agencies in Minnesota for the purpose of assisting those agencies in meeting their federal/local matching requirements for the receipt of funds from the federal Community Services Administration.
13. "Sub-contractor" means any agency, firm or individual receiving a contract from a grantee to perform some or all of the activities of the grant.

C. Allocation of funds. Every community action agency in Minnesota is an eligible grantee under the act. For fiscal year 1981, funds will be allocated in the following manner:

1. Each community action agency, other than an Indian community action agency, that received state match funds from the department in fiscal year 1979 will receive, at a minimum, an amount equal to its fiscal year 1979 allocation;
2. The statewide mathematical mean of dollars per poor person will be determined by dividing the total appropriation for the Minnesota Economic Opportunity Grant Program for the year by the number of poor persons residing in designated service areas of community action agencies that have submitted letters of intent to apply for a grant under the act;
3. Each Indian community action agency will receive an amount equal to the number of poor persons residing in the agency's designated service area multiplied by the statewide mathematical mean of dollars per poor person for the fiscal year 1981 appropriation, but not less than \$2,000;
4. Each grantee, other than an Indian community action agency, with a 1979 state match allocation mathematical mean that falls below the amount attributable to its designated service area applying the 1981 statewide mathematical mean per poor person will receive an additional amount from the remainder of the fiscal year 1981 appropriation determined by the following method:
 - a. The deviation below the amount attributable to its designated service area applying the 1981 state mathematical mean as compared to such deviation for all other designated service areas will be computed as a percentage;
 - b. A dollar amount will be determined for each of those agencies by multiplying the remaining appropriation by each agency's percentage of deviation below the mean;
 - c. That dollar amount will be added to the amount equivalent to the agency's fiscal year 1979 State Match allocation to determine the agency's total allocation for fiscal year 1981.

The commissioner will accept figures supplied by the Office of the State Demographer for formula components requiring population counts for any geographic area.

D. Grant application process. Each eligible agency will receive written notification of eligibility, guidelines for application and all necessary forms to complete the grant application package. An agency that wishes to receive a grant must submit to the department a letter of intent to apply for a grant. Each agency that submits a letter of intent will receive written notification of the potential grant amount for the agency.

Grant applications must be submitted in accordance with procedures specified in the guidelines for application prepared and distributed by the department pursuant to this rule.

All grant applications must be received by the department no later than 5:00 p.m. of the last business day of the first quarter of the state fiscal year. All applicants will be notified in writing of the receipt of their application and the need, if any, for changes or supplementary information.

E. Waiver of application deadline. The department, upon written request from an eligible agency, may allow the agency to submit its grant application after the established deadline. A request for a waiver to submit a grant application after 5:00 p.m. of the last business day of the second quarter of the state fiscal year will not be considered.

The department will consider waivers for late submission of a grant application for agencies whose program year starting date does not allow for simultaneous planning of the agency's federal grants and a grant under this act.

F. Denial or termination of grant award. An applicant may be denied a grant award if any of the following occur:

1. The grant application is submitted to the department after the application deadline without prior department consent for late submission.

2. The grant activities are inconsistent with community action activity as defined in this rule.

3. The applicant cannot demonstrate adequate fiscal management capabilities as required in federal Office of Management and Budget Circulars A-102 and A-110.

4. The applicant fails to respond to a request for revision of the application, supplementary information or other required documents to bring said application into compliance with this rule.

G. A Minnesota Economic Opportunity Grant may be terminated by the Commissioner upon 30 days written notice to the grantee if any of the following occur:

1. The grantee's community action agency designation is withdrawn by the federal Community Services Administration.

2. The grantee violates the provisions of the grant.

3. The grantee fails to submit grant reporting requirements established in accordance with this rule.

H. Grantee responsibilities. The grantee must obtain prior written approval from the department in order to alter its grant program from the manner in which it was described in the approved grant.

The grantee must comply with all federal and state regulations which apply to the general operation of the agency and to specific projects and grants which are co-funded by the federal or state government and this act.

I. Grantee reporting requirements. By acceptance of a grant award under this act, the grantee agrees to supply all grant activity information required by the department. The specific reporting requirements will be made known to eligible grantees at the same time that they are notified of eligibility to apply for a grant under the act.

The grantee must provide evidence of having a management information system that can produce auditable reports of client services as required by the department.

J. Appeals. An applicant or grantee may appeal a denial or termination of a grant award. The appeal must be in writing and must be signed by the community action agency executive director and the chairperson of the agency board of directors.

The appeal must be sent to the commissioner within 30 calendar days of receipt of notification of denial or termination. Upon such appeal the commissioner shall order a hearing in accordance with the contested case provisions of Minn. Stat. ch. 15.

Department of Public Welfare Mental Health Bureau

Proposed Rule 12 MCAR § 2.018 and Proposed Amendment to 12 MCAR § 2.034 Concerning Programs for Mentally Retarded Persons

Notice of Hearing

A public hearing concerning the above rules, 12 MCAR § 2.018 (Rule 18) Standards for the provision of semi-independent living programs to people who are mentally retarded., and 12 MCAR § 2.034 (Rule 34) Standards for operation of residential programs and services for persons who are mentally retarded., will be held at the State Office Building, Room 57, Wabasha Street, (between Aurora and Fuller), St. Paul, MN 55155 on October 17, 1980 commencing at 9:00 a.m.. The proposed rule, 12 MCAR § 2.018 (Rule 18), and proposed amendment to 12 MCAR § 2.034 (Rule 34), may be modified as a result of the hearing process. Therefore, if you are affected in any manner by 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 and 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 Jon Lunde, Hearing Examiner, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, MN 55104, telephone (612) 296-5938, 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.

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PROPOSED RULES

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 Administrative Hearings. 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 Administrative Hearings at a minimal charge.

12 MCAR § 2.018

Rule 18 establishes standards for the provision of semi-independent living services (SILS) to mentally retarded adults whose dependency requires services above the level of food and lodging, but below the level of a 24-hour per day program of care and services as provided in facilities licensed under Rule 34.

The provision of semi-independent living services as an organized program of support services needed to promote and achieve client independence, is a relatively recent development in Minnesota. The department is proposing a new rule because it was found that Rule 34 does not effectively apply to persons who no longer need a 24-hour per day program.

Semi-independent living services are not being provided to approximately 140 mentally retarded adults. While receiving SILS, the clients live in a variety of ordinary community living arrangements. Such living arrangements include, but are not limited to; client's own home, foster home, apartment or rooming house. The rule governs the provision of services to clients, but does not govern the client's place of residence. Such places in which the clients reside are subject to the ordinary community health, safety, sanitation and zoning codes. Such places of residence are not considered health care facilities.

The use of this type of living arrangement will increase in the future as more mentally retarded people are integrated into the community.

The proposed rule contains:

- a. Statutory authority for promulgation of the rule.
- b. Statement of purpose.
- c. Provision that the rule applies to persons, organizations and associations engaged in the operation and provision of SILS to adults who are mentally retarded.
- d. Procedures for licensing.
- e. Appeal rights pursuant to Minn. Stat. ch. 15, Minnesota Administrative Procedures Act.
- f. Definition of terms used in the rule.
- g. Program and service standards which include admission standards, and provision for comprehensive behavioral and physical assessments. Individual program planning is required, which includes goal objectives and methods in:
 - (1) Training in health planning, meal preparation and shopping.
 - (2) Training in first aid skills, responding to emergencies and symptoms of illness.
 - (3) Training in management of personal finances.
 - (4) Training in self-administration of prescription and nonprescription medication.
 - (5) Training in the use of the telephone and other public utilities.
 - (6) Development of the client's social, recreational and transportation abilities.
 - (7) Development of more appropriate behaviors for clients displaying inappropriate behaviors.
 - (8) Training in matters of personal appearance and hygiene.
- h. Administrative standards regarding responsibility for program direction, employment of staff, discharge of clients, client records, access to records, client rights regarding complaints and appeals, and living arrangements.

12 MCAR § 2.034

The provisions of the current Rule 34 establish standards for the operation of residential facilities and services for persons who are mentally retarded. The rule applies to any person, corporation, partnership, voluntary association or state hospital which provides services in a residential facility serving more than four mentally retarded people.

Rule 34 was originally promulgated in November, 1972, to implement Minn. Stat. § 252.28, which directs the Commissioner of Public Welfare to license programs and services for mentally retarded persons residing in community facilities and state hospitals.

The rule seeks to protect the human and civil rights of mentally retarded people in Minnesota by establishing a standard of normalized living and developmental services for residents of community and state hospital facilities. Such standards encompass the several functional levels of residents and any additional sensory, behavioral or physical disabilities that they may have.

Within this general framework, the rule establishes standards that require family-like primary living units that are small enough to ensure the development of meaningful interpersonal relationships among residents and between residents and staff. Primary living units may not have more than four persons to a bedroom, and no more than 16 residents per living unit. Such living units must have bedrooms, living room, bathroom, recreation room and connecting areas.

The rule establishes standards for staff in order to maintain a warm, friendly home-like environment that is conducive to optimal development of the residents. Standards further require an individual program plan for each resident which requires assessment of needs, development of goals, and the provision of specific developmental and remedial services.

The rule also requires that developmental and remedial services be provided outside of the living units, and, if possible, away from the facility. This is established as a standard to approximate normal living situations. The rule specifies standards for residents who also have physical or behavioral handicaps that need special treatment and services.

The rule prohibits corporal punishment and establishes that restraint and seclusion may be employed only to protect the resident from injuring himself or others.

In addition, the rule:

- 1) specifies the scope, purpose and statutory authority of the rule,
- 2) establishes procedures for licensing,
- 3) defines terms used in the rule,
- 4) establishes standards for the health, hygiene and grooming of residents,
- 5) provides standards for food service, medical care, admission and discharge of residents, and
- 6) administrative policies and practices.

The provisions of the proposed amendment to Rule 34 are intended to:

a. Eliminate health and safety standards from Rule 34. The Minnesota Department of Health's rule on supervised living facility standards (Chapter Twenty-three; MHD 391-401) is the applicable health and safety standard for all residential facilities licensed under Rule 34 (Minn. Stat. § 252.28), need not be duplicated in DPW rule.

b. Prescribe minimum overall staff-to-resident ratios. The staff ratios proposed are the same as those prescribed in Rule 34 facilities that are also certified as Intermediate Care Facilities for Mentally Retarded (ICF/MR). The proposed amendment to the rule establishes the same staffing ratios in the facilities that are not certified ICF/MR facilities.

c. Update the rule regarding the laws, rules, practices and definitions that have affected the rule since adoption of Rule 34 in November 1972.

The agency's authority to adopt proposed Rule 18 and amendments to Rule 34 are contained in Minn. Stat. §§ 252.28 and 245.781-245.814.

The agency estimates that there will be no cost to local public bodies in the State to implement these rules for the two years immediately following their 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 Kay Brown, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-2682. Additional copies will be available at the hearing. If you have any questions on the content, contact Ardo Wrobel, Department of Public Welfare, (612) 296-2160.

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

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(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, Minnesota 55155, telephone (612) 296-5615.

August 28, 1980

Arthur E. Noot
Commissioner of Public Welfare

Rule as Proposed (all new material)

12 MCAR § 2.018 Standards for the provision of semi-independent living service (SILS) to people who are mentally retarded.

A. Statutory authority.

1. Minn. Stat. § 252.28 (1978), and, as amended, (1980) Laws of 1980, ch. 612, provide for the determination of need, location, and program of public and private residential and day care facilities and services for mentally retarded children and adults. This statute further provides that the commissioner shall establish uniform rules, regulations, and program standards for each type of residential and day facility or service for more than four retarded persons.

2. Minn. Stat. §§ 245.781-245.814, Public Welfare Licensing Act, provide for the development and promulgation of rules and regulations for the operation and maintenance of day care and residential facilities and agencies, for granting, suspending, and revoking licenses and provisional licenses. It also provides that no individual, corporation, partnership, voluntary association, or other organization may operate a day care or residential facility or agency unless licensed to do so by the Commissioner.

B. Introduction.

1. Statement of purpose.

a. To establish standards for the provision of services to mentally retarded persons whose dependency requires services above the level of food and lodging, but who do not need 24-hour per day care or supervision, as provided in residences licensed under 12 MCAR § 2.034.

b. To assist clients in achieving their highest potential in self-sufficiency and independence in the least restrictive environment.

c. To insure that an individual program plan is developed with each client, and each client receives those services he needs to achieve or maintain independence.

d. To prescribe minimum program standards for semi-independent living services.

2. Applicability.

a. This rule applies to any person, organization or association engaged in the operation and provision of semi-independent living services (SILS) to adults who are or may be mentally retarded, as provided and defined in 12 MCAR § 2.185 A.4.h. and i. This rule sets forth the requirements necessary for any individual, organization, or association providing SILS to more than four mentally retarded adults to be licensed pursuant to Minn. Stat. § 252.28, and Minn. Stat. §§ 245.781-245.814, the Public Welfare Licensing Act.

b. Licensure under this rule does not require concurrent compliance with other Department of Public Welfare licensing rules or with Minnesota Health Department Supervised Living Facility Standards promulgated under Minn. Stat. § 144.56.

c. This rule does not govern the living arrangement of clients. Semi-independent living services licensed under this rule may be provided to persons living in a variety of ordinary community settings other than state hospitals and community residential facilities licensed under 12 MCAR § 2.034 and supervised living facility standards. Community living arrangements in which SILS are provided may include the following, but not be limited to: client's own home, foster home, apartment or rooming house.

3. Procedures for licensing.

a. Application for determination of need for SILS shall be made to the county board or its designee. Procedures for determination of need shall be as provided for in 12 MCAR § 2.185 D.

b. Upon notification that a need for the service has been found by the commissioner, application for license may be made to the commissioner.

c. Applicants shall submit such materials and information as may be required by the commissioner to make proper determination of the nature and adequacy of the services to be provided. Application for license shall not be considered complete until all required documents have been received by the commissioner.

d. Any SILS provider desiring to renew a license shall submit an application at least 30 days prior to expiration of the license. A renewal license may be issued for a period up to two years at the discretion of the commissioner.

e. The license or a formal letter of denial, including reasons for denial, shall be issued within 90 days after receipt of the completed application. The initial license issued to any new SILS provider shall be provisional for a designated period of time not to exceed one (1) year (Minn. Stat. § 245.783, subd. 3).

f. If, in the licensing procedure or enforcement of these standards, the commissioner finds that to require a provider to comply strictly with one or more provisions of this rule will result in undue hardship, and if the SILS provider is in substantial compliance with the standards of this rule, a provisional license not to exceed one year may be granted to allow the SILS provider reasonable time to conform with these standards.

g. When a specific requirement cannot be met or an innovative alternative is desirable, a waiver must be requested in writing. The waiver request shall state (a) the reason the current requirement cannot be met, (b) the proposed alternative, and (c) the date the alternative or requirement shall be met not to exceed one year. No waiver shall be granted that would affect the health, safety or rights of clients.

4. Technical provisions.

a. Failure to comply with these standards or applicable state law shall be cause for denial, revocation or suspension of license.

b. Denial, revocation or suspension of license may be appealed pursuant to Minn. Stat. ch. 15, the Minnesota Administrative Procedures Act.

c. The provisions of this rule shall be severable. If any clause, sentence or provision is declared illegal or of no effect, the validity of the remainder of this rule and its applicability shall not be affected.

d. Any provision of this rule which is inconsistent with any state or federal law is superseded by that law.

C. Definitions.

1. "Applicant." Any adult referred to the SILS provider for services. The term may also refer to an applicant for licensure under this rule.

2. "Client." Adults who need more than room and board, but less than 24-hour per day program of service and supervision, receiving services as provided in this rule.

3. "Commissioner." Commissioner of Public Welfare or designee.

4. "County board." That body of duly elected officials responsible for the governance of its county under the authority of Minn. Stat. §§ 275.02-275.55. When a human service board has been established under Minn. Stat. §§ 402.02-402.10, it shall be considered to be the county board, for purposes of this rule.

5. "Individual program plan (IPP)." A detailed plan for each client which sets forth both short-term and long-term goals with detailed methods of achieving movement toward the individual service plan of the local social service agency.

6. "Individual service plan." An analysis by the local social service agency of services needed by the client, including identification of the type of residential placement, if needed, and the general type of program required by the client to meet the assessed needs within a specified period of time.

7. "Interdisciplinary team." A team consisting, at a minimum, of the client, the client's legal guardian (if any), local social service agency representative and the program director. Other persons relevant to a particular client's needs may be included. The interdisciplinary team is responsible for the development and evaluation of the client's individual program plan and determination of need for semi-independent living services.

8. "Legal guardian." A person(s) appointed under Minn. Stat. ch. 252A or ch. 525 as guardian or conservator of the person (or estate or both) of anyone who has been legally judged to be incompetent to manage his or her person or estate. The Commissioner of Public Welfare may be appointed as guardian or conservator.

9. "Local social service agency (LSSA)." A local agency designated and authorized by the county board of human service board, to be responsible for providing social services. Social services include the case management and referral of applicants for semi-independent living services.

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10. "May." Indicates that the provisions or practices stated in this rule are permitted.

11. "Mentally retarded person." A mentally retarded person refers to any person who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and manifested during the developmental period.

12. "Normalization." To provide the client with a normal existence. If this is not possible, to provide the person with the alternative which is least restrictive. This includes making available to the client patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

13. "Provider." An individual, organization or association which exercises general direction over the policies and provision of SILS, and is responsible for the welfare of individuals being served.

14. "Semi-independent living services (SILS)." A system of services that includes training, counseling, instruction, supervision and assistance provided in accordance with the client's individual program plan. Services may include assistance in budgeting, meal preparation, shopping, personal appearance, counseling and related social support services needed to maintain and improve the client's functioning. Such services shall not extend to clients needing 24-hour per day supervision and services. Persons needing a 24-hour per day program of supervision and services shall not be accepted or retained in a semi-independent living service.

15. "Shall." Indicates that the requirement, provision, or practice stated in this rule is mandatory.

D. Program and service standards.

1. Admission. The provider shall maintain written policies and procedures, which shall be available to the local social service agency and to the general public, covering the following:

- a. Pre-admission and admission procedures.
- b. Pre-requisite client skills for admission.
- c. Admission criteria including age, type and degree of handicap.
- d. Nondiscriminatory practices with regard to race, creed, sex or national origin.
- e. Description of services.
- f. Discharge procedures.
- g. Cost rates for services and arrangements available for payment.
- h. The requirement that each client must have a current medical examination.

2. Comprehensive assessments.

a. Behavioral assessments.

(1) A standardized behavioral assessment, conducted by SILS staff at least annually, shall objectively describe the behavioral status of the client. The assessment instrument must be acceptable to the LSSA.

(2) Upon admission, the behavioral assessment shall be completed prior to the development of the individual program plan. This assessment may use data from any appropriate assessment conducted within the previous 12 months.

b. Physical assessment.

(1) Upon admission, there shall be a medical examination of the client conducted by a licensed physician within one year preceding admission, or one month following admission which includes re-evaluation date or schedule recommended by the physician.

(2) There shall be a record of dental examination in the client's record, and re-examination schedule recommended by the dentist.

c. Additional assessments determined to be needed by the inter-disciplinary team shall be conducted or arranged by the provider.

3. Individual program plan (IPP). The provider shall have a letter of referral from the local social service agency, including a copy of the individual service plan, for each client.

The interdisciplinary team shall evaluate each client's needs, and identify those needs having priority, within 30 days of admission. An annual individual program plan (IPP) for each client shall thereafter be established and evaluated to meet client needs.

a. The IPP shall be based on needs identified in the behavioral assessment, and on the individual service plan of the local social service agency, which shall include at least the following areas:

- (1) Training in meal planning, meal preparation and shopping.
- (2) Training in first-aid skills, responding to emergencies and symptoms of illness.
- (3) Training in management of personal finances.

- (4) Training in self-administration of prescription and nonprescription medication.
 - (5) Training in the use of the telephone and other public utilities.
 - (6) Development of the client's social, recreational and transportation abilities.
 - (7) Specific training plan concerning the development of more appropriate behaviors for clients displaying inappropriate behaviors.
 - (8) Training in matters of personal appearance and hygiene.
- b. The IPP shall establish program goals and behavioral objectives stated in measurable terms which specify the time limit for achieving each behavioral objective. The IPP shall also identify the person(s) responsible for implementation of the IPP.
 - c. The IPP shall describe the service to be provided, and how they will be obtained.
 - d. The annual IPP shall be reviewed at least quarterly by staff. The reviews shall include written report of:
 - (1) Client's progress toward goals and behavioral objectives.
 - (2) Need for continued services and any recommendation concerning alternative services and/or living arrangements.
 - (3) Recommended change in guardianship status (if any).
- E. Administrative standards.
- 1. The provider shall have a written statement of the SILS program philosophy, purpose and goals which:
 - a. Is consistent with the principles of normalization.
 - b. Includes expected client outcomes.
 - c. Is available to the public.
 - d. Is reviewed by the provider at least annually and revised as needed.
 - 2. The SILS provider shall be responsible for program direction for all clients, which shall include the provision, continuation and coordination of services in accordance with the client's IPP.
 - 3. The provider may employ one or more program directors to assist in program direction.
 - 4. The provider may employ other staff to carry out the programs for clients, providing that such staff are under the supervision of a qualified program director.
 - a. The program director shall have at least a bachelor's degree in a field related to mental retardation services, and at least one year experience in working with mentally retarded persons. Five years' experience in working full-time with clients under professional supervision in a developmental program for mentally retarded persons, may be substituted for a bachelor's degree if in the judgment of the commissioner such experiences result in ability to perform the duties of the program director.
 - b. The program director shall insure that all clients know how to contact a staff person for assistance in an emergency.
 - c. The program director shall insure that the SILS program is in conformance with applicable civil rights and affirmative action laws.
 - 5. Discharge.
 - a. Except in an emergency, planning for discharge shall be made only with prior involvement of the client, LSSA representative and guardian (if any).
 - b. Planning for termination of services by the provider shall include referral to any follow-up services the LSSA considers necessary.
 - c. The provider shall provide counseling about the advantages and disadvantages of termination of services to the client and/or legal guardian, if requested by the client or the LSSA.
 - d. The provider shall prepare a discharge summary which includes:
 - (1) A summary of findings, events, and progress during the period of services to the client.
 - (2) Written evidence of the reason for discharge.

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(3) If discharged to another service, specific recommendations for future programming shall be included in the discharge summary and transmitted to the LSSA of responsibility. A copy may be sent to the receiving service provider.

e. In the event of death of a client:

- (1) The provider shall notify the LSSA and guardian or responsible relative.
- (2) The date, time and circumstances of the client's death shall be recorded in the client's record.
- (3) If the client dies unattended by a physician, the coroner or medical examiner shall be notified.
- (4) Records of the deceased client shall be transmitted to the local social service agency.

6. Client records.

a. The SILS provider shall maintain a record for each client, which contains the following information:

- (1) Client's name, address and telephone number, birth date, and date of admission to and discharge from SILS.
- (2) Name, address and phone number of legal guardian (if any) and person to contact in an emergency.
- (3) Record of current medication prescription and adverse reactions to drugs (if any).
- (4) Special diet needs and food allergies (if any).
- (5) Name and address of the client's LSSA case manager.
- (6) Name and address of the client's physician or clinic and dentist.
- (7) The results of behavioral and physical assessments conducted within the past twelve months and the LSSA's individual service plan.
- (8) The client's IPP.
- (9) Any physician's orders within the past two years, including special instructions for self-medication, care and treatment.
- (10) Summary of professional service delivery during the past year, including specialized therapy, and the client's progress in therapy.
- (11) Summary of client's progress or lack of progress in previous programs, job skills and employment history.
- (12) Client's current place of employment or day program.
- (13) A complete record of the client's funds if such funds are managed by the SILS provider.

b. Access to client records.

(1) All information contained in the client's record shall be handled in a manner consistent with the Government Data Practices Act, Minn. Stat. §§ 15.162-15.174. The client shall have access to his record upon request, with accommodations for interpretation that meets his needs.

(2) The provider shall be responsible for the safekeeping of client records, and for securing them against loss or use by unauthorized persons.

(3) The client's record shall be removed from the provider's jurisdiction and custody only in accordance with a court order, subpoena, or statute.

(4) The provider shall have written policies governing access, duplication and dissemination of information.

(5) Written consent of the client or guardian (if any) shall be required for the release of information concerning the client to persons not otherwise authorized to receive it. The client's record shall specify the information requested to be released, purpose for which the information is released and expiration date for release of information.

(6) All client records shall be maintained by the provider following discharge of the client for at least two years.

7. Client rights.

a. The provider shall have written policies and procedures concerning the exercise and protection of client human and civil rights, which shall be available to LSSA, clients, guardians.

b. The provider shall have complaint procedures which shall include:

- (1) The name and telephone number of persons who may be contacted in order to register a complaint.
- (2) The time schedule established for registration of complaints.
- (3) The time limits for decisions to be made by the provider.

- c. The provider shall inform clients of their right to appeal the suspension, reduction or termination of services to the commissioner pursuant to Minn. Stat. § 256.045 as a social service appeal.
 - d. Upon request of the client, the provider shall instruct and assist clients in how to obtain legal assistance.
 - e. The provider shall have a written statement of policies and procedures that protect the financial interests of the clients.
 - f. If the provider manages the client's money, the following shall be recorded:
 - (1) Written permission from the client or his legal guardian.
 - (2) Reasons the provider is to manage the client's money.
 - (3) A complete record of the use of the client's money and reconciliation of the account.
 - g. Clients who work for the SILS provider shall be considered employees of the provider with all the rights and privileges of an employee.
8. The provider shall have a current written description of its organization, which includes the major operating services and person(s) having administrative responsibility, available to the local social service agency.
9. The provider shall have written personnel policies available to staff. The policies shall include:
- a. Application and hiring procedures.
 - b. Provisions for non-discrimination.
 - c. Description of probationary period, if any, and procedures for annual performance evaluation.
 - d. Procedures for suspension and dismissal.
 - e. Employee benefits.
 - f. Grievances and appeal procedures.
 - g. Prohibition of mistreatment, neglect, or abuse of clients, and mandatory reporting of any mistreatment, neglect or abuse.
 - h. Plans for staff orientation, training.
 - i. Prohibition of the use of any aversive or deprivation procedures.
10. The provider shall have a written plan and procedure in case of fire, severe illness, accident, severe weather and missing persons.
- a. Orientation in emergency procedures shall be recorded for each client and employee within one month of admission or employment.
 - b. This plan shall be reviewed quarterly with clients.
11. The provider shall maintain records of financial transactions and agreements with the referring LSSA.
12. The provider shall have a written plan for establishing service rates, which shall include at least 30-day advanced notice of change in rates.
13. Living arrangements.
- a. When living arrangements are provided by the SILS provider as a part of the SILS program, the living arrangements are not subject to this rule, and therefore need not be licensed facilities. Living arrangements are subject to applicable health, safety, sanitation and zoning codes. When living arrangements are provided as a part of the SILS program plan, the provider shall assure the local social service agency that the living arrangements are in conformance with the client's individual program plan, and applicable health, safety, sanitation and zoning codes. Living arrangements so provided shall include provisions for the preparation of meals, sleeping, bathing, mail, and access to telephone and transportation.
 - b. When living arrangements are not provided as a part of the SILS program, the provider may assist the local social service agency and client as agreed upon in:
 - (1) Choosing and arranging for an appropriate living environment.
 - (2) Developing client skills in choosing and making living arrangements.
 - (3) Developing client skills in shopping, seeking employment, paying rent and other bills, and in the use of public transportation and other community service.

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Amendments as Proposed

12 MCAR § 2.034 Standards for the operation of residential facilities programs and services for persons who are mentally retarded.

A. General provisions.

1. Scope.

a. ~~These regulations~~ This rule governs the operation of any facility or service engaged in, or seeking to engage in, the provision of residential or domiciliary service for mentally retarded individuals, and ~~it they~~ sets forth the requirements necessary for such a residence to be licensed.

b. Cost of boarding care outside of home or state institution is reimbursable by the state for care of children under 18 years of age in facilities licensed by the Department of Public Welfare. All participating facilities serving more than four mentally retarded children must be licensed under these regulations prior to participation.

c. Federal programs under the Social Security Act, as amended, require certification of participating facilities. All participating facilities serving more than four mentally retarded persons must be licensed under these regulations prior to certification.

2. Purpose.

a. The purpose of this rule is to establish the minimum standards for the operation of residential programs and services for mentally retarded persons residing in Licensed Supervised Living Facilities.

b. The purpose of ~~the licensing law~~ Minn. Stat. § 252.28 and ~~these regulations~~ this rule is to establish and protect the human right of mentally retarded persons to a normal living situation, through the development and enforcement of minimum requirements for the operation of residential facilities and services programs. Moreover, ~~these regulations~~ this rule serves an educational purpose in providing guidelines for quality service.

3. Statutory basis.

a. Minn. Stat. § 256.01 charges the Commissioner of Public Welfare with general responsibility for service to mentally retarded persons.

b. Minn. Stat. § 245.072 creates a mental retardation division in the Department of Public Welfare to "coordinate those laws administered and enforced by the Commissioner of Public Welfare relating to mental retardation and mental deficiency which the Commissioner may assign to the division."

c. Minn. Stat. § 252.28 charges the Commissioner of Public Welfare with the responsibility for licensing of residential facilities and services for mentally retarded persons.

4. Procedure for licensing.

a. Application shall be made to the Commissioner of Public Welfare, who may determine the need, location, and program of facilities and services seeking to be licensed or relicensed under these regulations. In making this determination, the commissioner shall be guided by ~~the this rules in this and subsequent sections and by the state advisory board created and established to assist him in carrying out the provisions of this act.~~ other state agency rules promulgated under Minn. Stat. § 252.28, subd. 1., including 12 MCAR § 2.185.

b. Applicants shall submit such materials and information as may be required to make a proper determination of the nature and adequacy of the ~~facility or service~~ residential program to be provided.

c. Applicants must have, or have applied for, a Supervised Living Facility license from the State Department of Health, MHD 391-401.

d. ~~e-~~ A ~~facility or service~~ residential program desiring to renew its license shall submit an application at least 45 days prior to expiration of the license. ~~All licenses shall expire one year after date of issuance unless sooner revoked.~~ A renewal license may be issued for a period of up to two years at the discretion of the commissioner.

e. ~~d-~~ If, in the licensing procedure or enforcement of these rules, the commissioner finds that to require a ~~facility or service~~ residential program to comply strictly with one or more provisions of these rules will result in undue hardship, and if the ~~facility or service~~ residential program is in substantial compliance with the intent and purpose of these rules, a provisional license may be granted to allow reasonable time to conform to these rules.

f. A residential program may request in writing a waiver of a specific provision of the rule. The request for a waiver must cite the provision of the rule in question, reasons for requesting the waiver, the period of time not to exceed one year the licensee wishes to have the provision waived and the equivalent measures planned for assuring that programmatic needs of residents are met. Waivers granted by the commissioner shall specify in writing the time limitation and required equivalent measures to be taken to assure that programmatic needs are met. Waivers denied by the commissioner shall specify in writing the reasons for the denial. No waiver shall be granted that would adversely affect the health, safety or rights of residents.

5. Refusal or revocation of license.

- a. Failure to comply with these regulations or applicable state laws shall be cause for refusal or revocation of license.
- b. Failure to be licensed as a Supervised Living Facility by the Minnesota Health Department (Chapter Twenty Three: MHD 391-401, or its successor) shall be cause for refusal or revocation of license.
- ~~b. The right of fair hearing and appeal shall be honored in accordance with Minnesota law.~~
- c. Revocation, suspension or denial of a license may be appealed pursuant to Minn. Stat. ch. 15.

6. Definitions.

- a. "Ambulatory." ~~Able~~ The ability to walk independently and at least negotiate any barriers, such as ramps, stairs, corridors, doors, etc., without assistance as may be necessary to get in and out of the facility.
- b. "Executive Officer." The individual appointed by the governing body (see below) of a facility residential program to act in its behalf in the overall management of the facility. Job titles may include, but are not limited to, superintendent, director and administrator.
- ~~c. Facility—A general term used in this Rule to refer to a residential or domiciliary service that has a physical plant and an administrative organization and/or structure for the purpose of providing room, board, training, and supervision for more than four mentally retarded individuals on a 24-hour basis. These facilities include, but are not limited to, group homes, child caring institutions, board and lodging homes, boarding care homes, nursing homes, state hospitals, institutions, and regional centers. Facility consists of one or more living units (see below).~~
- ~~c. d.~~ "Governing body." The policy-making authority, whether an individual or a group, that exercises general direction over the affairs of a facility residential program and establishes policies about its operation and the welfare of the individuals it serves. The governing body is responsible for the operation of the residential program and for compliance with this rule.
- ~~d. e.~~ "Interdisciplinary team." A general term used in this ~~Rule~~ rule to refer to persons representing professions, disciplines, or service areas as are relevant in each particular case, and including parents and the referring agency (see below). The interdisciplinary team shall evaluate the resident's needs, plan an individualized program to meet identified needs, and periodically review the resident's response to his program.
- ~~e. f.~~ "Legal incompetence." The legal determination that a resident is unable to exercise his full civil and legal rights and that a guardian (see parent below) is required.
- ~~f. g.~~ "Living unit." A resident-living unit that houses the primary living group (see below) and provides access to bedroom, living room, recreation/activity room, dining room, kitchen, and bathroom.
- ~~g. h.~~ "Living unit staff." Individuals who conduct the resident-living program; resident-living staff.
- ~~h. i.~~ "May." Indicates that the provisions or practices stated in this ~~Rule~~ rule are permitted.
- ~~i. j.~~ "Mental retardation." Refers to persons who have been diagnosed as having significantly subaverage general intellectual functioning that originates during the developmental period and is associated existing concurrently with impairment demonstrated deficits in adaptive behavior, and manifest during the developmental period.
- ~~j. k.~~ "Mobile." ~~Able~~ Ability to move independently from place to place with the use of devices such as walkers, crutches, wheelchairs, wheeled platforms, etc.
- ~~k. l.~~ "Multiple-handicapped." In addition to mental retardation, an orthopedic, incoordinative, or sensory disability that culminates in significant reduction of mobility, flexibility, coordination, or perception and that interferes with an individual's ability to function independently.
- ~~l. m.~~ "Nonambulatory." ~~Unable~~ Inability to walk independently. ~~or without assistance.~~
- ~~m. n.~~ "Nonmobile." ~~Unable~~ Inability to move independently from place to place.
- ~~n. o.~~ "Normalization principle." The principle of letting the persons who are mentally retarded obtain an existence as close to the normal as possible, making available to them patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.
- ~~o. p.~~ "Parent." The general term used in this ~~Rule~~ rule to refer to the natural parent, or other person who fills the legal or social role of the natural parent (i.e., represents the rights and interests of the mentally retarded persons as if they were his own). May include an advocate as one who acts on behalf of a resident to obtain needed services and the exercise of his full human and legal rights;

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legal guardian as one appointed by a court; guardian of the person as one appointed to see that the resident has proper care and protective supervision in keeping with his needs; guardian of the property as one appointed to see that the financial affairs of the resident are handled in his best interests; guardian ad litem as one appointed to represent a resident in a particular legal proceeding; public guardian as a public official empowered to accept court appointment as a legal guardian (i.e., the Commissioner of Public Welfare or his agent); or testamentary guardian as one designated by the last will and testament of a natural guardian.

p. ~~q~~. "Primary-living group." That group characterized by face-to-face relations that are personal, spontaneous, and typically (although not necessarily) long lasting. Members of a primary group are drawn together by the intrinsic value of the relations themselves rather than by a commitment to an explicit goal. The family is an example of a primary group.

q. ~~r~~. "Service Program." The general term used in this ~~Rule~~ rule to refer to all people, events, and environments that lead to a purposeful outcome (goal or objective) for the individual resident. These services include, but are not limited to, training and maintenance of the individual; the design, furnishing, and use of space; staff and staffing patterns; and professional and volunteer services.

r. ~~s~~. "Resident." The general term used in this ~~Rule~~ rule to refer to an individual who receives service ~~from~~ in a residential facility program (see below), whether or not such individual is actually in residence in the facility. The term thus includes individuals who are being considered for residence in a facility and individuals who were formerly in residence in a facility. (A residential facility program, on the other hand, may use the term "resident" to refer only to those individuals actually in residence.)

s. ~~t~~. "Referring agency." The general term used in this ~~Rule~~ rule to refer to the local social service agency responsible for establishment and implementation of case-work management plans for individuals and particular families with mental retardation problems and for the provision of specific financial or case-work services to these individuals and families. In Minnesota, the county welfare board is created by law and charged with administrative responsibility for these duties. Responsibility for certain of these duties is may be delegated to the county welfare director local social service agency. (see Administrative Manual I-7100 and Social Service Manual II-8251 and 8255.)

t. "Resident-living." Pertaining to residential or domiciliary services.

~~e~~. Facility-

u. "Residential program." A general term used in this ~~Rule~~ rule to refer to a residential or domiciliary service that has a physical plant and the program of services to residents of a Supervised Living Facility which has an administrative organization and/or structure for the purpose of providing care, food, lodging, room, board, training, and supervision, habilitation and treatment as needed for more than four mentally retarded individuals on a 24-hour per day basis. These facilities include Residential programs may also be known as, but are not limited to group homes, child-caring institutions, board and lodging homes, boarding-care homes, nursing homes, state hospitals, public institutions, and regional centers. Facility consists of one or more living units (see above).

v. ~~w~~. "Restraint." Any physical device or chemical substance that limits the free and normal movement of body or limbs. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered restraints.

w. ~~x~~. "Rhythm of life." Relating to the normalization principle (see above), under which making available to the mentally retarded persons patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society means providing a normal rhythm of the day (in relation to arising, getting dressed, participating in play and work activities, eating meals, retiring, etc.) normal rhythm of the week (differentiation of daily activities and schedules), and normal rhythm of the year (observing holidays, days with personal significance, vacations, etc.).

x. ~~w~~. "Seclusion." Involuntary removal from social contact with others, in a separate room.

y. ~~x~~. "Shall." Indicates that the requirement, provision, or practice stated in this ~~Rule~~ rule is mandatory.

z. ~~y~~. "Supervised Living Facility." A general term used in this rule to refer to the facility in which the health, treatment, comfort, safety and well-being of persons is provided. Supervised Living Facilities are licensed by Minnesota Health Department, in accordance with Minn. Stat. § 144.56 (1971).

aa. ~~z~~. "Time-out." Time out from positive reinforcement. A behavior modification procedure in which, contingent upon the emission of undesired behavior, the resident is removed from the situation in which positive reinforcement is available.

B. The resident-living unit.

1. Grouping and organization of living units.

a. The resident-living unit (subsequently called living unit) shall be small enough to ensure the development of meaningful interpersonal relationships among residents and between residents and staff.

(1) The living unit is that unit which houses the primary living group. It may be a group home, foster home, ward, wing, floor, etc.

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(2) The living unit shall contain bedroom, living room, bathroom, recreation room, and connecting areas. It may contain dining room and kitchen. Facilities with more than four mentally retarded persons in residence on ~~the effective date of this Rule~~ November 17, 1972 shall be deemed to be in substantial compliance with this provision, except that the living unit shall contain bedroom and living room areas.

(3) The living unit shall be physically, socially and functionally differentiated from areas for developmental and remedial services (see Part ~~III~~ C of this ~~Rule~~ rule) and shall simulate the arrangements of a home in order to encourage a personalized atmosphere for residents.

(4) The size of the living unit shall be based upon the needs of the residents, but the living unit shall provide for not more than 16 residents.

b. The living unit or complex of such units shall house both male and female residents to the extent that this conforms to the prevailing cultural norms and unless contraindicated by program plan. Such living arrangements shall include provision for privacy and for appropriate separation of male and female residents.

c. The living unit shall not be a self-contained program unit unless contraindicated by program plans of the particular residents being served, and living unit activities shall be coordinated with developmental and remedial services in which residents engage outside the living unit.

d. Residents shall be allowed free use of all space within the living unit, with due regard for privacy and personal possessions.

e. Each resident shall have access to a quiet, private area where he can withdraw from the group.

f. Outdoor active play or recreation areas shall be readily accessible to all living units.

g. Interior and exterior doors shall not be locked except to protect the resident from clear and present danger, or in conjunction with a behavior modification program (see Part B.-3.i. of this ~~Rule~~ rule). In no case shall locked doors be a substitute for program or staff interaction with residents.

2. Physical plant.

a. Design.

(1) The living unit shall be physically self-contained. Walls defining the living unit shall extend from floor to ceiling.

(2) The interior design of the living unit shall simulate the functional arrangements of a home to encourage a personalized atmosphere for a small group of residents unless it has been demonstrated that another arrangement is more effective in maximizing the development of specific residents being served.

(a) Space shall be arranged to permit residents to participate in different kinds of activities, both in groups and singly.

(b) Space shall be arranged to minimize noise and permit communication at normal conversation levels.

(c) Walls defining each room in the living unit shall extend from floor to ceiling.

(3) Bedrooms shall: accommodate from one to four residents.

~~(a) Be on or above grade level.~~

~~(b) Be outside rooms.~~

~~(c) Accommodate from one to four residents.~~

~~(d) Provide at least 60 square feet per resident, exclusive of closet space.~~

(4) Doors to bedrooms:

(a) Shall not have vision panels.

(b) Shall not be capable of being locked, except where residents may lock their own bedroom doors, as consistent with their program.

(5) There shall be provision for residents to mount pictures on bedroom walls.

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(6) Space outside the bedroom shall be provided for equipment for daily out-of-bed activity for all residents not yet mobile, except those who have a short-term illness or those for whom out-of-bed activity is a threat to life.

(7) Toilet areas shall be located in such places as to facilitate training toward maximum self-help by residents.

(a) Water closets, showers, bathtubs, and lavatories shall approximate normal patterns found in homes, unless specifically contraindicated by program needs.

(b) Toilets, bathtubs, and showers shall provide for individual privacy unless specifically contraindicated by program needs.

~~(c) There shall be at least one water closet of appropriate size for each six residents.~~

~~(d) There shall be at least one lavatory of appropriate size for each six residents.~~

~~(e) There shall be at least one tub or shower of appropriate size for each eight residents.~~

b. Furnishings and equipment.

(1) Furnishings shall be appropriate to the physiological, emotional and developmental needs of each resident.

~~(2) Each resident shall be provided with:~~

~~(a) A separate bed of proper size and height.~~

~~(b) A clean, comfortable mattress.~~

~~(c) Bedding appropriate to the climate.~~

~~(d) A place of his own for personal belongings.~~

~~(e) Individual furniture, such as a chest of drawers, table or desk, and an individual closet with clothes racks and shelves.~~

~~(f) A mirror; tilted mirrors shall be available to mobile nonambulatory residents.~~

~~(g) Private storage space for clothing in the bedroom area, and accessible to all, including mobile nonambulatory residents.~~

~~(h) Individual racks or other drying space for washcloths and towels.~~

(2) ~~(3)~~ Dining areas shall:

(a) Be furnished to stimulate maximum self-development, social interaction, comfort, and pleasure.

(b) Promote a pleasant and home-like environment and be attractively furnished and decorated and of good acoustical quality.

(c) Be equipped with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each resident.

(3) ~~(4)~~ Each resident shall have access to drinking water in the living units.

(4) ~~(5)~~ Equipment shall be provided for toilet training, as appropriate, including equipment for use by the multiple-handicapped.

c. Safety and sanitation.

~~(1) There shall be written plan and procedures, which are clearly communicated to, and periodically reviewed with, staff and residents, for meeting emergencies such as fire, serious illness, severe weather, and missing persons.~~

~~(a) The plan and procedures shall include, but not be limited to:~~

~~(i) Plans for assignment of staff and residents to specific tasks and responsibilities.~~

~~(ii) Instructions relating to the use of alarm systems and signals.~~

~~(iii) Information on methods of fire containment.~~

~~(iv) Systems for notification of appropriate persons.~~

~~(v) Information on the location of fire-fighting equipment.~~

~~(vi) Specification of evacuation routes and procedures.~~

(1) ~~(b)~~ Residents shall receive appropriate instruction in safety precautions and procedures.

(2) First-aid equipment, approved by a physician, shall be maintained on the premises in a readily available location, and staff shall be instructed in its use.

- (3) Applicable requirements of the State Fire Marshal or his agent shall be met.
- (4) ~~Applicable requirements of the State Department of Health or its agent shall be met.~~
- (5) ~~Applicable requirements of state or local building code shall be met.~~

3. Staff-resident relationships and activities.

a. The objective in staffing each living unit shall be to maintain reasonable stability in the assignment of staff, thereby permitting the development of a consistent interpersonal relationship between each resident and one or two staff members. Provisions shall be made to ensure that the efforts of the staff are not diverted from these responsibilities by excessive housekeeping and clerical duties, or other nonresident-involved activities.

b. The primary responsibility of the living-unit staff shall be to devote their attention to the care and development of the residents.

(1) Living-unit staff shall be responsible for the development and maintenance of a warm, family, or home-like environment that is conducive to the achievement of optimal development by the resident.

(2) Living-unit staff shall train residents in activities of daily living and in the development of self-help and social skills.

c. Living-unit staff shall participate in assessment, program planning, and evaluation activities relative to the development of the resident (see ~~Part III C.~~ of this ~~Rule~~ rule). A program plan for each resident shall be available to staff in each living unit.

d. The rhythm of life in the living unit shall resemble the cultural norm for the residents' nonretarded age peers unless a departure from this rhythm is justified on the basis of maximizing the residents' human qualities.

(1) Residents shall be assigned responsibilities in the living units commensurate with their interests, abilities, and program plans, in order to enhance feelings of self-respect and to develop skills of independent living.

(2) Multiple-handicapped and nonambulatory residents shall:

- (a) Spend a major portion of their waking day out of bed.
- (b) Spend a major portion of their waking day out of their bedroom areas.
- (c) Have planned daily activity and exercise periods.
- (d) Be rendered mobile by various methods and devices.

(3) All residents shall have planned periods out-of-doors on a year-round basis.

(4) Except as limited by program plan, residents shall be instructed in how to use, and shall be given opportunity for freedom of movement.

(5) Birthdays and special events should be individually observed.

e. Residents' views and opinions on matters concerning them shall be elicited and given consideration in defining the processes and structures that affect them.

f. Residents shall be instructed in the free and unsupervised use of communication processes. Except as denied individual residents by program plan, this may include:

- (1) Having access to telephones for incoming and local outgoing calls.
- (2) Having access to pay telephone, or the equivalent, for outgoing long distance calls.
- (3) Opening their own mail and packages and generally doing so without direct surveillance.
- (4) Not having their mail read by staff, unless requested by the resident.

g. Residents shall be permitted personal possessions, such as toys, books, pictures, games, radios, arts and crafts material, religious articles, toiletries, jewelry, and letters.

h. Regulations shall permit normal possession and use of money by residents.

- (1) Residents shall be trained in the use of money.
- (2) Allowance or opportunities to earn money shall be available to residents.

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i. There shall be provisions for prompt recognition of behavior problems, as well as appropriate management of behavior in the living unit. These provisions shall be subject to review by a research, review, and/or human rights committee (see ~~Part V.B.~~ E.2.d.(2) of this ~~Rule~~ rule).

- (1) There shall be a written statement of policies and procedures for the control and discipline of residents that:
 - (a) Is directed to the goal of maximizing the growth and development of the residents.
 - (b) Is available in each living unit.
 - (c) Is available to parents.
 - (d) Provides for resident participation, as appropriate, in the formulation of such policies and procedures.
- (2) Corporal punishment shall not be permitted.
- (3) Residents shall not discipline other residents, except as part of an organized self-government program that is conducted in accordance with written policy.
- (4) ~~Except in conjunction with a behavior modification program, physical~~ Physical restraint shall be employed only when absolutely necessary to protect the resident from injury to himself or to others; and restraint and seclusion shall not be employed as punishment, for the convenience of staff, or as a substitute for program.
 - (a) The facility shall have a written policy that defines the uses of restraint, the staff members who may authorize its use, and a mechanism for monitoring and controlling its use.
 - (b) This policy shall be available in each living unit.
 - (c) Totally enclosed cribs and barred enclosures shall be considered restraints.
- (5) Each use of restraint and seclusion shall be recorded in the resident's record. This record shall include:
 - (a) A description of the precipitating behavior.
 - (b) Expected behavioral outcome.
 - (c) Actual behavioral outcome.
- (6) Rooms used for seclusion:
 - (a) Shall be furnished with a bed and bedding, a chair, a commode, and a lavatory.
 - (b) Shall afford proper access to drinking water.
- (7) Chemical restraint shall not be used excessively, as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with a resident's program. Each use of a behavior-controlling drug shall be recorded in the resident's record. This record shall include:
 - (a) A description of the behavior to be modified.
 - (b) Expected behavioral outcome.
 - (c) Possible side or secondary effects.
 - (d) Date for review or termination.
 - (e) Actual behavioral outcome.
- (8) Behavior modification programs involving the use of time-out devices or the use of noxious or aversive stimuli shall be conducted only with the consent of the affected resident's parent and shall be described in written plans that are kept on file in the facility.

4. Health, hygiene, and grooming.

a. General.

- (1) Procedures shall be established for:
 - (a) Monthly weighing of residents, with greater frequency for those with special needs.
 - (b) Quarterly measurement of height, until the age of maximum growth.
 - (c) Maintenance of weight and height records. Every effort shall be made to ensure that residents maintain normal weights.
- (2) ~~Policies and procedures for the care of residents with infections and contagious diseases shall conform to state and local health department regulations.~~

~~(3) Orders prescribing bed rest shall be self-terminating in three days unless renewed by a physician's order.~~

(2) ~~(4)~~ Provisions shall be made to furnish and maintain in good repair, and to train residents in the use of, dentures, eyeglasses, hearing aids, braces, etc., prescribed by appropriate specialists.

b. Residents shall be trained to exercise maximum independence in health, hygiene, and grooming practices, including bathing, brushing teeth, shampooing, combing and brushing hair, shaving, and caring for toenails and fingernails.

(1) Each resident shall be assisted in learning normal grooming practices with individual toilet articles that are appropriately available to that resident.

(2) Living unit staff shall be instructed in each resident's daily oral care program and shall be responsible to see that it is carried out.

(a) Whenever possible, the resident shall be instructed in, and learn to carry out, his own program of daily oral care.

(b) Dental care practices should encourage the use of newer equipment, such as electric toothbrushes and water picks, as described.

(c) Individual brushes shall be properly marked, used, and stored.

(d) Teeth shall be brushed daily with dentifrice.

(3) Hair cutting and styling, in an individualized manner consistent with current style, shall be accessible to all residents.

(4) For residents who require such assistance, cutting of toenails and fingernails by trained personnel shall be scheduled at regular intervals.

(5) Each resident shall have a shower or tub bath as needed.

(a) Residents' bathing shall be conducted at the most independent level possible.

(b) Residents' bathing shall be conducted with due regard for privacy.

(c) Individual washcloths and towels shall be used.

(6) Female residents shall be helped to attain maximum independence in caring for menstrual needs. Menstrual supplies shall be of the same quality and diversity available to all women.

c. Residents shall be instructed in the use of drinking units.

(1) Those residents who cannot use the unit shall be given the proper daily amount of fluid at appropriate intervals adequate to prevent dehydration.

(2) A drinking unit shall be available to, and usable by, mobile nonambulatory residents, as needed.

(3) Special cups and noncollapsible straws shall be available when needed by the multiple-handicapped.

(4) If the drinking unit employs cups, only single-use, disposable types shall be used.

d. Every resident who does not eliminate appropriately and independently shall be engaged in a toilet training program.

~~(4)~~ Residents who are incontinent shall be immediately bathed or cleansed, upon voiding or soiling unless specifically contraindicated by a plan for toilet training; and all soiled clothing shall be changed.

~~(2) Persons shall wash their hands after handling an incontinent resident.~~

5. Clothing.

a. Each resident shall have an adequate allowance of neat, clean, fashionable, and seasonable clothing.

(1) Each resident shall have his own clothing that is, when necessary, inconspicuously marked with his name, and he shall use this clothing.

(2) Such clothing shall make it possible for residents to go out of doors in inclement weather and to make a normal appearance in the community.

(3) Nonambulatory residents shall be dressed daily in their own clothing, including shoes, unless contraindicated by program plan.

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- (4) Washable clothing shall be designed for multiple-handicapped residents being trained in self-help skills.
- (5) Clothing for incontinent residents shall be designed to foster comfortable sitting, crawling and/or walking, and toilet training.
- b. Residents shall be trained and encouraged to:
 - (1) Select and purchase their own clothing as independently as possible, preferably utilizing community stores.
 - (2) Select their daily clothing.
 - (3) Dress themselves.
 - (4) Change their clothes to suit the activities in which they engage.
 - (5) Maintain (launder, clean, and mend) their clothing as independently as possible.
- 6. Food service.
 - a. Food services shall recognize and provide for the physiological, emotional, cultural and developmental needs of each resident.
 - (1) There shall be a written statement of goals, policies, and procedures that is ~~prepared and reviewed periodically in consultation with a nutritionist or dietitian~~ governs food service.
 - (2) ~~A nutritionally adequate diet that meets the current Recommended Daily Dietary Allowances, Food and Nutrition Board, National Academy of Science, shall be provided.~~
 - (2) ~~(3)~~ The diet provided shall include foods that stimulate chewing, unless contraindicated by program plan.
 - (4) ~~When food services are not directed by a nutritionist or dietitian, regular, planned, and frequent consultation with a qualified nutritionist or dietitian should be utilized.~~
 - (a) ~~Records of consultations and recommendations shall be maintained by the facility.~~
 - (b) ~~An evaluation procedure shall be established to determine the extent of implementation of the consultant's recommendation.~~
 - (5) ~~Menus shall be kept for six months.~~
 - b. Residents shall have opportunity to be trained and participate in food preparation and service.
 - c. All residents, including the mobile nonambulatory, shall eat or be fed in dining rooms, except when contraindicated by program plan.
 - (1) All residents, including the mobile nonambulatory, shall eat at a table.
 - (2) Dining arrangements shall be based upon a plan to meet the needs of the residents and the requirements of their programs.
 - (a) Dining and serving arrangements shall provide for a variety of eating experiences (e.g., cafeteria and family style), and, when appropriate, for the opportunity to make food selections with guidance.
 - (b) Unless justified on the basis of meeting the program needs of the particular residents being served, dining tables shall seat small groups of residents (typically four to six at a table) and include both sexes.
 - (3) Dining rooms shall be supervised and staffed for the direction of self-help eating procedures and to ensure that each resident receives an adequate amount and variety of food.
 - (4) Staff members shall be encouraged to eat with those residents who have semi-independent or independent eating skills.
 - (5) For residents not able to get to dining areas, food service practices shall permit and encourage maximum self-help and shall promote social interaction and a pleasant meal time experience.
 - d. Residents shall be provided with systematic training to develop eating skills, utilizing adaptive equipment when it serves the developmental process.
 - (1) A plan for the remediation of eating problems shall be implemented for all residents with special disabilities. This plan shall be consistent with the individual's developmental needs.
 - (2) Living-unit staff shall be trained in and shall utilize proper feeding techniques when a resident must be fed.
 - (a) Residents shall be fed in an upright position.
 - (b) Residents shall be fed in a manner consistent with their developmental needs (for example, infants shall be fed in arms).

(c) Residents shall be fed at normal consumption rates, and the time allowed for eating shall be such as to promote the development of self-feeding abilities, to encourage socialization, and to provide a pleasant mealtime experience.

e. ~~Modified diets shall be:~~

- ~~(1) Prescribed by a qualified person, with a record of the prescription kept on file.~~
- ~~(2) Planned, prepared, and served by persons who have received adequate instruction.~~
- ~~(3) Reviewed every 90 days and adjusted as needed.~~

C. Developmental and remedial services.

1. General provisions.

a. In addition to resident-living services detailed in ~~Part HB~~ of this ~~Rule~~ rule, residents shall be provided with developmental and remedial services called for by individual assessment and program plan. These services may be provided in two ways:

(1) Within the facility and by staff employed by the ~~facility~~ residential program, except that developmental services, as here defined, shall not be provided in the living unit unless contraindicated by the assessed needs of the particular residents being served.

(2) Outside of the facility and by agreement between the facility and other agencies or persons.

b. All developmental and remedial services, as here defined, shall be rendered outside of the facility, whenever possible, and when rendered in the facility, such services must be at least comparable to those provided in the community.

2. Assessment.

~~Facility~~ Residential program staff shall participate in regular—at least annual—assessment of each resident. The assessment shall cover behavioral and physical status of the resident and shall be conducted by an interdisciplinary team.

a. Behavioral assessment.

(1) Shall utilize objective description to the greatest degree possible.

(2) Shall include the resident, when he is capable of participation, and data supplied by his parents, when appropriate, and by living unit staff.

(3) Shall include, but not be limited to, the following areas:

(a) Educational assessment. All school-age children shall be assessed annually in accordance with guidelines of a properly designated school authority, in order to determine eligibility for public school class. School-age is defined as ~~five~~ four years to 21 years for mentally retarded children and shall not extend beyond secondary school.

*~~(b)~~ Self-care skills.

*~~(c)~~ Economic skills.

*~~(d)~~ Language development.

*~~(e)~~ Number and time concepts.

*~~(f)~~ Domestic occupation.

*~~(g)~~ Vocational skills.

*~~(h)~~ Maladaptive behavior and emotional disturbances.

b. Physical assessment.

*A ~~facility~~ residential program shall be in substantial compliance with these provisions when the American Association of Mental Deficiency Adaptive Behavior Scale, or the Minnesota Developmental Programming System (MDPS), is used for behavioral assessment.

(1) Physical assessment for children shall be performed as recommended by the Council on Pediatrics, ~~Standards of Child Health Care (Evanston, Illinois: 1967).~~

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to: (2) Physical assessment for adults shall be performed at least annually and shall include, but not necessarily be limited

- (a) Physical examination.
- (b) Blood count.
- (c) Urinalysis.
- (d) Determination of freedom from tuberculosis.

~~(3) Dental assessment shall be performed at least annually. Dental examinations for children shall begin by three years of age.~~

(3) ~~(4)~~ Drug assessment: A resident who receives daily medications for a chronic condition shall have a planned and recorded schedule for examination and review of his medication regimen. Use of prescribed medications shall not be continued past the scheduled time for examination. Persistent deviancy in use of a drug by a resident, or adverse reaction to a drug, shall be considered in adjustment of the resident's program plan.

(4) ~~(5)~~ Physical and motor assessment shall be performed at least annually for persons under 16 years of age, and as needed thereafter.

(5) ~~(6)~~ Speech and language assessment shall be performed annually for persons under 16 years of age, and as needed thereafter.

(6) ~~(7)~~ Vision assessment shall be performed annually.

(7) ~~(8)~~ Hearing assessment shall be performed annually for persons under ten years of age, and thereafter when hearing change is suspected.

(8) ~~(9)~~ Dietary assessment shall be performed at least every 90 days for residents receiving a therapeutic diet.

(9) ~~(10)~~ Psychological assessment shall be performed at least every three years for persons under 16 years of age, and as needed thereafter. Current psychological assessment data (less than one year old) available from the referring agency may be utilized to comply with this requirement.

3. Program and treatment plan. ~~Facility~~ Residential program staff shall participate with an interdisciplinary team including Developmental Achievement Center staff, in the formulation of an individualized program and treatment plan for each resident. Facility staff shall be responsible for implementation of the plan.

a. General provisions. The formulation of individualized program and treatment plans shall:

- (1) Define specific and time-limited objectives for behavioral and physical development.
- (2) Consider the proper exercise of the residents' and parents' civil and legal rights, including the right to adequate service.
- (3) Define needed services without consideration of the actual availability of desirable options.
- (4) Investigate and weigh all available and applicable services.
- (5) Determine the resident's need for remaining in the facility.
- (6) Consider the need for (continued) guardianship or conservatorship or restoration to capacity of the resident.

b. Developmental services. All developmental services utilized by residents shall be provided by persons, facilities, or services licensed or certified to provide these services.

(1) Developmental services shall be utilized to promote the intellectual, physical, affective, and social development of each individual, and may include:

- (a) ~~Daytime activity services.~~ Developmental achievement services.
- (b) Educational services.

(i) All school-age children shall attend public school class unless specifically excluded by the responsible school district. A school program operated by the facility shall meet the standards of the State Department of Education and the local school district.

- (c) Recreational services.
- (d) Religious services.
- (e) Sheltered-workshop services.
- (f) Social-work services.
- (g) Vocational-training and placement services.

c. Health services: ~~All health services utilized by residents shall be provided by persons or facilities licensed or certified to provide such services.~~

(1) Health services shall be utilized:

(a) To maintain an optimal general level of health for each resident.

(b) To maximize function, prevent disability, and promote optimal development of each resident.

(2) ~~Health services may include, but not be limited to:~~

(a) ~~Audiology and speech services.~~

(b) ~~Dental services.~~

(c) ~~Dietary services.~~

(d) ~~Hospital services.~~

(e) ~~Medical services.~~

(f) ~~Nursing services.~~

(g) ~~Pharmacy services.~~

(h) ~~Physical and occupational therapy services.~~

(i) ~~Psychological services.~~

(2) ~~(3)~~ Residents who are members of an organized religious group opposed to any health practices may be excused from regulations applying to personal health upon written request by the resident or his parents; but they shall be subject to requirements for control of outbreaks of infectious disease.

4. Evaluation. Facility Residential program staff shall participate with an interdisciplinary team in the evaluation of all services utilized by residents as reflected by each resident's level of functioning.

a. This evaluation shall include evaluation of resident movement toward objectives stated in the program plan.

b. The evaluation shall include the views of the resident and his parents.

c. The evaluation shall include the views of the facility program advisory committee (see E.2.) and appropriate agencies.

D. Admission and release procedures.

1. General provision.

a. No resident shall be admitted to a facility residential program prior to its being licensed.

b. The number of residents admitted to the facility program shall not exceed its licensed ~~space and~~ program capacity.

c. The facility residential program shall make descriptive information available to the public that includes, but is not limited to:

(1) Preadmission and admission services and procedures.

(2) Limitations of age, length or place of residence, and type or degree of handicap.

(3) Developmental and remedial services provided by facility program staff.

(4) Developmental and remedial services provided by agreement with other agencies or persons.

(5) Means for individual programming for residents in accordance with need.

(6) The plan for grouping residents into living units.

(7) Release and follow-up services and procedures.

d. The facility residential program shall have an admission and release committee (see E.2.d.(3) of this Rule rule) that shall:

(1) Include consumers and their representatives, interested citizens, and relevantly qualified professions.

(2) Review all applications and advise the administration of the facility residential program on selection, admission, and release of residents.

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."

PROPOSED RULES

e. The laws, regulations and procedures on admission, readmission, and release shall be summarized and available for distribution.

f. Admission and release procedures shall:

- (1) Encourage voluntary admission upon application of the resident or his parent.
- (2) Give equal priority to persons of comparable need, whether application is voluntary or by a court.
- (3) Facilitate emergency, partial, and short-term care when feasible.
- (4) Ensure the rights and integrity of the resident and his parent.
- (5) If respite care services are provided, there shall be a written policy defining respite care which includes:

(a) Minimum and maximum time limit.

(b) Conditions and procedures for admission (emergency; vacations; etc.).

(c) Age and developmental level. Respite care admissions must approximate the standard admission criteria.

(d) Description of services provided.

(e) Type of services to be provided.

(f) Charges for respite care.

(6) Ensure the resident the maximum opportunity to participate in admission and release decisions.

(7) Ensure the resident is informed of right to appeal the suspension, reduction, termination or denial of services to the Commissioner of Public Welfare pursuant to Minn. Stat. § 256.045 as a Social Service appeal.

g. Upon determination of the possible inadmissibility of a resident, the facility residential program shall consult with the referring agency and with his parents.

2. Selection and eligibility.

a. The facility residential program shall provide information on eligibility requirements and application materials upon any and all requests.

b. Residents and their parents shall be free to apply directly to the facility program for service. However, placement for service shall be made by the responsible local social service agency.

c. Facilities Residential programs shall admit residents without regard to race, creed, or national origin, and accord equal treatment to all persons.

d. When admission is not an optimal measure, but must, nevertheless, be implemented, its inappropriateness shall be clearly acknowledged; and plans shall be initiated for the continued and active exploration of alternatives.

e. The determination of legal incompetence shall be separate from the determination of the need for services, and admission to the facility program shall not automatically imply legal incompetence.

3. Admission.

a. For each resident admitted, there shall be a written program plan stating the services he needs or a written statement of the procedure and timetable for development of the program line.

b. Prior to admission, the resident and his parent shall be counseled on the relative advantages and disadvantages of admission to the facility program.

c. Prior to admission, the resident and his parent shall be encouraged to visit the facility program and the living unit in which the resident is likely to be placed.

d. Prior to admission of a school-age child, facility residential program staff shall notify the local school district.

e. Upon admission, each resident shall be placed in his living unit, and he shall be isolated only upon medical orders issued for specific medical reasons.

~~f. Upon admission, current medical evaluation by a physician shall be made available.~~

4. Release.

a. Planning for release, the facility residential program staff shall involve the referring agency, the resident, and his parent.

b. At the time of release, a summary of findings, progress, and plans shall be recorded and transmitted with the resident.

c. Procedures shall be established so that:

(1) A parent who requests the release of a resident is counseled about the advantages and disadvantages of such release.

(2) The court or other appropriate authorities are notified when a resident's release might endanger either the individual or society.

d. At the time of release, physical examination for signs of injury or disease shall be made in accordance with procedures established by the facility residential program.

e. Except in an emergency, release shall be made only with the prior knowledge, and ordinarily the consent, of the referring agency, the resident, and his parents.

E. Administrative policies and practices.

1. The facility residential program shall have a written statement clearly defining its philosophy, purpose, and function.

a. This statement shall be consistent with the current status of knowledge and information available on residential services.

b. This statement shall be consistent with the principle of normalization.

2. The facility residential program shall have a written statement defining its administrative and organizational structure.

a. The governing body shall exercise general direction and establish policies on the operation of the facility program and the welfare of the residents.

b. The governing body shall appoint an executive officer of the facility program.

(1) The qualification of the executive officer shall be determined by the governing body and be consistent with the training and education needed to meet the stated goals of the facility program.

(2) The governing body shall delegate to the executive officer the authority and responsibility for management of the affairs of the facility program.

c. The facility residential program shall be administered and operated in accordance with sound management principles.

(1) The type of administrative organization of the facility program shall be appropriate to the program needs of the resident.

(2) The facility program shall have a table of organization that shows the governing and administrative responsibilities of the facility program.

d. The facility residential program shall provide for meaningful and extensive consumer representation and public participation in its operation. If consumer representatives, interested citizens, and relevantly qualified professionals are not represented on the governing body, and advisory body composed of such representation shall be appointed by the governing body.

(1) The advisory body shall sit ad hoc to the governing body and to the chief executive officer and provide consultation and assistance as appropriate.

(2) The advisory body may function as the facility program research review and human rights committee. ~~(See Part B. 3. of this Rule).~~

(3) The advisory body may function as the admission and release committee. (See D.1.d. of this ~~Rule~~ rule.)

3. Personnel policies, ~~and practices~~, and staff to resident ratios.

a. Personnel policies.

(1) There shall be written personnel policies, which shall be made available to each staff member.

(a) The hiring, assignment, and promotion of employees shall be based on their qualifications and abilities, without regard to sex, race, creed, age, disability, marital status and ethnic or national origin.

(b) Personnel policies shall include but not be limited to:

(i) Qualifications, job description, salary schedule, and benefits for all positions.

(ii) A policy prohibiting mistreatment, neglect, or abuse of residents, and mandating the report of any mistreatment, neglect or abuse to the executive officer.

(iii) Procedure for suspension and/or dismissal of an employee for cause.

(c) There shall be a staff person responsible for implementation of these policies.

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PROPOSED RULES

b. Staff assignments.

(1) There shall be sufficient, appropriately qualified, and adequately trained personnel to provide facility program service in accordance with facility's program's statement of services provided (see C. of this Rule rule) and with the standards specified in this document.

(a) There shall be staff on duty or call at night to ensure adequate care and supervision.

(b) There shall be staff on duty or call to assist all residents in an emergency.

(c) There shall be staff on duty or call so that provision of facility residential service is not dependent upon the use of unpaid residents or volunteers.

(i) Residents shall not replace staff or be used in lieu of staff in any area of work unless they are reimbursed commensurate with ability and production.

(ii) Residents shall not be involved in the care (feeding, clothing, and bathing), training, or supervision of other residents unless they are adequately supervised, have the requisite humane judgment, and have been specifically trained in necessary skills.

(d) All staff shall be administratively responsible to a person whose training and experience is appropriate to the program.

(e) The title applied to all staff shall be appropriate to the kind of residents with whom they work and the kind of interaction in which they engage.

(2) The use of volunteers shall be encouraged to strengthen services in a manner consistent with the purposes of the program.

c. Staff training.

(1) There shall be a staff-training program that is appropriate to the size and nature of the facility program and that includes, but is not limited to:

(a) Orientation for all new employees, to acquaint them with the philosophy, organization, program, practices, and goals of the facility residential program.

(b) Induction training for each new employee, in order that his skills in working with the residents are increased.

(c) Continuing in-service training to update and improve the skills and competencies.

(2) There shall be a record of all staff training on file.

d. ~~Employee health.~~

~~(1) Each employee, at the time of his employment, shall present evidence of a current medical examination that shall include a report of freedom from tuberculosis.~~

~~(2) The facility shall determine and ensure that all staff members are free of communicable disease.~~

~~(3) When an employee has been absent from work for more than three days due to illness, the executive officer may request that a statement of freedom from infectious disease from the employee's physician be provided upon the employee's return to work.~~

~~(4) The executive officer may require that an employee have a medical examination when a reasonable suspicion of contagious disease exists.~~

~~(5) When an unusual number of cases of similar illness occur among staff, a physician or local public health official shall be called upon for assistance in appropriate prevention and control measures.~~

d. Staffing ratios.

(1) The determination of staff needs shall include consideration of staff members' experience and training, as well as the overall ratio of staff to residents.

(2) The number of available direct care resident living staff shall be related to each resident's degree of handicap and his training needs.

(3) The minimum overall ratios of resident living staff necessary to provide 24-hour supervision shall be as follows:

(a) For units including children under the age of six years, severely and profoundly retarded persons, severely physically handicapped persons, and residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the overall staff to resident ratio (allowing for a five day work week plus holiday, vacation, and sick time) is 1:2.

(b) For units serving moderately retarded residents requiring habit training, the overall staff to resident ratio is 1:2.5.

(c) For units serving residents in vocational training programs and adults who work in sheltered employment situations, the staff to resident ratio is 1:5.

(4) Staff to resident ratios during peak programming hours (evenings and weekends) shall be optimized by appropriate scheduling around residents' day programs.

(5) If a residential program determines that a different staff ratio is needed to comply with the provisions of this rule, a letter shall be submitted to the commissioner for approval. Criteria for approval shall be:

(a) Extraordinary medical, behavioral or developmental needs of residents.

(b) Possible changes that could be effected in staff assignment, deployment, or qualification to optimize utilization of existing staff.

(c) Relevance of the proposed change in staff ratio to (a) and (b) above.

4. The ~~facility~~ residential program shall have a written statement outlining a plan of financing that gives assurance of sufficient funds to enable it to carry out its defined purposes.

a. Budget management shall be in accordance with sound accounting principles.

~~b. There shall be an annual audit of the fiscal activity of the facility.~~

~~b. e-~~ A ~~facility~~ residential program charging for services shall have a written schedule of rates and charge policies, which shall be available to the resident, his parent, referring agencies, and the public.

5. An individual record shall be maintained in the facility for each resident.

a. All information contained in the resident's records shall be ~~considered privileged and confidential, and written consent of the resident or his parent shall be required for the release of information to persons not otherwise authorized to receive it.~~ handled in a manner consistent with the Government Data Practices Act. The resident shall have access to his record upon request.

b. All entries in the resident's record shall be legible, dated and authenticated by the signature and identification of the individual making the entry.

c. All records shall contain basic demographic information, to be entered at the time of admission, including reason for referral and individual program plan.

d. Recorded information shall be in sufficient detail and adequate to:

(1) Plan and evaluate the resident's program.

(2) Provide a means of communication among all persons contributing to the resident's program.

(3) Furnish documentary evidence of the resident's progress or regression and of his general response to his program.

(4) Serve as a basis for study, evaluation, and development of services provided by the ~~facility~~ residential program.

(5) Protect the legal rights of the resident, his parent, the ~~facility~~ residential program, and staff.

(6) Serve as a basis for evaluation of all services utilized by residents.

e. When it is necessary for ~~facility~~ residential program staff to supervise the use of personal funds, a record of these funds shall be maintained as a part of the resident's record.

~~f. Medical records.~~

~~(1) There shall be a permanent medical and dental record in the facility that shall include, but is not limited to:~~

~~(a) The name of the resident's physician, dentist, or clinic.~~

~~(b) The dates of examinations and treatments.~~

~~(c) Any special instructions and treatments.~~

~~(2) When a resident receives specialized therapeutic services, a record of therapies provided and the resident's progress in these therapies shall be maintained.~~

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PROPOSED RULES

(3) When a resident receives a therapeutic diet, a record of the diet shall be maintained, except when responsibility for maintenance of the resident's own therapeutic diet is warranted by program plan.

(4) When a resident receives a medication, a record of the prescription and administration of the medication shall be maintained. Adverse reactions to medication, and the report to the physician of the same, shall be recorded.

(5) When a resident is hospitalized, a summary of the hospitalization shall be requested. The summary shall include a listing of medications and treatment recommended at discharge, as well as directions for follow-up care and further examination.

6. Emergency and unusual occurrence.

a. In the event of an emergency or unusual occurrence, such as hospitalization, serious illness, accident, imminent death or death, the resident's parent or others who maintain a close relationship with him shall be notified. The wishes of the resident and his parent about religious matters shall be determined and followed as closely as possible.

b. In case of accident:

(1) Appropriate measures for the care and safety of the resident shall be undertaken.

(2) An accident report shall be made for use by the facility program.

(3) In case of injury of unknown or uncertain cause, all legal requirements shall be complied with. This includes the Minnesota law related to reporting of possible child abuse.

c. When a resident dies:

(1) The date, time, and circumstances of the resident's death shall be recorded in his record.

(2) If the resident dies in the facility, the coroner's office shall be notified.

(3) Assistance in making funeral and burial arrangements shall be rendered upon request.

(4) Personal belongings shall be handled in a responsible and legal manner.

(5) Records of a deceased resident shall be retained for a period of seven years following death.

SUPREME COURT

Decisions Filed Friday, September 5, 1980.

Compiled by John McCarthy, Clerk

49933, 49960/447 In the Matter of the Welfare of Valerie Karge and Walter Cook, Children. Mower County.

Where there is clear and convincing evidence that a parent is unwilling or incapable of correcting conditions which led to a finding that her children are dependent, it is proper to terminate her parental rights.

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

50094/142 In the Matter of the Trust Created by Maude H. Schroll for the Benefit of Laurence H. Dorcy, Jr. on March 16, 1969. Laurence H. Dorcy, Jr., primary life beneficiary, Appellant, v. The First Trust Company of St. Paul, Trustee. Ramsey County.

A provision in an irrevocable inter vivos trust requiring a successor to be a corporate trustee may not be revoked by agreement of the settlor and all living beneficiaries where the trust creates interests in unborn beneficiaries and a guardian ad litem appointed to represent those interests does not consent to the revocation.

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

49793/161 Luverne R. Ruberg, et al v. Skelly Oil Company, Appellant, Keith C. Engen and Carl Lundgren, co-partners, d.b.a. Lundgren and Engen Excavating, Applt Zimm, d.b.a. Standard Heating Company of Duluth. St. Louis County.

In this negligence action arising out of a gas explosion, the trial court committed no prejudicial error by including in the jury charge an instruction regarding superseding cause.

Defendant gas supplier was liable for damages caused by a gas explosion where it had reasonable notice of a potential danger and failed to act to remedy that danger.

Under the comparative negligence statute, Minn. Stat. § 604.01 (1976), where two separate defendants are each liable to compensate plaintiff for an indivisible injury, they are jointly and severally liable for the whole damage award.

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

50876/SP State of Minnesota v. August Gregory Mendoza, Jr., Appellant. Otter Tail County.

Defendant, by failing to raise in the trial court the issue of whether Minn. Stat. § 609.035 (1978) barred his prosecution for attempted simple robbery, is deemed to have forfeited the issue; multiple-victim exception to rule against multiple sentences for multiple offenses arising from the same behavioral incident permitted defendant to be sentenced for both offenses arising from the same behavioral incident.

Trial court did not abuse its discretion in permitting use of a prior manslaughter conviction to impeach defendant's credibility, in admitting evidence of an assault by defendant on the officer who was trying to question defendant at the scene of the crime, or in failing sua sponte to submit lesser offenses.

Affirmed. Peterson, J. Dissenting, Otis, Rogosheske, and Wahl, JJ. Took no part, Amdahl, J.

50326/273 Timothy M. Leininger, Appellant v. City of Bloomington, et al. Hennepin County.

The Merit Board applied the correct legal standard based on "just cause" in arriving at its decision that employee-police sergeant's demotion was warranted.

The findings and decision of the Merit Board are supported by substantial evidence.

The Merit Board is impliedly authorized by statute to fashion a remedy other than that determined by the city if the evidence presents extenuating circumstances, and we remand to the board so that it may exercise that authority if such exercise, in its opinion, is warranted.

Employee's demotion did not violate his First Amendment rights.

Employee was not denied his due process right to fair hearing due to alleged improprieties by the city.

Employee was not denied due process when the city failed to implement its Employee Assistance Program before proceeding with disciplinary action.

Since a veteran may not be suspended without pay pending a determination of the charges filed against him, we remand the case to the board to make findings and a determination regarding whether employee, as a veteran, is entitled to receive pay for the period from July 6, 1977, to December 13, 1978.

Affirmed in part, reversed in part, and remanded. Wahl, J. Took no part, Amdahl, J.

50483/SP State of Minnesota v. Craig LeRoy Nelson, Appellant. St. Louis County.

Trial court did not prejudicially err in denying defense request for submission of lesser defense.

Affirmed. Per Curiam.

Opinion Filed August 27, 1980**51522/SP 51523 State of Minnesota, Appellant v. Julian Loren Bekkerus, and State of Minnesota, Appellant v. Joyce Margaret Bekkerus. Ramsey County.**

District court in criminal prosecution did not err in pretrial rulings on evidentiary issues.

Affirmed. Sheran, C. J.

STATE CONTRACTS

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

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

Department of Economic Security Office of Economic Opportunity

Notice of Request for Proposals for Auditing Services on CSA, DOE and State Grants

1. Agency Name and Address: Minnesota Department of Economic Security, Office of Economic Opportunity, 690 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.
2. Contact Person: Certified Public Accounting Firms wishing to receive this Request for Proposals Package or additional information may write the contracting officer, Jim Markoe, at 390 North Robert Street, Office of Audit Coordination, 390 North Robert Street, St. Paul, MN 55101; or call at (612) 296-4983.
3. Description: An RFP is scheduled for issuance on September 17, 1980 for the purpose of contracting financial and compliance audits of U.S. Community Services Administration (CSA), U.S. Department of Energy (DOE) and Minnesota grants awarded to the Office of Economic Opportunity.
4. Cost: One or more awards will be granted, estimated to exceed \$50,000 in aggregate.
5. Final proposals must be received by 4:30 p.m., September 30, 1980.

Department of Health Community Services Division

Notice of Request for Proposal for Technical Services Contract

Services for Children with Handicaps or SCH (the Crippled Children's Services agency in Minnesota) seeks to improve the health, both mental and physical, of children with handicapping or potentially handicapping conditions who live in the west metropolitan Twin-Cities area and who may not have access to necessary health care.

Therefore SCH is requesting a proposal from a health care facility or program to assist SCH in implementing a program to accomplish its goal by means of a technical services contract.

The contractor's duties shall be to provide a child psychologist, speech therapist and occupational therapist skilled in the evaluation of children with developmental disorders. This team will assist SCH in fulfilling its goals by:

1. Assessment of children with developmental disorders referred to the program from Minneapolis and surrounding communities.
2. Provision of reports to SCH on diagnostic findings.
3. Consultation with families, SCH staff, community agencies and professionals to assure optimal management of evaluated children.
4. Submission of a summary report to SCH at conclusion of the contract period.

The total obligation of the state for all compensation and reimbursements to the contractor shall not exceed twenty thousand dollars (\$20,000.00).

Proposals shall be submitted to Richard P. Nelson, M.D., Director Services for Children with Handicaps, 2829 University Avenue Southeast, Suite 840, Minneapolis, Minnesota 55414 two weeks following publication of this request. The contract period will extend from October 1, 1980, through September 30, 1981.

Department of Transportation Office of Transit Administration

Notice of Request for Proposals for Professional Services

Mn/DOT is seeking qualified organizations to provide a ride-sharing marketing, computer matching services, a personalized telephone follow-up/brokerage for car-pool applicants and van-pool formation activity in the western portion of the Twin Cities Metropolitan Area. These work tasks are outlined in detail in the Request for Proposal (RFP) Project Task Section. Proposals for alternative methods of providing requested services will be considered. The formal RFP may be requested and inquiries should be directed to:

Robert M. Works, Director
Office of Transit Administration
419 Transportation Building
St. Paul, Minnesota 55155
(612) 296-2533

It is anticipated that the activities for a twelve month period starting October 1, 1980, will not exceed a total cost of \$300,000. The deadline for submission for completed proposals is September 29, 1980.

September 3, 1980

Richard P. Braun
Commissioner

Water Planning Board

Notice of Request for Proposals for Industrial Water Conservation and Analysis

In 1979, the Water Planning Board examined water conservation potential in the agricultural processing industry. The purpose of this request for proposals is to pursue the recommendations for future study of water conservation in other manufacturing sectors. The term "water conservation" is used as an efficient use/anti-waste concept rather than a purely anti-use design.

This request for proposal does not obligate the state to complete the project and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

I. Scope of Project. This project will examine water conservation practices in a number of industries and provide background information necessary for development of a water conservation "self-audit" guide which will take into consideration quantity, quality, and energy consumption relationships. Major incentives for industries to practice water conservation which should be built in to the audit are: (1) the rising costs of energy needed to pump and heat water; (2) pollution control standards which raise the cost of treating wastewater; and (3) desire to locate plants in water-short areas to take advantage of other economic and natural resources. It should also recognize that two levels of conservation programs may be pursued: common sense (inexpensive/housekeeping) and capital intensive. In general, no two plants are the same in terms of product line, capital equipment, plant layout, financial or market position, water supply, or utility costs. All plants require specific measures and have unique constraints on technological feasibility and fiscal ability.

II. Project Tasks. A survey of water conservation potential in Minnesota industries and an analysis of the relation of water conservation practices to economic benefits shall be performed. This project will involve: (a) a survey of water use conservation practices in selected Minnesota industries (with emphasis on age of plant, type of technology employed, and relation to water supplies) and of conservation potential for these industries; (b) an assessment of probable economic benefits from the institution of water conservation measures in selected Minnesota industries; and (c) delineation of a water conservation audit program which may be employed by industries to assess conservation potential. A representative sample of industries should be included in the proposal. Examples of the types which might be examined are mining, pulp and paper, dairy, food processing, and light (computer) industries.

III. Department Contact. Prospective responders who have any questions regarding this Request for Proposal may call or write: Linda Bruemmer, Water Planning Board, 600 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101, (612) 297-2377.

Please note: other board personnel are not allowed to discuss the project with responders before the proposal submittal deadline.

IV. Submission of Proposals. All proposals must be sent to and received by Linda Bruemmer at the above address no later than 4:30 p.m., October 6, 1980. Late proposals will not be accepted. There must be 3 copies of each proposal and they are to be sealed in a mailing envelope or package with the responder's name and address clearly written on the outside. Prices and terms of the proposal as stated must be valid for the length of the project.

STATE CONTRACTS

V. **Project Costs.** The board has estimated that the cost of this project should not exceed \$20,000 for professional services and expenses.

VI. **Project Completion Date.** The project shall be completed by December 31, 1980.

VII. **Proposal Contents.** The following will be considered minimum contents of the proposal: (a) a restatement of the project objectives to demonstrate the responder's view of the nature of the project, (b) identification and description of the deliverables to be provided by the responder, (c) a description of the responder's background and experience with particular emphasis on local and state government work. This shall include identification of personnel who will conduct the project and an explanation of their training and work experience. No changes in primary personnel assigned to the project will be permitted without specific written approval of the state project manager, (d) a detailed cost and work plan which shall identify the major tasks to be accomplished. This plan will be used as a scheduling and managing tool as well as a basis for invoicing, and (e) a description of the extent of the Board's participation in the project as well as any other services to be provided by the Board.

VIII. **Evaluation.** All proposals received by the deadline will be evaluated by representatives of the Water Planning Board. If deemed necessary, an interview may be included in the evaluation process. Factors upon which proposals will be judged include, but are not limited to the following: (a) expressed understanding of project objectives, (b) project work plan, (c) project cost detail, (d) qualifications of both company and personnel. Experience of project personnel will be given greater weight than that of the firm. Evaluation and selection will be completed by October 16, 1980. Results will be sent immediately by mail to all responders.

OFFICIAL NOTICES

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

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

Department of Administration Building Code Division Residential Energy Disclosure Program

Notice of Scheduled Examinations for Certification of Evaluators for the Energy Disclosure Program

The Minnesota State Legislature in 1978 enacted a statute that provided for energy conservation standards for existing residences.

This statute provides that the Building Code Division and the Minnesota Energy Agency promulgate rules and standards for energy conservation standards and a disclosure report of energy efficiency of the residence to the buyer of the residence at the time of sale.

This statute also provides for a waiver of the energy efficiency disclosure report, provided the buyer has a copy of the disclosure from and has signed the waiver provision.

October 1, 1980 is the effective date of the statute requiring compliance with the disclosure report at time of sale.

Copies of the disclosure form may be obtained from the Building Code Division and Minnesota Energy Agency. Copies of the Energy Conservation Standards for Existing Residences (2 MCAR § 1.16201) are available from State Register and Public Documents Division, 117 University Ave., St. Paul, MN 55117.

Energy evaluation of the residence and execution of the disclosure form is limited to Certified Energy Evaluators who are certified by the Department of Administration upon successful completion of a written examination.

2 MCAR § 1.16224 Standards for certification, prerequisites. Persons possessing one of the following qualifications shall be eligible to be admitted for examination.

- A. Building Officials, certified by examination by the Building Code Division.
- B. Architects and mechanical engineers registered in the State of Minnesota.

C. Truth in Housing Evaluators and Truth in Sale of Housing Evaluators certified by examination by the Cities of Minneapolis and St. Paul.

D. Individuals experienced in weatherization procedures who have completed a minimum of twenty-five (25) audits and six (6) months satisfactory work with a non-profit weatherization program.

E. Employees of participating companies trained to perform audits under the Federal Residential Conservation Program.

F. Persons who have successfully completed a prescribed course or courses of training for residential evaluators, sponsored by the Minnesota Energy Agency.

G. Persons who have successfully completed a course or courses of training for residential evaluators sponsored by the University of Wisconsin Extension Division, or similar courses, with prior approval of the Building Code Division.

Said persons shall be required to attend an orientation program prior to examination.

I. Persons who have certification of completion from the energy training course conducted by Aadland, Hoffman, Pieri, Energy Associates, Inc. or EES of Minnesota, Inc. are also eligible.

Candidates shall submit their completed application together with a \$50.00 check made payable to the State Treasurer at the location and time listed below.

Application forms will be available at the site.

Schedule of Orientation and Examinations Energy Evaluator Program

ORIENTATION AND TEST LOCATIONS AT AVTI

Date	Location	Time
Sept. 22, 1980 Monday	Brainerd AVTI	1:00 p.m. to 3:00 p.m.
	Alexandria AVTI	7:00 p.m. to 9:00 p.m.
	Rochester AVTI	1:00 p.m. to 3:00 p.m.
Sept. 23, 1980 Tuesday	Moorhead AVTI	1:00 p.m. to 3:00 p.m.
	Thief River Falls	7:00 p.m. to 9:00 p.m.
	AVTI (RM 109)	
	Mankato AVTI	9:30 a.m. to 11:30 a.m.
	Pipestone AVTI	7:00 p.m. to 9:00 p.m.
Sept. 24, 1980 Wednesday	Bemidji AVTI	1:00 p.m. to 3:00 p.m.
	Hibbing AVTI	7:00 p.m. to 9:00 p.m.
	Willmar AVTI	2:00 p.m. to 4:00 p.m.
	Hutchinson AVTI	7:00 p.m. to 9:00 p.m.
September 25, 1980 Thursday	Duluth AVTI	10:00 a.m. to 12:00 noon
	Anoka AVTI	10:00 a.m. to 12:00 noon
	Dakota AVTI	7:00 p.m. to 9:00 p.m.
	St. Paul AVTI	7:00 p.m. to 9:00 p.m.

The Department of Administration shall issue a certificate to successful candidates.

Training courses in energy standards and the Residential Conservation Services Program (RCS Program) will be offered at selected Area Vocational Technical Institutes, by the Minnesota Energy Agency after November 1, 1980.

Department of Administration Data Privacy Division

Notice of Disapproval of An Application for Temporary Classification for Statewide Applicability

The Commissioner of Administration hereby gives notice that on August 28, 1980, he disapproved a "private" classification for all data on individuals on applications for water and sewer rate assistance. The commissioner's ruling was in response to an application for temporary classification for water and sewer rate assistance data which was submitted by the Water Department of the City of South St. Paul, Minnesota and which the commissioner considered for statewide applicability under the authority vested in him by Minnesota Statutes, Section 15.1642 as amended by Chapter 603, Laws of Minnesota, 1980. Water and sewer rate assistance data maintained by all cities in the State of Minnesota shall become "public" data twenty days after the commissioner's disapproval unless the City of South St. Paul submits an amended application for temporary classification which sets forth additional information relating to the proposed classification of "private." Questions on this matter may be directed to the Data Privacy Division, 200 State Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155.

Department of Agriculture Agronomy Services Division

Notice of Special Local Need Registrations for Princep 80W and Princep 4 L Herbicides

Pursuant to Minn. Stat. § 18.A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on August 28, 1980, issued Special Local Need Registrations for Princep 80W and Princep 4 L manufactured by Ciba-Geigy Corporation, Greensboro, North Carolina.

The Commissioner of Agriculture, based upon information in the applications, has deemed it in the public interest to issue such registrations, and has deemed that the information in the applications indicates that the pesticides do not have the potential for unreasonable adverse environmental effects.

In addition to the uses perscribed on the product labels, these Special Local Need Registrations permits the use of these pesticides to control annual weeds in birdsfoot trefoil grown for seed.

The applications and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to these registrations (identified as SLN # MN 80-0014 and SLN # MN 80-0015) are on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
Phone: (612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding this registration.

August 29, 1980

Mark W. Seetin, Commissioner
Department of Agriculture

Minnesota Board of Chiropractic Examiners

Notice of Intent to Solicit Outside Opinion and Information Regarding Proposed Rules Related to Aspects of the Definition of Unprofessional Conduct

Pursuant to Minn. Stat. § 15.0412, subd. 6, notice is hereby given that the Minnesota Board of Chiropractic Examiners intends to solicit information and opinions from sources outside of the agency for the purpose of considering the adoption of rules relating to aspects of the definition of unprofessional conduct.

In pertinent part, Minn. Stat. § 148.10, subd. 1 (10) states:

Unprofessional conduct shall include, but not be limited to, the following acts of a chiropractor:...

(c) Performing unnecessary services;

(d) Charging a patient an unconscionable fee...

If adopted, the rules in question would define "unnecessary services" and "unconscionable fee[s]" or establish criteria for their determination.

Any persons desiring to submit data or views on these subjects should address their comments, whether written or oral, to:

E. A. Brochman, D.C.
Minnesota Board of Chiropractic Examiners
Minnesota Department of Health Building
717 Delaware Street Southeast
Minneapolis, Minnesota 55414
Telephone: (612) 296-5430.

All written submissions will become part of the record in any subsequent hearing.

September 2, 1980

E. A. Brochman, D.C.
Executive Secretary

Energy Agency Data and Analysis Division

Notice of Intent to Solicit Outside Opinion Concerning Draft Rules Revising the Plan Governing Actions and Procedures during A Fuel Oil Supply Emergency

Notice is hereby given that the Minnesota Energy Agency is seeking information or opinions from outside the agency on appropriate measures to use during a fuel oil supply emergency to reduce the fuel oil shortage and to assure equitable distribution of existing supplies. Minn. Stat. § 116H.09 requires the Minnesota Energy Agency to revise by rulemaking plans for conservation and allocation of fuel during an energy supply emergency. The rules discussed below are for use during an energy supply emergency resulting from a shortage of fuel oil, particularly home heating oil and diesel fuel.

Background

During the fall of 1979, the Energy Agency began development of a revised plan of action for use during a fuel oil supply emergency. Comments were solicited and meetings were held to gain public participation in the plan development. The new Fuel Oil Emergency Action Plan was completed in February, 1980.

The agency is beginning the rulemaking process to develop fuel oil emergency rules, based on the new Fuel Oil Emergency Action Plan. The rules will govern the activities of the state during, or immediately prior to, a declared energy supply emergency resulting from a fuel oil shortage. In contrast, the plan also maps out activities designed to mitigate or prevent a serious shortage will in advance of an actual emergency. Thus, the fuel oil emergency rules would come into effect only after the State has already requested Minnesota citizens to employ various voluntary conservation measures, and these voluntary measures fail to alleviate the shortage.

Draft rules have been developed and are published following this notice. The agency believes this specific proposal will help focus discussion and elicit public input. Written comments are invited and should be submitted by October 22, 1980. The agency will then draft and publish proposed rules.

Key Issues

Several portions of the revised Fuel Oil Emergency Plan have been expanded in the Draft Rules. In addition, the Draft Rules contain several new sections. The Energy Agency is particularly interested in receiving comments on the following important changes and additions:

1) § 2.3105 B. Priority ranking of users.

This rule more specifically details the criteria and priority ranking developed in the revised plan. In addition, it specifies the procedure for delivery of fuel oil to users based on priority ranking.

Fuel oil suppliers are charged with delivering fuel oil according to these priorities. Does this charge place too heavy a burden on fuel oil suppliers during an energy emergency?

2) § 2.3105 C.1.-C.2. Measures.

This rule includes mandatory measures that may be enacted during an emergency situation. The agency hopes to receive comments on the potential effectiveness of these measures and suggestions for additional fuel saving measures that may have been omitted from this draft.

Included in these measures is the authority to curtail delivery of fuel oil supplies to specific industries during a severe shortage. The order of curtailment would be based on the industry's energy consumption per employee. Is this a workable system? Is there a more equitable way to accomplish this fuel oil savings?

3) §§ 2.3107-2.3109 Appeals system.

The appeals system may follow three tracks: (a) Appeals of priority status through the Fuel Allocation Rules of Procedure (b) Appeals of mandatory measures except fuel oil curtailment, and (c) Appeals of fuel oil curtailment.

This system was devised to avoid making unrealistic demands on any single appeals board during an emergency situation. Has the Agency accomplished this goal? Is the current system understandable and timely for the potential appellant?

All interested or affected parties are invited to submit written comments addressed to:

Abigail McKenzie, Emergency Rules Analyst
Minnesota Energy Agency
Suite 980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Comments must be written and received by October 22, 1980 in order to be considered.

OFFICIAL NOTICES

Draft Rules

Draft Rules Governing Procedures and Measures To Reduce Demand and Increase Supply of Fuel Oil During a Fuel Oil Supply Shortage.

6 MCAR § 2.3101 Purpose of rules. The purpose of these rules is to specify procedures to be used during a fuel oil supply emergency and to specify measures that may be employed to reduce demand for and increase supply of fuel oil and the method of implementing the measures.

6 MCAR § 2.3102 Applicability of rules. The rules shall apply:

- A. during a declared fuel oil supply emergency (see 6 MCAR § 2.3105);
- B. during a declared fuel oil supply alert (see 6 MCAR § 2.3104); and
- C. to the Minnesota Energy Agency when the agency is preparing to recommend that a fuel oil supply alert or fuel oil supply emergency be declared.

6 MCAR § 2.3103 Definitions.

- A. "Agency" means the Minnesota Energy Agency;
- B. "Agriculture" means all the activities classified under the industry code numbers specified in paragraph 1 below as set forth in the Standard Industrial Classification Manual, 1972 edition, except those industry code numbers listed in paragraph 2 which are excluded:

1. Activities included. (a) All industry code numbers included in Division A, Agriculture, Forestry and Fishing, except as specified in paragraph 2 of this section. (b) All industry code numbers included in Major Group 20, Food and Kindred Products, of Division D, Manufacturing, including grain and seed drying, except as specified in paragraph 2 below; and (c) All the following other industry code numbers:

- 1474 Potash, Soda and Borate Mineral (Potash mining only);
- 1475 Phosphate Rock;
- 2141 Tobacco Stemming and Redrying;
- 2411 Logging Camps and Logging Contractors;
- 2421 Sawmills and Planing Mills;
- 2819 Industrial Inorganic Chemicals, Not Elsewhere Classified (dicalcium phosphate only);
- 2873 Nitrogenous Fertilizers;
- 2874 Phosphatic Fertilizers;
- 2875 Fertilizers, Mixing Only;
- 2879 Pesticides and Agricultural Chemicals Not Elsewhere Classified;
- 4212 Local Trucking Without Storage (Farm to market hauling and log trucking only);
- 4971 Irrigation Systems (for farm use); and
- 5462 Retail Bakeries, Baking and Selling.

2. Activities excluded. (a) All the following industry code numbers, otherwise listed under Division A, Agriculture, Forestry and Fishing, are excluded from the definition:

- 0271 Fur-Bearing Animals and Rabbits (except rabbit farms which are included in the definition);
- 0279 Animal Specialties, Not Elsewhere Classified, (except apiaries, honey production and bee, catfish, fish, frog and trout farms which are included in the definition);
- 0742 Veterinary Services for Animal Specialties;
- 0752 Animal Specialty Services;
- 0781 Landscape Counseling and Planning;
- 0782 Lawn and Garden Services; and
- 0849 Gathering of Forest Products, Not Elsewhere Classified;

C. "Btu" means British thermal unit, a common unit of energy measurement which is used in these rules for comparative purposes;

D. "Commercial buildings" means buildings all of whose occupants are engaged in commerce, unless residential occupants have separate heating controls;

E. "Communications" means telecommunications including the repair, operation and maintenance of voice, data, telegraph, video and similar communication services for the public by a communications common carrier or by a firm providing the same service in direct competition with a communication common carrier, newspaper production and distribution, excluding sales and routine administrative activities;

F. "Consumer" means a person that consumes natural gas, electricity, middle distillate, residual, or propane;

G. "County and/or municipal fuel coordinator" means any person who has been appointed by his county board or city council to perform certain actions with regard to the Federal Fuel Allocation Program;

H. "Demand" means that quantity of products or services for which there are willing and able purchasers;

I. "Division" means the Division of Emergency Services;

J. "Electric utilities" means any entity engaged in the generation, transmission, or distribution of electric energy for sale;

K. "Emergency services" means law enforcement, fire fighting, snow removal, emergency medical services, search and rescue activities, telecommunications services and utilities services;

L. "Energy production" means the refining, processing, production and distribution of coal, natural gas, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy. It also includes the construction of facilities and equipment used in energy production, such as pipelines, power plants, transmission lines and similar capital goods. Excluded from this definition is electrical generation whose power source is petroleum based;

M. "Environmental standards" means those laws and regulations, both federal and state, intended to protect the environment;

N. "Essential transportation" means emergency vehicles, public transportation including bus, rail, taxi, and van pool services, energy distribution such as heating oil delivery, transportation of perishable food items and postal delivery and mail hauling;

O. "Forecast" means a projection of future demand or supply for some specified time period;

P. "Fuel oil" means any liquid or liquefiable petroleum product with a flashpoint above 100°F which is used to generate heat or power;

Q. "Health and residential care facilities" means hospitals, nursing homes, penal institutions, and all types of residential treatment centers including but not limited to drug/alcoholism treatment centers, residential mental health centers, and residential care centers for the retarded or handicapped;

R. "Home owner" means a person who has a vested legal or beneficial interest, jointly or severally, in a dwelling which is occupied by that person;

S. "Middle distillate" means any derivatives of petroleum, including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which have a fifty percent boiling point in the ASTM D86 standard distillation test falling between 371° and 700°F. Products specifically excluded from this definition are kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in VV-F-815C of ASTM D-396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and all specialty items such as solvents, lubricants, waxes, and process oil;

T. "Person" means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, corporation, governmental unit or subdivision thereof, or a charitable, educational or other institution;

U. "Plant protection" means minimum plant maintenance necessary to secure buildings and prevent damage from inclement weather;

V. "Residence" means the place where a natural person or persons actually live, including buildings being used as emergency housing facilities;

W. "Residual fuel oil" means the fuel oil commonly known as: 1. No. 4, No. 5 and No. 6 fuel oils; 2. Bunker C; 3. Navy Special Fuel Oil; and 4. all other fuel oils which have a fifty percent boiling point over 700°F in the ASTM D-86 standard distillation test;

Y. "Sanitation services" means the collection and disposal for the public of solid wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities. Sanitation services includes the provision of water supply services by public utilities, whether privately or publicly owned and operated;

Z. "Shortage" means a situation in which demand exceeds supply;

AA. "State set-aside" means the amount of an allocated product from the total supply of a supplier made available to the state for use to meet emergencies and hardship needs, pursuant to 10 Code of Federal Regulations § 211.17;

BB. "Supplier" means any firm or any part of a subsidiary of any firm other than the Department of Defense which presently supplies, sells, transfers, or otherwise furnishes (as by consignment) any petroleum product to wholesale purchasers or end users, including but not limited to refiners, natural gas processing plants or fractioning plants, importers, resellers, jobbers and retailers; and

CC. "Tenant" means any person who occupies but does not own a dwelling under any agreement, lease, or contract, whether oral or written, and for whatever period of time, which requires the payment of moneys as rent for the use of the dwelling unit, and all other regular occupants of such dwelling unit.

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6 MCAR § 2.3104 Fuel oil supply alert. A fuel oil supply alert will inform the citizens of a potential fuel oil shortage, encourage conservation, and initiate a state of readiness for such a shortage.

A. A fuel oil supply alert may be declared in the event that Agency forecasts indicate a reasonable likelihood that fuel oil supply will not be adequate to meet fuel oil demand, within a period of 6 months from the date of declaration.

B. The director of the Minnesota Energy Agency shall have sole responsibility for declaring a fuel oil supply alert.

6 MCAR § 2.3105 Fuel oil supply emergency. A fuel oil supply emergency is a state of declared emergency resulting from a shortage of fuel oil.

A. Determination of an energy emergency. Responsibilities of each organization are as follows:

1. Minnesota Energy Agency. When agency forecasts of short-term demand for fuel oil exceed forecasts of short-term supply of fuel oil within a three month period of time, the director of the agency may recommend that an energy supply emergency be declared.

2. The Executive Council or Legislature. The Executive Council, consisting of the Governor, the Lieutenant Governor, the Attorney General, the Auditor, the Treasurer, and the Secretary of State, or Legislature has responsibility for declaring an energy supply emergency.

a. An energy supply emergency automatically expires in 30 days, unless renewed by the Legislature. Declaration of an energy supply emergency must be renewed every 30 days.

b. The declaration shall be promptly disseminated and brought to the attention of the general public by the Executive Council or Legislature, whichever body declares the emergency. The Energy Supply Emergency Resolution shall be promptly filed with the Division of Emergency Services, the Energy Agency, and the Secretary of State.

B. Priority ranking of users.

1. In an energy supply emergency resulting from a fuel oil shortage, suppliers shall deliver fuel oil according to the system of priorities set out below. Higher priority users shall have legitimate needs filled before lower priority users.

a. First priority users are fuel oil users with no available alternative fuel whose continued operation is essential for the health and safety of the citizens of the state. These include:

1. Health and residential care facilities;
2. Residences;
3. Essential transportation;
4. Plant protection;
5. Emergency services;
6. Communications;
7. Energy production; and
8. Agriculture.

b. Second priority users are those users whose continued operation is necessary for the health and safety of the citizens of the State but who have an available alternative source of fuel, such as residual oil or coal, the use of which would violate environmental standards.

c. Third priority users are those users whose continued operation is not essential for the immediate health and safety of the citizens of the State. These include:

1. Schools;
2. Government;
3. Commerce;
4. Industry; and
5. Cargo and freight hauling.

Within this category preference will be given to users who have no available alternative source of fuel; and users who have demonstrated that they have engaged in energy saving measures.

d. Users who have an available alternative source of fuel the use of which would not violate environmental standards will not receive fuel oil during a fuel oil supply emergency.

2. Major refineries and supplier representatives will be notified of the state of emergency by Energy Agency staff and supplied with a written description of the priority system for distribution, within two (2) days of a declared emergency.

3. The Emergency operating center shall provide services necessary to answer questions and resolve conflicts regarding the priority ranking of individual firms or entities.

4. Appeals of priority status shall be made through 6 MCAR §§ 2.0101-2.0107 Fuel Allocation Rules of Procedure.

C. Measures.

1. Upon declaration of a fuel oil energy supply emergency, the Governor shall select from the following measures to reduce the shortage.

a. Commercial buildings may be ordered to comply with the Emergency Building Temperature Restrictions (EBTR), pursuant to the Energy Policy and Conservation Act of 1975, 201 (A) and (B), (42 USC 6201). (Buildings which are exempted under EBTR shall be exempted from this rule.)

b. Home owners and renters may be requested to voluntarily turn their thermostats back to between 62°F and 66°F during the day and 52°F and 58°F during the night and during unoccupied hours, and may be requested to set back water heater thermostats to between 105°F and 115°F (or the lowest setting).

c. Citizens may be requested to refrain from driving diesel powered automobiles.

d. Voluntary industrial, commercial, government, and residential conservation targets may be established to reduce energy usage, including electricity and natural gas, especially during periods of peak usage.

e. Mandatory industrial, commercial, government targets may be established to reduce energy usage, including electricity and natural gas, especially during peak usage periods.

f. Fuel oil suppliers may be ordered to stop deliveries to large users (1000 gallon or larger storage tanks) until those users have less than one week's fuel oil supply on hand.

g. Commercial and industrial establishments may be requested to voluntarily reduce their hours of operations where this action saves energy.

h. Smoking within buildings may be prohibited and reduction of the amount of outside air entering building ventilation systems may be ordered.

i. All electric utilities with oil-fired generating facilities may be ordered to use oil of a quality not suitable for home heating or to shut down these plants and purchase power from the Mid-Continent Area Power Pool when power from nuclear or coal-fired generating facilities is available.

j. Weight limits on trucks may be raised to a uniform level of 80,000 lbs. for all roads.

k. Business and industrial and government institutions which now burn middle distillate, natural gas, or propane and which have the capacity to burn residual oil may be ordered to convert to the residual oil during the crisis period, unless such action is specifically prohibited by the Pollution Control Agency.

1. Commercial and industrial users may be requested to voluntarily release fuel oil from inventory supplies; and use fuel allocation rules of procedure (See 6 MCAR §§ 2.0101-2.0107) to allocate voluntarily released inventory.

(1) Under this system suppliers shall be directed to deliver fuel oil supplies according to the system of priorities described in § 2.3105 B.

(2) First priority users shall receive set-aside and voluntary inventory releases necessary to maintain health and safety for as long as such supplies last.

m. Business, industrial and government institutions may be requested to close nonessential buildings.

2. When the agency determines that actions listed in 6 MCAR § 2.3105 C. 1. have not or will not be sufficient to approximately equalize supply and demand the following options may be selected by the Governor:

a. Owners/operators of commercial, industrial, and government buildings may be ordered to reduce heating thermostats to 62°F during the day and 50°F at night or during unoccupied periods.

b. Temporary rules may be ordered adopted or rules may be ordered suspended to relax environmental standards, where such action would yield significant fuel oil savings.

c. Delivery of fuel oil supplies to specific industries, including commerce and government, may be ordered to be curtailed according to the following criteria. An order shall be in writing and shall be delivered by registered mail to firms in the industry and area suppliers.

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(1) Order of curtailment will be based on an industry's energy-labor ratio, defined as the sum of natural gas and fuel oil consumption in Btu's per employee. The industry with the highest energy-labor ratio will be the first to be curtailed, and so on. Such action will be rescinded in reverse order according to the industry's energy-labor ratio.

(2) Users who have first priority status under 6 MCAR § 2.3105 B. will be the last to be curtailed.

(3) A firm may be exempted from curtailment of delivery of fuel oil supplies if it can demonstrate it has reached the 1980 energy conservation targets established by the Department of Energy in 1977, under the Energy Policy and Conservation Act of 1975 if applicable, and that its energy-labor ratio is below the industry average. If no energy conservation targets exist, the firm must prove that its energy-labor ratio is significantly below the industry average. Exemption may be granted pursuant to 6 MCAR § 2.3109 B.

(4) The order of curtailment and estimated energy-labor ratio will be published annually in the *State Register* during the month of October.

d. Homeowners and renters may be requested to close homes and move in with friends or relatives or move into emergency shelters. The emergency operating center shall assist in this effort by designating shelters, aiding in securing homes, and providing emergency transportation.

3. Actions available for implementation under 6 MCAR § 2.3105 C.1. will remain available under 6 MCAR § 2.3105 C.2.

D. Operating organization during an emergency.

1. Energy emergency operating center. During a declared energy emergency, the Division of Emergency Services and the Minnesota Energy Agency will set up an energy emergency operating center.

a. The director of the emergency operating center will be the Director of the Division of Emergency Services. She/He shall direct the implementation of the emergency plan.

b. The emergency operating center shall be located at a site designated by the director of the center and staffed by personnel from the division, the agency and other state agencies as deemed necessary by the director of the center. While on detail at the center, these personnel shall be primarily responsible to the director of the center.

2. Energy Agency.

a. The agency shall assist the division by analyzing the fuel oil situation, evaluating alternative courses of action included in the emergency plan, and advising as to the proper time and sequence of the implementation of emergency measures.

b. The agency shall determine and recommend to the Governor the least restrictive measures specified under 6 MCAR § 2.3105 C.1.-2. capable of eliminating the shortage of fuel oil.

3. Emergency services.

a. The division shall have the responsibility for implementing the energy emergency plan and coordinating the emergency operations of the governmental organizations involved in the energy emergency program.

b. The division shall use a network of regional and local coordinators who would be responsible for coordinating the emergency operations with the different geographic areas of the State.

c. By January 1, 1982, the division shall develop procedures to monitor compliance with the mandatory measures listed in 6 MCAR § 2.3105 C.1.-2.

4. Pollution Control Agency. By January 1, 1982, the Pollution Control Agency, with the cooperation of the Energy Agency, shall develop standby plans and procedures for the administration and possible modification of pollution control standards during an energy emergency.

5. Other organizations with important responsibilities.

The Division of Emergency Services shall have the authority to call on any state agency or cooperating organization, such as the Red Cross, if its services are deemed to be necessary.

6 MCAR § 2.3106 Penalties.

A. Penalties for the violation of any provision of the plan are set out in Minn. Stat. § 116H.15 (1978).

B. Any person who violates the plan or knowingly submits false information in any report required by the plan shall be guilty of a misdemeanor. Maximum penalty is \$500 or 90 days or both. Each day of violation shall constitute a separate offense.

C. The plan may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county where the violation takes place. The existence of an adequate remedy at law shall not be a defense to such an action.

D. A court which finds that a person has violated a requirement of the plan or has knowingly submitted false information in any report required by the plan, or has violated a court order issued pursuant to the plan may impose a civil penalty of not more than \$10,000 for each such violation. These funds are payable to the general fund in the state treasury.

6 MCAR § 2.3107 Local energy conservation board.

A. A local energy conservation board shall be created to hear requests for exemption from mandatory measures listed in 6 MCAR § 2.3105 C.1.-C.2, except 2.c., in each county, in each city of the first class and in each city of more than one thousand population in St. Louis county.

B. The chairman of the county board of commissioners shall appoint a five member county local energy conservation board to include, if possible, the county attorney, the county fuel coordinator, a health professional, the county director of Emergency Services (if different from the county fuel coordinator), and a member of the public. If the county fuel coordinator and county director of Emergency Services are the same person, the fifth member shall be selected from the public.

C. Where appropriate under 6 MCAR § 2.3107 A., the chairman of the city council shall appoint a five member municipal local energy conservation board to include the city attorney, the city fuel coordinator, a health professional, the city director of emergency services (if different from the city fuel coordinator), and a member of the public. If the city fuel coordinator and the city director of Emergency Services are the same person, the fifth member shall be selected from the public.

D. The appointed members shall not be named until after the declaration of an emergency. In making the appointments, the chairman of the county board of commissioners and chairman of the city council shall make every reasonable effort to avoid any conflicts of interest.

E. Three members shall constitute a quorum.

6 MCAR § 2.3108 Fuel oil curtailment review.

Each appeal of an order to curtail delivery of Fuel Oil Supplies (6 MCAR § 2.3105 C.2.c.) shall be decided by the State Hearing Examiner's Office.

6 MCAR § 2.3109 Appeals.

A. Each appeal from an action taken pursuant to a declared energy supply emergency shall be in writing and shall be signed by the appellant. Each appeal shall state:

1. the action from which the appeal is made, including the individual or unit of government taking the action, and the date and nature of the appeal;
2. the reason for the appeal, including the reasons the appellant believes the action to be unjust or unwise;
3. the names and addresses of any persons known to the appellant who might be adversely or beneficially affected by the outcome of the appeal; and
4. the nature of the relief sought, whether reversal, modification or some other relief.

B. Appeals shall be delivered by mail or in person to the following locations:

1. Appeals of mandatory measures described in 6 MCAR § 2.3105 C., except 2.c., shall be sent to the local energy conservation board at the county courthouse, or the mayor's office, whichever is appropriate.
2. Appeals of an order to curtail delivery of supplies shall be sent to the Hearing Examiner's Office, Room 300, 1745 University Avenue, St. Paul, Minnesota 55101.

C. Appeals of an order to curtail delivery of fuel oil supplies based on conservation effort, described in 6 MCAR § 2.3105 C.2.c. shall be in writing and shall be signed by the appellant. In addition to the information required by 6 MCAR § 2.3109 A. each appeal shall include:

1. A detailed description of energy savings resulting from conservation efforts since 1977; and
2. calculation of the firm's energy-labor ratio.

D. Timing and procedures.

1. Within two (2) calendar days after receipt of an appeal, the hearing examiner or local energy conservation board, whichever is applicable, or his/her designate shall set a hearing date. The date of hearing shall not be more than five (5) calendar days after the receipt of an appeal. The chairman or hearing examiner or his/her designate shall notify all affected persons, either verbally or in writing, of the appeal and the time and place for the hearing not less than two (2) calendar days before the hearing.

2. The parties to an appeal shall be the appellant and the emergency operating center. Any party may be represented by counsel, but need not be.

3. The order to curtail delivery of fuel oil supplies shall remain in effect during an appeal of such an order.

OFFICIAL NOTICES

4. Informal disposition may be made of an appeal or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings. The hearing examiner or local energy conservation board may dispose of an appeal adversely to a party which defaults. Disposition of default shall occur only after the party against whom default is proposed, having received timely notice, fails to appear. The hearing examiner or local energy conservation board may order a prehearing conference to be held at any time prior to hearing, if it determines that such conference may simplify the issues or provide an opportunity for settlement. If a prehearing conference is ordered, notice of the time and place of the conference shall be served on all parties to the appeal not less than two (2) working days before the date of the conference.

5. Appeals from an action taken pursuant to an energy supply emergency shall not be heard if received more than ten (10) working days after the termination or expiration of an energy supply emergency.

E. Hearings.

1. Anyone submitting an appeal shall have the right to a hearing before the hearing examiner or local energy conservation board, at which hearing the parties may present and cross-examine witnesses and present evidence, rebuttal testimony and argument with respect to the issue or issues raised in the appeal. Evidence must be offered to be considered.

2. The hearing examiner or local energy conservation board shall prepare an official record of each hearing. Any party requesting a verbatim transcript of the hearing must bear the expense of preparing the transcript.

3. The chairman of the local energy conservation board or the hearing examiner shall use the procedure of the state hearing examiner's office at the hearing. The hearing examiner or local energy conservation board may prohibit devices which interfere with the hearing and may evict persons who disrupt the hearing.

F. Decision.

1. No factual information or evidence which is not part of the record shall be considered by either Board in making a decision on an appeal.

2. Within two (2) calendar days after the hearing is closed, the Hearing Examiner shall issue a final decision in writing, including the findings and conclusions on which the decision is based, a copy of which shall be given to all parties to the appeal.

3. Within two (2) calendar days after the hearing is closed, the local energy conservation board shall issue a recommended decision in writing, including the findings and conclusions on which the decision is based, a copy of which shall be given to all parties to the appeal. The division director may accept or overrule the board's decision, or he/she may remand the appeal for further hearing on specified parts. His/her decision shall be in writing and served on all parties.

4. The appellant may seek judicial review of a final decision of the division director or the hearing examiner.

Minnesota State Retirement System

Special Meeting, Board of Directors

Special meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, September 19, 1980 at 9:00 a.m. in the office of the system, 529 Jackson Street, St. Paul, Minnesota.

The purpose of the meeting is to receive a report regarding the Data Base system, revision of board rules and any other matters to come before the board.

Department of Transportation

Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove ICC Track No. 261, Located at St. Louis Park, Minnesota

Notice of Application and of Opportunity for Hearing

Notice is hereby given that the Chicago and North Western Transportation Company, with Attorneys at 4200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402 has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. § 219.741 to retire and remove ICC Track No. 261, located at St. Louis Park, Minnesota.

Any person may file a written objection to the action proposed by the petitioner by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before October 6, 1980. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

The petition recites among other matters that:

“The subject track is no longer needed for rail transportation service, constitutes a continuing and burdensome maintenance expense, and is an unnecessary safety hazard. The track is not used at the present time, and there is no present prospect that the subject track will be needed in the future. The only shipper, patron or member of the public who might have any interest in the retention of the tracks or facilities, or who have used the same to any substantial degree within the past several years is Apex Realty Co. . . .”

Upon receipt of a written objection, the commissioner will, with respect to the named petitioner, set the matter down for hearing. If no objections are received, the commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a party to this matter must submit a timely petition to intervene to the Hearing Examiner pursuant to 9 MCAR § 2.210, showing how the person’s legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

September 8, 1980

Richard P. Braun
Commissioner

Water Planning Board

Notice of Meeting

Notice is hereby given that the Water Planning Board will hold a meeting on Thursday, September 25, 1980, in Room 22 of the State Office Building, beginning at 10:00 a.m. An agenda for the meeting may be obtained one week prior to the meeting by contacting the undersigned at 600 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota 55101.

Thomas Kalitowski
Chairman

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