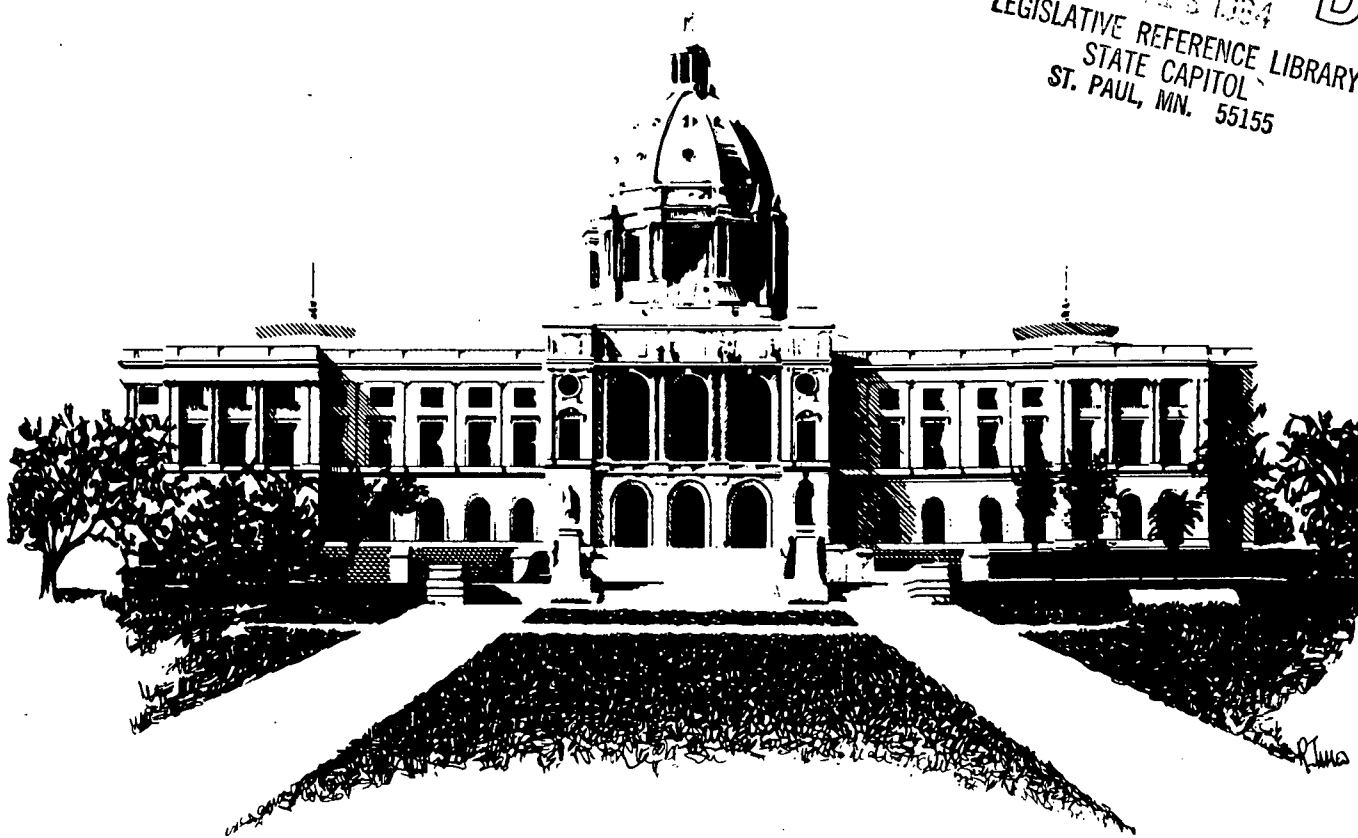


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STATE REGISTER

STATE OF MINNESOTA

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August 13, 1984

Pages 309-356



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 9			
8	Monday Aug 6	Monday Aug 13	Monday Aug 20
9	Monday Aug 13	Monday Aug 20	Monday Aug 27
10	Monday Aug 20	Friday Aug 24	Monday Sept 3
11	Monday Aug 27	Friday Aug 31	Monday Sept 10

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

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

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

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

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

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

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

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

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

Issues 1-13, inclusive

Issues 14-25, inclusive

Issue 26, cumulative for 1-26

Issues 27-38, inclusive

Issue 39, cumulative for 1-39

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EXECUTIVE ORDERS

Executive Order No. 84-11

Providing for the Establishment of the Governor's Council on Families and Children

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

WHEREAS, families and children are truly our most precious social resource because they are responsible for perpetuating the basic goals and values which bind a society together; and

WHEREAS, Minnesota families reflect a richness of ethnic diversity and family styles which need to be supported and encouraged; and

WHEREAS, rapid and radical changes in society have brought new pressures and challenges to today's families, and especially to the children in these families; and

WHEREAS, public policy toward families and children is of the utmost importance because of the demonstrable effects on the family by the actions of major social institutions, including all levels of government; and

WHEREAS, public policy should be designed to combat harmful effects upon the family by all such activities, just as programs which actively service family needs should be devised and implemented.

NOW, THEREFORE, I order the creation of a Governor's Council on Families and Children. The Council shall consist of fifteen members representative of a broad spectrum of Minnesota citizens, with emphasis on people with a strong commitment to families as well as experience in working for the community good.

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

IN TESTIMONY WHEREOF I have set my hand this 25th day of July, 1984.



PROPOSED RULES

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

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

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

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

Department of Energy and Economic Development

Proposed Emergency Rules Governing Allocation of Industrial Development Bond Issuance Authority

Notice of Intent to Adopt Emergency Rules and Request for Public Comment

Notice is hereby given that the Minnesota Department of Energy and Economic Development is proposing to adopt emergency rules for the allocation of its total industrial development bond issuance allocation. The agency is authorized by Minnesota Statutes, section 116J.58, subdivision 4 and 474.17, subdivision 3, to adopt emergency rules for the allocation of the amount of industrial bond issuance authority to other state agencies, political subdivisions, or other authorization.

All interested parties have 25 days from the day of publication of this notice in the *State Register* to submit written comments to the agency on the proposed emergency rules. With publication of this notice in the August 13, 1984, *State Register*, written comments must be received by the agency no later than 4:30 p.m. on September 7, 1984. Written comments should be sent to:

Mary A. Callahan
Financial Management Division
Department of Energy and Economic Development
900 American Center Building
150 E. Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: 612/297-1543

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

The proposed emergency rules with any modifications adopted by the agency, will be submitted to the Attorney General for review as to form and legality after close of the comment period. Persons wishing to be informed of the date of submission of the proposed emergency rules to the Attorney General should notify the agency of such desire at the address given above. The Attorney General has ten working days to approve or disapprove the rules.

The emergency rules will be effective five working days following approval of the rules by the Attorney General. It is the agency's intent to keep the rules in effect for a period of 180 days upon publication of a separate notice to such effect.

A full copy of the proposed emergency rules is available by contacting Ms. Callahan at the above address.

July 25, 1984

Mark B. Dayton, Commissioner
Department of Energy and Economic
Development

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

PROPOSED RULES

Emergency Rules as Proposed (all new material)

8300.2400 [Emergency] ALLOCATION OF INDUSTRIAL DEVELOPMENT BOND ISSUANCE AUTHORITY.

Subpart 1. Definitions. The definitions in Laws of Minnesota 1984, chapter 582, section 13 and in this subpart apply to subparts 2 and 3:

A. "Allocation" means the aggregate limit of industrial development bond issuance authority granted to the Department of Energy and Economic Development by Laws of Minnesota 1984, chapter 582, section 14, subdivision 3.

B. "Authority" means the Minnesota Energy and Economic Development Authority.

C. "Commissioner" means the commissioner of the Department of Energy and Economic Development Authority or a designee.

D. "Department" means the Department of Energy and Economic Development.

E. "Supplemental allocation" means any additional amount of industrial development bond issuance authority that may be available for allocation or reallocation under Laws of Minnesota 1984, chapter 582, section 16.

Subp. 2. Allocation. Under the authority granted in Laws of Minnesota 1984, chapter 582, sections 1; and 14, subdivision 3, the department shall allocate its total allocation to the authority by order of the commissioner if the authority meets the following requirements:

A. the authority operates programs of statewide application, including but not limited to business loans, small business loans, energy loans, farm loans, or pollution control loans located within a statewide jurisdiction;

B. the authority is a state entity or an agency with a statewide jurisdiction that has bond issuance authority and that is subject to the federal limitations act, but is not allocated bond issuance authority under Laws of Minnesota 1984, chapter 582, section 14; and

C. the authority submits a resolution requesting the allocation from the department on or after the effective date of the federal limitations act in 1984 and on or before January 1 of subsequent years.

Subp. 3. Supplemental allocation. If the authority received all of the allocation under subpart 2 and if the authority submits a resolution to the department requesting additional bond issuance allocation, the department shall apply for a supplemental allocation from the pool amount on behalf of the authority according to Laws of Minnesota 1984, chapter 582, section 16, subdivision 1.

Department of Health Division of Environmental Health

Proposed Rules Governing Healing Arts

Notice of Intent to Adopt Rule without a Public Hearing

Notice is hereby given that the Commissioner of Health proposes to amend the above-entitled rules without a public hearing. The Environmental Health Division has determined that the proposed amendment to Minn. Rules pt. 4730.1700 (MHD 182 (a)(1)(aa)(vii)) will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Stat. §§ 14.21-14.28 (1982).

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

If 25 or more persons submit written requests for a public hearing on the proposed rules within the thirty-day comment period, a public hearing will be held. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. §§ 14.14-14.15 (1982). If a hearing is not required, notice of the date of submission of the proposed rule to the attorney general for review will be mailed to any person requesting to receive the notice.

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

Mrs. Alice T. Dolezal Hennigan, Chief
Section of Radiation Control
Minnesota Department of Health
717 Delaware Street S.E.
P.O. Box 9441
Minneapolis, Minnesota 55440
612/623-5323

Authority for the adoption of these rules is contained in Minnesota Statutes §§ 144.12 (15). A statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules has been prepared and is available from Mrs. Alice T. Dolezal Hennigan upon request.

Any person who desires to be advised of the submission of this material to the Attorney General for approval may make this request in writing to Mrs. Alice T. Dolezal Hennigan.

July 12, 1984

Sister Mary Madonna Ashton,
Commissioner
Minnesota Department of Health

Rule as Proposed

4730.1700 HEALING ARTS.

Subpart 1. Fluoroscopic equipment. Fluoroscopic equipment:

A. to F. [Unchanged.]

G. Collimators shall be provided to restrict the size of the useful beam to less than the area of the primary barrier, irrespective of the panel-to-screen distance. During fluoroscopy with image intensifiers, the useful beam shall not exceed the ~~diameter of the input phosphor~~ size of the film receptor. Collimators, adjustable diaphragms, and shutters shall provide the same degree of protection as is required of the tube housing.

H. to L. [Unchanged.]

Subp. 2. to 4. [Unchanged.]

Department of Human Services Mental Health Bureau

Proposed Emergency Rules Relating to Medical Assistance Funding and Administration of Home and Community-Based Services for Persons Who Are Mentally Retarded

Notice of Intent to Adopt Emergency Rules without a Hearing

The State Department of Human Services proposes to adopt the above-entitled emergency rules to implement Laws of Minnesota 1983, Chapter 312, Article 9.

Persons interested in these rules have until 4:30 p.m., September 7, 1984 to submit written comments. The proposed emergency rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Written comments should be sent to:

Grace Stroebel
Department of Human Services
4th Floor, Centennial Office Building
St. Paul, MN 55155

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

PROPOSED RULES

Upon adoption of these emergency rules, this notice, all written comments received, and the adopted emergency rules will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality.

Notice of the date of submission of the proposed emergency rule to the attorney general will be mailed to any person requesting to receive this notice. The Attorney General shall approve or disapprove the proposed emergency rule and any modifications on the tenth working day following the date of receipt of the proposed emergency rule from the agency.

The adopted emergency rules will not become effective without the Attorney General's approval and the Revisor of Statutes' certification of the rules' form. Emergency rules take effect five working days after approval by the Attorney General.

As required by the Administrative Procedures Act, Minnesota Statutes, chapter 14, these emergency rules shall be in effect for up to 180 days following their adoption and may be continued in effect for an additional 180 days if the Commissioner gives notice of continuation by publishing notice in the *State Register* and mailing the same notice to all persons registered with the Commissioner to receive notice of rulemaking proceedings. The emergency rules shall not be effective 360 days after their effective date without following the procedures in Minnesota Statutes, sections 14.13 to 14.20.

The purpose of proposed Minnesota Rules parts 9525.1800 to 9525.1930 [Emergency] is to establish procedures to fund home and community-based services through the medical assistance program for eligible persons who are mentally retarded.

Proposed Minnesota Rules, parts 9525.1800 to 9525.1930 [Emergency] apply to a county or counties administering medical assistance funds for home and community-based services for persons who are mentally retarded and to all providers that contract with a county to provide home and community-based services for persons who are mentally retarded. "Home and community-based services" means the following services for persons who are mentally retarded authorized under United States Code, title 42, sections 1396 to 1396p, and authorized in the waiver granted by the federal Department of Health and Human Services: case management, respite care, homemaker, in-home family support services, supported living arrangements for children, supported living arrangements for adults, day habilitation, and minor physical adaptations to the home.

Proposed Minnesota Rules, parts 9525.1800 to 9525.1930 [Emergency] include sections on client eligibility, provision of home and community-based services, parental contribution fee, provider reimbursement, reimbursable services, provider contracts, county funding of home and community-based services, required records and reports, and penalties for noncompliance.

These emergency rules will not result in any additional state or county spending beyond the amount of funds appropriated by the legislature.

A free copy of the proposed emergency rule may be obtained by contacting Grace Stroebel at 612/296-2682.

Leonard W. Levine
Commissioner of Human Services

Emergency Rules as Proposed (all new material)

9525.1800 [Emergency] DEFINITIONS.

Subpart 1. Scope. The terms used in parts 9525.1800 to 9525.1930 [Emergency] have the meanings given to them in this part.

Subp. 2. Billing rate. "Billing rate" means the rate charged for providing services. The rate may be based on a day, hour, or fraction of an hour, of service.

Subp. 3. Case manager. "Case manager" means the person designated by the county to provide case management services as defined in part 9525.1860 [Emergency].

Subp. 4. Client. "Client" means a person who is receiving home and community-based services.

Subp. 5. Commissioner. "Commissioner" means the commissioner of human services or the commissioner's designated representative.

Subp. 6. County. "County" means the county board of commissioners for the county of financial responsibility or the county board of commissioners' designated representative.

Subp. 7. County of financial responsibility. "County of financial responsibility" has the meaning given it in Minnesota Statutes, section 256B.02, subdivision 3.

Subp. 8. Daily intervention. "Daily intervention" means supervision, assistance, or training provided to a client in the client's residence by a provider or family member to help the client manage daily activities for more than 90 consecutive days.

Subp. 9. Department. "Department" means the Minnesota Department of Human Services.

Subp. 10. Diversion. "Diversion" means the act of placing a client who would be placed in an intermediate care facility for the mentally retarded within one year if the home and community-based services were not provided.

Subp. 11. Family. "Family" means the client's biological parents, adoptive parents or stepparents, siblings, children, and spouse.

Subp. 12. Federal waiver application. "Federal waiver application" means the application, and all amendments to the application including any amendments made after the effective date of parts 9525.1800 to 9525.1930 [Emergency], submitted to the federal Department of Health and Human Services under United States Code, title 42, sections 1396 to 1396p, requesting a waiver of Title XIX of the Social Security Act requirements to allow the state to pay for home and community-based services for persons who are mentally retarded.

Subp. 13. Fiscal year. "Fiscal year" means the state's fiscal year from July 1 through the following June 30.

Subp. 14. Geographic region. "Geographic region" means the economic development regions established by executive order of the governor in accordance with Minnesota Statutes, section 462.385, in effect on July 1, 1984.

Subp. 15. Home and community-based services. "Home and community-based services" means the following services for persons who are mentally retarded authorized under United States Code, title 42, sections 1396 to 1396p, and authorized in the waiver granted by the federal Department of Health and Human Services: case management, respite care, homemaker, in-home family supported services, supported living arrangements for children, supported living arrangements for adults, day habilitation, and minor physical adaptations to the home, as defined in part 9525.1860 [Emergency].

Subp. 16. Host county. "Host county" means the county in which the home and community-based service is provided.

Subp. 17. Individual program plan. "Individual program plan" has the meaning given it in parts 9525.0010 to 9525.0100.

Subp. 18. Individual service plan. "Individual service plan" has the meaning given it in parts 9525.0010 to 9525.0100.

Subp. 19. Intermediate care facility for the mentally retarded or (ICF/MR). "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to serve persons who are mentally retarded under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Department of Health as an intermediate care facility for the mentally retarded. Unless otherwise stated, the term ICF/MR includes state-operated and community-based facilities.

Subp. 20. Placement. "Placement" means the act of placing a client who is discharged from an ICF/MR.

Subp. 21. Primary caregiver. "Primary caregiver" means the person responsible for the daily care, supervision, or training of the client in the client's residence.

Subp. 22. Provider. "Provider" means a person or legal entity providing home and community-based services according to parts 9525.1800 to 9525.1930 [Emergency].

Subp. 23. Room and board. "Room and board" means costs associated with providing food, shelter, and personal needs items for clients.

Subp. 24. Screening team. "Screening team" has the definition given it in Minnesota Statutes, section 256B.092.

Subp. 25. Service site. "Service site" means the location at which home and community-based services are provided.

Subp. 26. Short term. "Short term" means a period of less than 90 days in a year.

9525.1810 [Emergency] PURPOSE AND APPLICABILITY.

Subpart 1. Purpose. The purpose of parts 9525.1800 to 9525.1930 [Emergency] is to establish procedures to fund home and community-based services through the medical assistance program for eligible persons who are mentally retarded.

Subp. 2. Applicability. Parts 9525.1800 to 9525.1930 [Emergency] apply to a county or counties administering medical assistance funds for home and community-based services for persons who are mentally retarded and to all providers that contract with a county to provide home and community-based services for persons who are mentally retarded.

Subp. 3. Effect. The entire application of parts 9525.1800 to 9525.1930 [Emergency] shall continue in effect only as long as the federal waiver from the federal Department of Health and Human Services is in effect in the state of Minnesota.

9525.1820 [Emergency] ELIGIBILITY.

Subpart 1. Eligibility criteria. A person is eligible to receive home and community-based services if the person meets all the

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criteria in items A to D and if home and community-based services may be provided in accordance with part 9525.1830 [Emergency]:

- A. the person is eligible to receive medical assistance under Minnesota Statutes, chapter 256B or subpart 2;
- B. the person is determined to be mentally retarded in accordance with the definitions in parts 9525.0010 to 9525.0100;
- C. the person is a resident of an ICF/MR or it is determined by the screening team that the person would be placed in an ICF/MR within one year if home and community-based services are not provided;
- D. the screening team has determined that the person needs daily intervention and the person's individual service plan documents the need for daily intervention and specifies the services needed.

Subp. 2. Medical assistance eligibility for children residing with their parents. The county shall determine eligibility for medical assistance for a person under age 21 who resides with a parent or parents without considering parental income and resources if:

- A. the person meets the criteria in subpart 1, items B to D;
- B. the person will be provided home and community-based services in accordance with part 9525.1830 [Emergency]; and
- C. the commissioner has approved in writing a county request to suspend for the person the deeming requirements in Code of Federal Regulations, title 42, section 436.821 in accordance with the approved federal waiver application.

9525.1830 [Emergency] PROVISION OF HOME AND COMMUNITY-BASED SERVICES.

The county shall provide or arrange to provide home and community-based services to a person if the person is eligible for home and community-based services under part 9525.1820 [Emergency] and all the conditions in items A to F have been met:

- A. the home and community-based services money allocated to the county by the commissioner is sufficient to pay the costs of providing home and community-based services to the person;
- B. the screening team has determined that home and community-based services are an appropriate alternative to ICF/MR services for the person under parts 9525.0010 to 9525.0100;
- C. the commissioner has authorized payment for home and community-based services for the person;
- D. the person or person's legal representative has agreed to the home and community-based services determined by the screening team to be appropriate for the person;
- E. the county has authorized provision of home and community-based services to the person based on the goals and objectives in the person's individual service plan; and
- F. the county has a signed agreement with the state that complies with part 9525.1900 [Emergency].

9525.1840 [Emergency] PARENTAL CONTRIBUTION FEE.

Subpart 1. Out-of-home placements. Parents of clients under age 18 shall be liable for a parental contribution fee determined according to Minnesota Statutes, section 256B.14, if the client resides outside the parent's home.

Subp. 2. In-home placements. Parents of clients under age 18 may be liable for a parental contribution fee determined according to Minnesota Statutes, section 256B.14, if the client is residing with a parent and the client's medical assistance eligibility for home and community-based services was determined without considering parental income or resources under part 9525.1820 [Emergency], subpart 2.

9525.1850 [Emergency] PROVIDER REIMBURSEMENT.

A provider may receive medical assistance reimbursement for home and community-based services only if the provider meets the criteria in items A to D:

- A. the provider has a current license or licenses for the specific home and community-based services as required under Minnesota Statutes or Minnesota Rules or, if no license is required, has received approval from the county to provide home and community-based services in accordance with Minnesota Statutes, sections 252.28 and 245.781 to 245.812;
- B. the provider has a legally binding contract with the county which complies with part 9525.1870 [Emergency];
- C. the provider agrees to comply with parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1800 to 9525.1930 [Emergency]; and
- D. the provider is not the client's guardian or a member of the client's family. If the client is a ward of the commissioner, the county is not precluded from providing services.

9525.1860 [Emergency] REIMBURSABLE SERVICES.

Subpart 1. General limits. The costs of providing the home and community-based services defined in subpart 2, limited in accordance with subpart 3, are reimbursable under the medical assistance program for as long as the federal waiver from the federal Department of Health and Human Services is in effect in the state of Minnesota.

Subp. 2. Definitions. For the purposes of this part the following terms have the meanings given them.

A. "Case management" means services provided to and with the involvement of the client including: assessing client needs and strengths; client screening as described in Minnesota Statutes, section 256B.092; developing individual service plans; analyzing and coordinating services; monitoring and evaluating client progress and the outcome of services provided to the client; and assuring the protection of clients' rights under Minnesota Statutes, sections 13.46 and 626.557; and parts 9555.8000 to 9555.8500.

B. "Day habilitation" means habilitation services provided away from the client's place of residence and focused on functioning in the community, using leisure and recreation time and developing task-oriented skills which will prepare the client to participate in a work environment. Day habilitation services for children are focused on stimulating the physical, intellectual, and emotional development of the child.

C. "Habilitation services" means health and social services directed toward increasing and maintaining the physical, intellectual, emotional, and social functioning of persons who are mentally retarded. Habilitation services include therapeutic activities, assistance, training, supervision, and monitoring in the areas of self-care, sensory and motor development, interpersonal skills, communication, socialization, reduction or elimination of maladaptive behavior, community living and mobility, health care, leisure and recreation, money management, and household chores. Day habilitation services and residential-based habilitation services are types of habilitation services.

D. "Homemaker services" means general household activities and ongoing monitoring of the client's well-being provided by a homemaker who meets the standards in part 9565.1200.

E. "In-home family support services" means residential-based habilitation services designed to enable the family to care for and maintain the client in the home. In-home family support services are only reimbursable for clients under 21 years of age and may include training of the client and the client's family and counseling for the client and the client's family.

F. "Minor physical adaptations to the home" means one or more of the structural changes to the client's residence set forth in subpart 3, item D. Minor physical adaptations to the home must be designed to enable the client to avoid institutionalization by increasing the client's mobility and protecting the client against injury. Minor physical adaptations to the home are only reimbursable for clients with mobility problems, sensory deficits, or behavior problems. Minor physical adaptations are limited to those in subpart 3, item D.

G. "Residential-based habilitation services" means habilitation services provided in the client's residence. In-home family support services, supported living arrangements for children, and supported living arrangements for adults are residential-based habilitation services.

H. "Respite care" means short-term supervision, assistance, and care provided to a client due to the temporary absence or need for relief of the client's family, foster family, or primary caregiver. Respite care includes day, overnight, in-home, and out-of-home services as needed.

I. "Supported living arrangements for adults" means residential-based habilitation services provided on a daily basis to adults who require 24 hours or less of supervision, assistance, or training, in a residence for up to six clients.

J. "Supported living arrangements for children" means residential-based habilitation services provided on a daily basis to clients under 21 years of age in a residence for up to three clients.

Subp. 3. Limitations. The provision of home and community-based services is limited as follows in items A to I.

A. Staff time billed by the provider shall be limited to time actually and reasonably spent:

(1) in direct contact with the client to assist the client in attaining the goals in the client's individual service plan;

(2) in verbal or written contact with professionals or others regarding the client's progress in attaining the goals in the client's individual service plan; or

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(3) in planning activities including attending the client's interdisciplinary team meetings, developing goals and objectives for the client's individual program plan, assessing and reviewing client's goals and objectives, documenting the client's progress toward attaining the goals and objectives in the client's individual service plan and assessing the adequacy of the services related to the goals and objectives in the client's individual service plan.

B. Day habilitation services shall:

- (1) only be provided to clients who receive a residential-based habilitation service;
- (2) not include sheltered work or work activity services funded or certified by the Minnesota Division of Vocational Rehabilitation; and
- (3) be provided at a different site than the client's place of residence unless medically contraindicated in accordance with Minnesota Statutes, section 256B.501, subdivision 1, paragraph (d).

C. Homemaker services may be provided only if:

- (1) the person regularly responsible for these activities is temporarily absent or is temporarily unable to manage the home and care for the client; or
- (2) there is no person, other than the client, regularly responsible for these activities and the client is unable to manage the home and his or her own care without ongoing monitoring or assistance. Homemaker services include meal preparation, cleaning, simple household repairs, laundry, shopping, and other routine household tasks.

D. Reimbursement for minor physical adaptations to the home shall be limited to an average cost of \$3,000 per client for all clients in the county. The average cost limitation applies to the entire period of time during which the clients receive home and community-based services. Minor physical adaptations to the home must be limited to the purchase and installation of one or more of the following in subitems (1) to (12):

- (1) wheelchair ramps;
- (2) handrails and grab bars;
- (3) elevated bathtub and toilets;
- (4) widened doorways;
- (5) shatterproof windows;
- (6) blinking lights and tactile alarms as alternate warning systems;
- (7) door handle replacements;
- (8) lowered kitchen work surfaces;
- (9) modified cabinets and sinks which provide wheelchair space;
- (10) handles and hoses for showerheads;
- (11) door hinge replacements; or
- (12) shower and bathtub seats.

E. Home and community-based services must not be provided to a client while the client is a resident of an ICF/MR or on leave from an ICF/MR.

F. Respite care must be provided only for the client's family, foster family, or if the client is in a supported living arrangement, respite care may be provided for the client's primary caregiver.

G. Room and board costs are not allowable costs for residential-based habilitation services.

H. For the purposes of this part, the services in subitems (1) to (9) have the meanings given them in parts 9500.0750 to 9500.1080. If the services in subitems (1) to (9) are provided to a client, the cost of the services must be included in the rate billed by a provider. These services are not reimbursable under any other rule or rules for clients in home and community-based services:

- (1) psychological services;
- (2) physical therapy;
- (3) occupational therapy;
- (4) services for individuals with speech, hearing, and language disorders;
- (5) mental health center services;
- (6) rehabilitative and therapeutic services;

- (7) home health care services;
- (8) private duty nursing services; and
- (9) personal care attendant services.

I. Control of the delivery of home and community-based services shall be limited as stated in Minnesota Statutes, section 256B.501.

9525.1870 [Emergency] PROVIDER CONTRACTS AND SUBCONTRACTS.

Subpart 1. Contracts. In order for a provider to receive medical assistance reimbursement for home and community-based services, the provider must have a contract with the host county. The contract must contain at least the information in items A to M and subpart 2:

- A. maximum and minimum number of clients to be served;
- B. types of service sites where services are to be delivered;
- C. qualifications of persons to provide services, including proof of licensing or certification if licensing or certification is required by state laws or federal regulations;
- D. description of services to be delivered including type, amount, frequency, and duration;
- E. description of the purposes of the services to be delivered;
- F. description of how the services will benefit the clients in attaining the goals in the clients' individual service plans;
- G. description of how the benefits of the services will be measured;
- H. agreement to develop clients' individual program plans in accordance with the goals in the clients' individual service plans;
- I. billing rate and total budget;
- J. description of county contract monitoring procedures agreed to by the provider, including frequency of monitoring;
- K. the starting and ending dates of the contract;
- L. description of program and financial records to be maintained by the provider in accordance with part 9525.1920 [Emergency]; and

M. name of the person responsible for ensuring that the provider is in compliance with the data practices in Minnesota Statutes, section 13.46, subdivision 10, paragraph (d).

Subp. 2. Required provision. The contract must contain the following language verbatim: "The county shall withhold reimbursement to the provider if either the county or the Minnesota Department of Human Services has reasonable grounds to believe that the contract of the county with the provider or the subcontract of the provider with any subcontractor of services has been breached in any manner or is anticipated to be breached in any manner. If the breach occurs, the county may recoup any payments made. The provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as such is an affected party under this contract and as such may recoup payments made by the county to the provider in event of breach of this contract if the county does not recoup the payments. The provider specifically acknowledges and agrees that the Minnesota Department of Human Services has standing to and may take any appropriate administrative action or sue the provider for any appropriate relief in law or equity, including, but not limited to rescission, damages, or specific performance of all or any part of the contract between the county and the provider. The provider specifically acknowledges that the county and the Minnesota Department of Human Services are entitled to and may recover from the provider reasonable attorney's fees and costs and disbursements associated with any action taken under this paragraph. This provision shall not be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity."

Subp. 3. Subcontracts. If the provider subcontracts with another contractor the provider must:

- A. have written permission from the host county to subcontract;
- B. ensure that the subcontract meets all the requirements of subpart 1;

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C. ensure that the subcontractor meets the requirements in part 9525.1850 [Emergency];

D. ensure that the subcontractor performs fully the terms of the subcontract; and

E. ensure that the subcontract contains the following language verbatim: "The provider shall withhold reimbursement to the subcontractor if either the county or the Minnesota Department of Human Services has reasonable grounds to believe that the subcontract of the provider with the subcontractor has been breached in any manner or is anticipated to be breached in any manner. The subcontractor acknowledges and agrees that the county and the Minnesota Department of Human Services are third-party beneficiaries, and as such are affected parties under this subcontract and as such either or both may recoup payments made by the provider to the subcontractor in event of breach of this subcontract. The subcontractor specifically acknowledges and agrees that the county and the Minnesota Department of Human Services have standing to and may take any appropriate administrative action or sue the subcontractor for any appropriate relief in law or equity, including, but not limited to rescission, damages, or specific performance for all or any part of the subcontract between the subcontractor and the provider. The subcontractor specifically acknowledges that the county and the Minnesota Department of Human Services are entitled to and may recover from the subcontractor reasonable attorney's fees and costs and disbursements associated with any action taken under this paragraph. This provision shall not be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity."

Subp. 4. Noncompliance. If the provider fails to comply with the provisions of the contract, the county may seek any available legal remedy.

9525.1880 [Emergency] COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.

Subpart 1. Application forms and deadlines. The commissioner shall notify the counties of the deadlines and forms for the submission of proposals for home and community-based services.

Subp. 2. County proposal for fiscal year 1985. In order to be considered for reimbursement under parts 9525.1800 to 9525.1930 [Emergency] during fiscal year 1985, counties must submit to the commissioner a proposal showing quarterly projections of the number of clients to be provided home and community-based services during the fiscal year. The county must include in the county projections:

- A. the projected number of diversions;
- B. the projected number of placements from state-operated ICFs/MR into home and community-based services;
- C. the projected number of placements from community-based ICFs/MR into home and community-based services; and
- D. the information requested in subpart 3, item B, if known.

Subp. 3. County proposal for fiscal year 1986. In order to be considered for reimbursement under parts 9525.1800 to 9525.1930 [Emergency] during fiscal year 1986, counties, singly or jointly, shall submit to the commissioner an annual proposal for the provision of home and community-based services to clients for which the county or counties are financially responsible. The proposal must:

- A. State measurable program goals and objectives to be accomplished by the home and community-based services.
- B. Identify the persons the county expects to provide the home and community-based services. If counties are applying jointly, each county must identify the persons for which the county is financially responsible. For each person the county shall identify:
 - (1) date of birth and initials;
 - (2) current living arrangement;
 - (3) current day programs;
 - (4) the level of supervision required;
 - (5) the type of home and community-based services projected to be needed and the expected duration of the service or services;
 - (6) the projected starting date of home and community-based services; and
 - (7) the proposed service provider or providers and billing rate, if known.

C. Describe how the county proposal complies with the county utilization targets developed by the department in accordance with the *Welsch v. Levine* consent decree.

D. Describe how the county proposal affects the admission and discharge of children in state hospitals as required in the *Welsch v. Levine* consent decree.

E. Describe how the proposal limits the development of new community-based ICF/MR beds or reduces the county's

use of existing ICF/MR beds in state-operated ICFs/MR and community ICFs/MR, including any steps the county has taken to encourage voluntary decertification of community-based ICF/MR beds.

F. Describe the steps the county has taken to prepare to provide home and community-based services.

Subp. 4. Review and approval of proposal. The commissioner shall review all proposals submitted in accordance with subparts 1 to 3. In fiscal year 1985, all proposals that meet the requirements of parts 9525.1800 to 9525.1880 [Emergency] shall be approved. In fiscal year 1986, the commissioner shall only approve the county applications that meet the requirements of parts 9525.1800 to 9525.1880 [Emergency] and that demonstrate compliance with the goals of the department as stated in items A to D:

A. compliance with the county utilization targets developed by the department in accordance with the *Welsch v. Levine* consent decree;

B. reduction of the number of children in state-operated ICFs/MR;

C. limitation of the development of new community-based ICF/MR beds or reduction of the use of existing ICF/MR beds in state-operated ICFs/MR and community-based ICFs/MR; and

D. integration of home and community-based services into the county's administrative services planning system.

If the proposal is disapproved, the commissioner shall notify the county, in writing, of the reasons the proposal was not approved. The county has seven days after receipt of the written notice in which to revise the proposal and resubmit it to the commissioner.

9525.1890 [Emergency] ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.

Subpart 1. Allocation of diversions; fiscal year 1985. To allocate home and community-based services money for diversions for fiscal year 1985, the commissioner shall compare the number of diversions projected in the approved county proposal and the number of diversions projected for the county by the commissioner. The commissioner's projections shall be the average of the projected utilization of state-operated and community-based ICF/MR beds using historical utilization by the county; and the projected per capita utilization of state-operated and community-based ICF/MR beds by the county, both of which are adjusted to conform with the number of diversions projected in the federal waiver application. The county's allocation of money for diversions shall be based on the lesser of the number of diversions projected in the approved county proposal or the number of diversions projected for the county by the commissioner.

Subp. 2. Allocation of diversions; fiscal year 1986. To allocate home and community-based services money for diversions for fiscal year 1986, the commissioner shall project the number of diversions for the county under subpart 1 and adjust the projection based on the county's actual use of allocated diversions during fiscal year 1985. If the county uses less than the number of diversions allocated, the commissioner may decrease the number of diversions projected for the county by the commissioner. The county's allocation of money for diversions shall be based on the lesser of the number of diversions in the approved county proposal and the number of diversions projected for the county by the commissioner.

Subp. 3. Allocation of placements. The county's allocation of money for placements shall be based on the number of placements in the approved county proposal.

Subp. 4. Notification of allocation. The commissioner shall notify all counties, in writing, of the amount of home and community-based services money allocated to each county or group of counties if the proposal was submitted jointly.

Subp. 5. Review of allocation; reallocation. The commissioner shall review the projected and actual use of home and community-based services by all counties participating in the program on a quarterly basis, and report the findings to all the counties in the state. The commissioner may reduce the allocation to a county if the commissioner determines, in consultation with the county, that the initial allocation to the county will not be used during the allocation period. The commissioner may reallocate the unused portion of the county's initial allocation to other counties in the same geographic region that plan to expand home and community-based services or provide home and community-based services for the first time. If there is not a sufficient number of projections to use the unused allocation from counties within the geographic region, the commissioner may reallocate the remainder to counties in other geographic regions that plan to expand home and community-based services or provide home and community-based services for the first time.

Subp. 6. Preference during reallocation process and in fiscal year 1986. The commissioner may give preference during the

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reallocation process and in the allocation of funds for fiscal year 1986 to proposals submitted by counties that have not previously provided home and community-based services. In allocating funds for fiscal year 1986, the commissioner shall give priority to the continued funding of home and community-based services for clients who received home and community-based services in fiscal year 1985 and continue to be eligible for home and community-based services in 1986.

9525.1900 [Emergency] AGREEMENT BETWEEN STATE AND COUNTY.

Subpart 1. Contents of agreement. The county must have a legally binding written agreement with the state in order to receive home and community-based services money. The agreement must include provisions specifying that:

A. home and community-based services money will be used only for services to persons who are determined to be eligible under part 9525.1820 [Emergency] and meet the conditions in part 9525.1830 [Emergency];

B. home and community-based services money will be used only for the services in part 9525.1860 [Emergency];

C. home and community-based services money will be used only for services provided by providers who meet the requirements of part 9525.1850 [Emergency] and have a legally binding contract with the host county which meets the requirements of part 9525.1870 [Emergency];

D. the total cost of providing home and community-based services to all home and community-based service clients will not exceed the limits in part 9525.1910 [Emergency];

E. records will be kept in accordance with part 9525.1920 [Emergency] and applicable provisions of parts 9505.1750 to 9505.2150;

F. the county will comply with all applicable standards in parts 9525.0010 to 9525.0100;

G. the county will comply with parts 9525.1800 to 9525.1930 [Emergency];

H. the county will comply with Minnesota Statutes, chapter 256B, and rules adopted thereunder; and

I. the county will comply with United States Code, title 19, sections 1396 et seq., and all regulations promulgated thereunder.

Subp. 2. Additional requirements. If the county provides home and community-based services in addition to case management, the agreement must specify the services to be provided by the county and must meet all the requirements in part 9525.1870 [Emergency].

If the agreement is signed on or after the effective date of parts 9525.1800 to 9525.1930 [Emergency], the agreement must include a provision specifying that the county agrees that the commissioner may reduce or discontinue reimbursement, or seek other legal remedies if the county fails to comply with the provisions of the agreement and parts 9525.1800 to 9525.1930 [Emergency].

9525.1910 [Emergency] COUNTY FUNDING OF HOME AND COMMUNITY-BASED SERVICES.

Subpart 1. County responsibility. The county shall fund home and community-based services in accordance with subparts 2 to 5.

Subp. 2. Distribution of money. The total amount of money allocated to a county for home and community-based services in a fiscal year shall be the statewide average daily reimbursement rate multiplied by the total number of days the home and community-based services will be provided to the clients. The statewide average daily reimbursement rate shall be calculated by dividing the total amount of money available under the federal waiver by 365 days and then dividing the quotient by the department's projection of the total number of clients to receive home and community-based services as stated in the federal waiver application.

Subp. 3. Rate setting. The host county shall determine the rates to be paid to providers for home and community-based services and retain documentation of the process and data used to determine the rate.

Subp. 4. Cost limitations. There is no dollar limitation on the amount of home and community-based services money that may be used per client. In authorizing and billing for home and community-based services for individual clients, the county must comply with items A and B. For counties applying jointly, the total cost and total allocation in item A shall be the total cost and total allocation for all of the counties represented on the application and the average cost in item B shall be the average cost for all clients included in the application.

A. The total cost of home and community-based services provided to all clients during the fiscal year must not exceed the total allocation approved for the county, or counties if applying jointly, for the fiscal year by the commissioner.

B. The county's average cost per day for all services provided to all clients must not exceed the statewide average daily reimbursement rate.

Subp. 5. Leave days. Leave days are days when a client is temporarily absent from services. Leave days are reimbursable for supported living arrangements for children or supported living arrangements for adults if the client intends to return to the service. Normal billings may be made for leave days only when the client is:

- A. hospitalized;
- B. on a therapeutic overnight trip, camping trip, or vacation;
- C. home for a visit; or
- D. in respite care.

Leave days which are not included in the individual service plan may not be billed for without county authorization. The county and the provider must document all leave days for which billings are made and specify the reasons the county authorized the leave days.

9525.1920 [Emergency] REQUIRED RECORDS AND REPORTS.

Subpart 1. Provider records. The provider and any subcontractor the provider contracts with shall maintain complete program and fiscal records and supporting documentation identifying the clients served and the services and costs provided under the provider's home and community-based services contract with the county. These records must be maintained in well-organized files and identified in accounts separate from other facility or program costs. The provider's records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.1750 to 9505.2150.

Subp. 2. County records. The county shall maintain complete fiscal records and supporting documentation identifying the clients served and the services and costs provided under the county's agreement with the department. The county records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.1750 to 9505.2150.

Subp. 3. Availability of records. The county's and the provider's financial records shall be available, on request, to the commissioner and the federal Department of Health and Human Services in accordance with parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1800 to 9525.1930 [Emergency].

Subp. 4. Retention of records. The county and the county's home and community-based service providers shall retain a copy of the records required in subpart 1 for five years unless an audit in process requires a longer retention period.

9525.1930 [Emergency] PENALTIES.

Subpart 1. Noncompliance. The commissioner may pursue contractual remedies in accordance with part 9525.1870 [Emergency], subparts 2 and 3, withhold or withdraw reimbursement, recoup money paid, and pursue any other available legal remedy for failure of a county, provider, or subcontractor to comply with parts 9525.1800 to 9525.1930 [Emergency]. The commissioner may also take action in accordance with Minnesota Statutes, section 256B.064.

The county shall pursue contractual remedies in accordance with part 9525.1870 [Emergency], subparts 2 and 3, withhold or withdraw reimbursement, recoup money paid, or pursue any other available legal remedy for failure of a provider or subcontractor to comply with parts 9525.1800 to 9525.1930 [Emergency]. A provider shall be held liable if a subcontractor fails to comply with parts 9525.1800 to 9525.1930 [Emergency].

Subp. 2. Failure to enforce. The county shall be held liable for any damages or costs to the department for failure of the county to enforce contracts entered into under parts 9525.1800 to 9525.1930 [Emergency] or for any action or inaction which impedes enforcement by the commissioner.

Subp. 3. Appeals. Before the commissioner withholds, recoups, or withdraws the county's allocation under subpart 1, the commissioner shall give 30 days written notice to the county and send a copy of the written notice to the affected providers or subcontractors. The written notice shall inform the county, provider, or subcontractor of its right to a hearing under the contested case procedures of Minnesota Statutes, chapter 14. If the commissioner receives a written appeal of the commissioner's action within 30 days of the date the written notice is sent, the commissioner shall initiate a contested case proceeding. The written appeal must state the reasons the county, provider, or subcontractor is appealing the commissioner's action. The commissioner shall not take the proposed action before the hearing unless, in the commissioner's opinion, the action is necessary to protect the public welfare and the interests of the home and community-based services program.

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PROPOSED RULES

Waste Management Board

Proposed Rules Governing the Hazardous Waste Reduction Grants Program

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Waste Management Board proposes to adopt the above-entitled rules without a public hearing. The Waste Management Board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes 1982, sections 14.22 to 14.28 (as amended).

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

If twenty-five (25) or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will be held. Persons requesting a hearing are encouraged to identify the reasons for their request, the portion of the proposed rules that the hearing should address, and any changes proposed. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes 1982, sections 14.14 to 14.20 (as amended).

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

Waste Management Board
Ken Stabler
123 Thorson Building
7323 - 58th Avenue North
Crystal, MN 55428
(612) 536-0816

Authority to adopt these rules is contained in Laws of Minnesota 1984, Chapter 644, Section 10. The Board is authorized by this section to adopt rules for the administration of hazardous waste reduction grants. The grants are intended to fund studies to determine the feasibility of applying specific methods and technologies to reduce the generation of hazardous waste. The proposed rules include eligibility criteria, information required to be included in the application, procedures and criteria for evaluating grant applications, and provisions related to the award of a grant.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Stabler. Persons who wish to receive a copy of the rules as adopted should also request a copy from Mr. Stabler.

Robert G. Dunn, Chairman
Waste Management Board

Rules as Proposed (all new material)

9200.9500 SCOPE AND AUTHORITY.

Parts 9200.9500 to 9200.9508 govern the administration of grants for hazardous waste reduction under Laws of Minnesota 1984, chapter 644, section 10.

9200.9501 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 9200.9500 to 9200.9508, the following terms have the meanings given them unless the context requires otherwise.

Subp. 2. Board. "Board" means the Minnesota Waste Management Board established in Minnesota Statutes, section 115A.04.

Subp. 3. Chairperson. "Chairperson" means the chairperson of the board.

Subp. 4. Generation. "Generation" means the act or process of producing waste.

Subp. 5. Generator. "Generator" means a person or a local government unit who produces a hazardous waste in Minnesota.

Subp. 6. Hazardous waste. "Hazardous waste" means those wastes identified and listed in the rules of the Minnesota Pollution Control Agency, parts 7045.0100 to 7045.0141.

Subp. 7. Intrinsic hazard. "Intrinsic hazard" of a waste means the propensity of the waste to migrate in the environment, and thereby to become exposed to the public, and the significance of the harm or damage likely to result from exposure of natural resources or the public to the waste, as a result of inherent or induced attributes of the waste such as its chemical and physical stability, solubility, bioconcentratability, toxicity, flammability, and corrosivity.

Subp. 8. Local government unit. "Local government unit" means a city, town, county, school district, or other political subdivision or public corporation.

Subp. 9. Person. "Person" means a natural person or a corporation, association, operation, firm, partnership, trust, or other form of organization.

Subp. 10. Recipient. "Recipient" means an applicant who has received a grant under the hazardous waste reduction grants program.

Subp. 11. Reduction. "Reduction" means action by a generator that:

A. decreases the total quantity of hazardous waste generated by the generator; or

B. decreases the quantity of one or more types of hazardous waste that results in a decrease in risk to the public health and safety and the environment, but does not decrease the total quantity of hazardous wastes generated by the generator.

9200.9502 ELIGIBILITY CRITERIA.

Subpart. 1. Eligible applicants. The following are eligible to apply for a hazardous waste reduction grant:

A. a generator; or

B. an association that consists of or represents two or more generators generating similar hazardous wastes in Minnesota.

Subp. 2. Eligible projects. Only projects designed to determine the feasibility of applying specific methods and technologies to reduce the generation of hazardous waste are eligible to receive a hazardous waste reduction grant. Projects to study the specific application of a method or technology already developed and projects to analyze a method or technology for which additional research is necessary to establish the feasibility of the method or technology are eligible. Examples of possible methods and technologies which may be studied include process modification and material substitution.

Application or research projects currently under development by the applicant and new projects are eligible.

Subp. 3. Eligible costs. Eligible costs are limited to the costs of conducting studies and analyses consistent with subpart 2.

Subp. 4. Ineligible costs. Grant money awarded through this program may not be spent for capital improvements or equipment.

9200.9503 GRANT APPLICATION.

An applicant shall submit an application in the form specified by the board. An application must include the following information:

A. A description of the applicant's managerial and technical ability to undertake a hazardous waste reduction feasibility study, including any consultant help that may be anticipated.

B. A statement outlining the method or technology that will be studied by the applicant and the waste reduction that may result from application of the method or technology. This statement must include a discussion of the following items:

(1) a description of the method or technology to be studied;

(2) whether the study involves the application of an existing method or technology, or original or continuing research on a method or technology for which additional research is necessary to determine the feasibility of the method or technology;

(3) the applicability of the method or technology to generators of similar wastes;

(4) a description of the hazardous waste affected by the proposed project that is generated by the applicant, including

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the quantity generated in calendar year 1983 and the quantities generated during each of the calendar years from 1980 through 1982, if available and applicable;

(5) an estimate of the decrease in the quantity of hazardous waste generated and any decrease in risk that results from the application of the method or technology to be studied;

(6) a projection of the quantity of hazardous waste generated in calendar years 1984 through 2000 with and without the application of the method or technology being studied;

(7) the importance to the applicant of achieving the estimated reduction, such as a discussion of liability, treatment, management, disposal, and transportation costs;

(8) the relationship of the hazardous waste reduction estimated by the applicant to the hazardous waste reduction goals of the Waste Management Board as stated in the board's Hazardous Waste Management Report of December 1983 and the Draft Certificate of Need of February 1984, particularly the goal of minimizing the quantity of hazardous wastes that are difficult to manage or can be managed only through final disposal;

(9) the current method used to manage the hazardous waste generated by the applicant; and any anticipated change in management occurring after the reduction; and

(10) estimated increased or decreased annual operating and maintenance costs that will be realized if the proposed method or technology is implemented.

C. A statement of financial feasibility for the project must be included with the application, and must include a discussion of the following items:

(1) A statement explaining the need for the grant amount requested.

(2) The amount of grant funds requested.

(3) An estimate of the total amount of funds needed to complete the study. This section should include a discussion of any financial support that might be available to the applicant from other sources, including both external and internal sources.

(4) A description of any previous requests for funds from other sources that would have been used to conduct a study similar to that proposed by the applicant under this grant program.

9200.9504 APPLICATION PROCESS.

Subpart 1. Deadline. A letter of intent to apply for a hazardous waste reduction grant must be received by the board on or before 30 days after the effective date of these parts. An application for a hazardous waste reduction grant must be received by the board on or before 60 days after the effective date of these parts.

Subp. 2. Additional applications. The board may solicit additional applications at a later date by notification in the *State Register*.

9200.9505 INITIAL APPLICATION REVIEW.

Subpart 1. Application review. The chairperson or a designee shall review all applications. Applications received after the close of business (4:30 p.m.) on the last business day of the application period will be returned to the applicant.

Subp. 2. Eligibility and documentation review. The chairperson or a designee shall review each application to determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the proposal specified in the application, and the adequacy of the supporting documentation. Documentation is considered adequate if it enables the board to determine whether:

A. the proposal appears to be feasible;

B. the applicant has the managerial and technical ability and experience to carry out the proposal; and

C. the proposal meets the evaluation factors listed in part 9200.9506.

Subp. 3. Notice of determination. Within 14 days after receiving the application, the chairperson shall notify each applicant of the chairperson's determinations. If the chairperson determines that the documentation in the application is adequate, the application is considered final and the applicant shall be so notified. The application must then be referred to the board to be evaluated as provided in part 9200.9506. If the chairperson determines that any of the costs or any part of the proposals are not eligible or that the documentation in the application is inadequate, the application must be returned with a statement of the reasons for rejecting the application. The applicant has 14 days after receipt of the rejection to correct the inadequacies. If the inadequacies are corrected within the time allowed, the application is considered final and the applicant shall be so notified. The application must then be referred to the board to be evaluated as provided in part 9200.9506.

9200.9506 EVALUATION OF PROPOSALS.

Subpart 1. Evaluation schedule. Within 45 days of the completion of the eligibility and documentation review, the board shall evaluate eligible proposals and set a date for action.

Subp. 2. Evaluation factors. In evaluating each proposal the board shall consider the following factors:

A. The relationship of the proposed hazardous waste reduction to the goals and policies of the Waste Management Board.

B. The significance of the proposed waste reduction measured by:

(1) the decrease in total hazardous waste generated in Minnesota as a result of the waste reduction and the potential future decrease as a result of application of the waste reduction method by other generators; or

(2) the decrease in risk to the public health and safety and the environment resulting from the waste reduction including:

(a) the decrease in the quantity of waste with a high degree of intrinsic hazard;

(b) the decrease in the quantity of untreatable waste requiring land disposal; or

(c) the effect of waste reduction on the subsequent management of any remaining waste, including the need for and risk associated with further processing and disposal steps to properly manage the waste.

C. The merits of the specific method or technology proposed by the applicant which will be based on the following factors:

(1) the percentage decrease in the quantity of hazardous waste affected by the reduction;

(2) the percentage increase or decrease in the total quantity of hazardous wastes generated by the applicant;

(3) the general applicability of the hazardous waste reduction method or technology to other generators located in Minnesota; and

(4) the likelihood of the success of the specific method or technology to reduce hazardous wastes, the estimated reliability of the proposed method or technology, and capital, operating, and maintenance costs required to operate and maintain the proposed method or technology if it is implemented.

D. Consideration by the board with respect to the following factors:

(1) Whether an applicant is an association of two or more generators. In considering this factor, the board may give preference to an association of two or more generators if the board determines that the association significantly contributes to cooperation among generators in reducing hazardous waste generation.

(2) The recommendations of the board's technical assistance program advisory committee.

(3) An evaluation of the feasibility of the project by an independent consultant if such evaluation is requested by the board.

(4) Whether, in the board's view, alternative sources of financial and technical support are available to the applicant and whether, in the board's view, the method or technology will be developed without state financial assistance.

9200.9507 AWARD OF GRANTS.

Subpart 1. General procedure. The board shall award grants for those proposals which in the board's judgment best meet the factors in part 9200.9506.

Subp. 2. Amount of grants. The board shall determine the amount of a grant based on a review of the factors identified in this part and based upon the availability of funds. Grants are limited to a maximum of \$30,000 per agreement. Multiple awards to a single applicant are allowed.

9200.9508 GRANT AGREEMENT.

Subpart 1. Contents of agreement. The board and a grant recipient shall enter into a grant agreement. The grant agreement must:

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A. Establish the term of the grant. Unless otherwise determined by the board, all grants awarded under this part must have a maximum term of one year.

B. Provide that the recipient is authorized to enter into contracts to complete the work specified in the agreement.

C. Identify the product of the proposal and provide that the results of all studies or analyses performed under this agreement are made available to the board and to the general public. All information and techniques developed through a project assisted by a board grant will be made available to all generators in the state through the technical assistance program established by the board.

Subp. 2. Cancellation of grants. The board shall cancel a grant that is not completed in accordance with the terms and conditions of the respective agreements, including time schedules, unless the board determines that variances from the respective agreements are in order.

Subp. 3. Termination. The board may terminate a grant upon 30 days' notice if it determines that the project is not feasible. A request for termination may be initiated by either the board or a grant recipient. If the board gives notice to terminate a grant, the board may also require that no additional grant funds be spent by the applicant effective as of the date of the termination notice. The procedure for determining that a project is not feasible shall be specified in the grant agreement.

Subp. 4. Disbursement. The board shall disburse grants in accordance with the payment schedule set out in the grant agreement. At the discretion of the board, this may include a phased disbursement or final holdback of a percentage of funds.

Subp. 5. Audit. Since this program involves the expenditure of public funds, the books, records, documents, and accounting procedures and practices of the recipient of grant funds that are only relevant to this program are subject to examination at any time by the chairperson of the board and other appropriate state officials. Any audit exceptions identified by the board must be reimbursed at the board's discretion.

Subp. 6. Return of unspent funds. Upon completion of the project, cancellation of the grant, or termination of the project the applicant shall return the state's share of the unspent funds. The procedure for determining the amount of funds returned must be specified in the grant agreement.

ADOPTED RULES

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

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

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

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

State Board of Education (State Board for Vocational Education) Department of Education Vocational-Technical Division

Adopted Rules Governing Post-Secondary Vocational Instructional Personnel Licensure—Robotics Technician 5 MCAR § 1.0790 C

The rules proposed and published at *State Register*, Volume 8, Number 11, pages 428-429, September 12, 1983 (8 S.R. 428) and Volume 8, Number 30, pages 1715-1717, January 23, 1984 (8 S.R. 1715) are adopted with the following modifications:

Amended Rule as Adopted

5 MCAR § 1.0790 Post-secondary vocational instructional personnel.

C. Uncharted licensure criteria; robotics technician. To qualify for a license, an applicant in a licensure area not charted in 5 MCAR § 1.0798, must comply with 5 MCAR § 1.0781, 1.0782, 1.0784 C., and 1.0785, and specifically in the area of technical education/robotics technician, must present evidence of completion of the following education and occupational experience requirements.

1. Education requirement. An applicant must have completed at an accredited institution, either:

a. two years (2,160 clock hours) post-secondary vocational-technical training focusing on technician level training in any one or more of the following areas of: robotics/flexible automation, fluid power, electronics, automated packaging, industrial engineering, electro-mechanical technology, or industrial technology, or manufacturing processes; or

b. a degree program in any one or more of the following: mechanical, electrical, or aero-space engineering at the baccalaureate level or higher.

2. Occupational experience requirement. An applicant must have 2,000 hours of experience within the last five years in robotics ~~or programmable/flexible~~ automation, and 4,000 hours of experience focusing on the technical application of any one or more of the following areas: robotics/flexible automation; electronics emphasizing computer technician or computer programmer skills; fluid power mechanics; manufacturing processes applications; or electro-mechanical technology.

Environmental Quality Board

Adopted Rules Governing Operating Procedures for Conduct of Business

The rules proposed and published at *State Register*, Volume 8, Number 38, pages 2061-2066, March 19, 1984 (8 S.R. 2061) are adopted as proposed.

Housing Finance Agency

Adopted Emergency Rules Governing the Temporary Housing Demonstration Program

The rules proposed and published at *State Register*, Volume 8, Number 50, pages 2650-2652, June 11, 1984 (8 S.R. 2650) are adopted as proposed.

Department of Labor and Industry

Workers' Compensation Division and Office of Administrative Hearings

Adopted Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings

The rules proposed and published at *State Register*, Volume 8, Number 42, pages 2246-2269, April 16, 1984 (8 S.R. 2246) are adopted with the following modifications:

Rules as Adopted

1415.0400 MEDICAL AUTHORIZATIONS.

An employee shall provide the employer and insurer with appropriate signed medical authorizations within ~~15 working~~ 30 calendar days of receipt of a written request for them. A written request for medical authorization must inform the employee

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of the ~~15-day~~ 30-day requirement. In pending litigation failure to comply with the request for appropriate medical authorizations constitutes grounds for striking the case from the active trial calendar until authorizations are furnished. The employer or insurer may bring a motion to strike the case from the calendar if authorizations have not been furnished and the employer or insurer is unable to adequately defend its case.

1415.0700 SERVICE.

Subpart 1. Service by state. The division and the office must serve all notices, findings, orders, decisions, or awards upon the parties ~~or their attorneys or agents of record~~ by first class mail at their addresses of record or by personal service.

If the division or office has received notice that a party is represented by an attorney or authorized agent, documents required to be served on the party must also be served on the attorney or agent.

1415.0800 NOTICE OF REPRESENTATION.

Subpart 1. Filing. When an employee is represented by an attorney, written notice of representation must be filed with the division, or if the case has been certified to the office, with the office.

A. The notice of representation must be signed by the attorney, signed by the employee ~~or~~ dependent, or heir, and include the address and telephone number of the attorney, the attorney's Minnesota Supreme Court license number, the employee's social security number, and the date of the claimed injury or disease. A copy of the fully executed retainer agreement must be attached to the notice of representation filed with the division or office.

C. Failure to file the notice and retainer agreement will be considered in determining attorney fees according to Minnesota Statutes, section 176.081, subdivision 5.

Subp. 2. Substitution of attorney. If the employer ~~or~~ dependent, or heir is represented by an attorney who may have an undetermined claim for fees and the employee ~~or~~ dependent, or heir subsequently desires to change attorneys, the attorney assuming representation shall file a substitution of attorney and consent form signed by the client, the previous attorney, and the new attorney, together with a copy of the new retainer agreement. The new notice of representation must be filed within 20 calendar days of the signing of a retainer agreement if a claim petition has been filed or if the original notice of representation has been served by the preceding attorney.

1415.0900 NOTICE OF CLAIM FOR WORKERS' COMPENSATION BENEFITS.

Subpart 1. Notice required. Prior to the filing of a claim petition for workers' compensation benefits, the employee ~~or~~ dependent, or heir or the claimant's attorney shall notify the parties against whom the claim is made, including all employers and insurers that will be named as parties and the special compensation fund if it will be named as a party, of the claim pursuant to Minnesota Statutes, section 176.271, subdivision 2.

Subp. 2. ~~Form of notice.~~ The notice of claim must specifically state, if applicable:

~~A. the exact dates of temporary total disability, temporary partial disability, or permanent total disability claimed and the part of the body involved;~~

~~B. the percentage of permanent partial disability claimed and the part of the body involved;~~

~~C. the amount of dependency benefits claimed;~~

~~D. an itemization of penalties claimed;~~

~~E. an itemization of unpaid medical expenses claimed under Minnesota Statutes, section 176.135; and~~

~~F. an itemization of other expenses or benefits claimed.~~

~~**Subp. 3. Supporting documentation.** The employee ~~or~~ dependent, or heir must attach to the notice of claim, if applicable, all medical reports, medical bills, if available, and other bills supporting the claim.~~

Subp. ~~4~~ 3. Defective notice. If the division determines that the notice of claim is defective, the employee ~~or~~ dependent, or heir will be notified of the deficiency. The claim petition is not considered filed until the deficiency is corrected. However, the claim petition will be considered filed absent the correction where compliance with this part would result in the claim being barred by Minnesota Statutes, section 176.151 or other statutes.

1415.1000 COMMENCEMENT OF PROCEEDINGS.

Subpart 1. Commencement of proceedings. All proceedings for adjudication of claims for personal injuries or occupational diseases are instituted by petition addressed to the division, and must be on forms prescribed by the division, containing:

L. the name, address, telephone number, and Minnesota Supreme Court license number of the ~~employee's~~ petitioner's attorney.

Subp. 2. Service of petition, filing. The petitioner shall serve a copy of the petition on each adverse party personally or by first class mail. "Adverse party" includes all employers, insurers, potential intervenors, and the fund director, if the ~~employee~~ employer is uninsured or the special compensation fund is named. The original petition, together with the copy of the notice of claim required by Minnesota Statutes, section 176.271, subdivision 2 and any medical or other supporting documentation not filed with the notice of claim, must be filed with the division with proof of service.

1415.1700 DISMISSAL.

Subp. 2. Involuntary dismissal. The judge may, on the judge's own motion or upon motion of a party with notice to the parties, dismiss an action or claim for failure to prosecute; or to substantially comply with this chapter, the act, or an order of a judge; ~~or any other reason allowable in the district courts of Minnesota.~~

1415.1900 PRETRIAL PROCEDURES.

Subp. 2. Conference. All cases are subject to a pretrial conference with a calendar or compensation judge at which all parties shall attend or be represented, unless a calendar or compensation judge orders otherwise. A compensation judge shall order that a pretrial conference be conducted for the purpose of settlement, narrowing of the issues, or trial preparation, if any party requests that one be conducted. The chief hearing examiner or compensation judge may set a pretrial conference on his or her own motion once the matter has been received from the commissioner. If parties are represented by attorneys, the attorneys shall bring with them their appointment calendars. If a party is not represented by an attorney, the party shall appear personally and be prepared to set a date for the hearing. Parties or their attorneys attending a pretrial conference shall be prepared to participate in meaningful settlement discussions and must have authority to settle their respective claims reach a full settlement on the issue in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 5. Conference procedures. At the pretrial conference:

L. Unless previously filed, the attorney for the petitioner shall give the calendar or compensation judge a copy of the retainer agreement with the petitioner and state the amount of retainer fee paid. ~~The attorney shall be prepared at the time of hearing or settlement to show the reasonableness of any attorney's fees or costs, in accordance with Minnesota Statutes, section 176.081.~~

1415.2000 SETTLEMENTS.

Subp. 4. Contents. Stipulations for settlement must contain, if applicable:

C. The weekly wage and compensation rate of the ~~petitioner~~ employee.

G. ~~Where applicable,~~ A statement that the employee has been fully advised of the provisions of Minnesota Statutes, sections 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits.

H. ~~Where applicable,~~ A statement that the petitioner is claiming or waiving the right to make application for an award of attorney's fees against the employer or insurer under Minnesota Statutes, section 176.081, subdivision 7 or 8, 176.135, or 176.191.

I. Where rehabilitation, retraining, or medical benefits are closed out, a statement in which the claims and contentions of the parties are sufficiently specific to provide a basis for the judge's determination that the settlement as a whole is fair, reasonable, and in conformity with the act.

1415.2200 DISCOVERY.

Subpart 1. Demand. Each party shall, within 30 days of a demand by another party, unless a shorter time is indicated by this part, disclose or furnish the following:

C. Medical privilege is waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or occupational disease. Medical authorizations must be furnished within ~~45~~ 30 calendar days of an adverse party's demand. All medical reports must be provided, upon demand to adverse parties. The petitioner shall disclose the names and addresses of all persons who have treated the ~~petitioner~~ employee in the past for injuries or conditions identical or related to those alleged in the petition, the dates of the treatment, and provide medical authorization for each.

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ADOPTED RULES

Subp. 4. Motion for direct testimony by physician or health care provider. A motion for full testimony of a physician or health care provider must comply with part 1415.2900, subpart 9, ~~item C, subitem 1~~ 3.

Subp. 5. Penalties. Upon the failure of a party to reasonably comply with discovery or a judge's order under this part, the following orders of the compensation judge are allowed upon a party's motion:

B. an order ~~refusing to allow~~ prohibiting the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

1415.2300 TEMPORARY ORDERS.

Subp. 3. Necessary parties. For the purpose of this part, the following are necessary parties:

A. the employee ~~or~~ dependent, or heir;

1415.2900 THE HEARING.

Subp. 5. Witnesses. A party may be a witness and present other witnesses at the hearing. Oral testimony at the hearing must be under oath or affirmation. At the request of a party or upon the judge's motion for good cause, the compensation judge may exclude witnesses other than parties from the hearing room so that they cannot hear the testimony of other witnesses.

Subp. 7. The record. Record requirements are as follows:

E. Under Minnesota Statutes, section 176.421, subdivision 4, clause (3), a party may petition the chief hearing examiner for an order directing that a transcript be prepared, for purposes of appeal to the court of appeals, at no cost to the appellant. A petition filed under this provision must include:

(3) the name, address, and telephone number of the attorney representing the appellant; ~~and~~

(4) if appellant is an individual, a sworn affidavit from the appellant which must include:

(5) if appellant is a legal entity not an individual, a sworn affidavit from the legal representative of the appellant must include:

(a) appellant's monthly income from all sources, including income from trust, bonds, and other securities holdings;

(b) a list, at market value, of all stocks, bonds, or other certificates of indebtedness held by appellant;

(c) a statement of the monthly expenses for appellant including salaries, taxes, rent, and insurance;

(d) if the appellant owns any rental property, a statement showing the appellant's equity in the property and the monthly income and expense for the property; and

(e) if the appellant owns outright or is purchasing the property in which it is located, a statement showing the market value of the property, the appellant's equity in the property, and the present monthly payments, if any.

Waste Management Board

Adopted Emergency Rules Governing Hazardous Waste Processing and Collection Facilities and Services Development Grants

The rules proposed and published at *State Register*, Volume 8, Number 48, pages 2567-2570, May 28, 1984 (8 S.R. 2567) are adopted with the following modifications:

Emergency Rules as Adopted

9200.6008 [Emergency] APPLICATION FOR ~~DEVELOPMENT GRANT FOR RFP FOR DEVELOPMENT OF COLLECTION AND TRANSPORTATION SERVICES.~~

The board may award a grant to a respondent to the RFP for the development and operation of a statewide collection and transportation system which may include temporary storage and transfer facilities. The following requirements apply only to a development grant application submitted in conjunction with the RFP:

A. An applicant shall submit both the RFP and a development grant application.

~~B.~~ Applications are due on or before November 1, 1984.

~~C.~~ An applicant may apply for a grant up to \$350,000.

~~D.~~ C. An applicant may be required to provide up to ten percent of the grant amount.

~~E.~~ D. The board's evaluation of the grant application must be based on information provided in both the grant application and the proposal in response to the RFP.

9200.6009 [Emergency] GRANT AGREEMENT.

Subpart 1. Grant contents. The board and a grant recipient shall enter into a grant agreement. The grant agreement must:

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 Economic Security Training and Community Services Division, Office of Economic Opportunity

Notice of Fiscal Year 1985 Community Services Block Plan Availability

Notice is hereby given that the state plan for the use and distribution of the FY 85 Community Services Block Grant is available for public review. This plan may be reviewed at the offices of current Community Service Block grantees, community action agencies, county libraries, Indian reservations, and the Minnesota Migrant Council.

On Wednesday, August 22, 1984 at 9:00 a.m., there will be a legislative hearing on the content of the plan in Room 118, State Capitol. This hearing will be conducted by members of subcommittees from the House Appropriations and Senate Finance Committees.

A single copy of the plan may be obtained by writing:

Ronald E. O'Neal
Minnesota Department of Economic Security
Office of Economic Opportunity
690 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

Written comments will be accepted at the above address until 4:30 p.m., September 10, 1984.

Department of Energy and Economic Development Financial Management Division

Availability of Issuance Authority in Competitive Pool

Pursuant to Minn. Laws 1984, ch. 582 §17, subd. 2, to be codified as 474.20, the Department gives notice that the amount of Industrial Development Bond issuance authority available in the competitive pool as of August 5, 1984, is \$103,240,000, and will be available to qualifying Industrial Development Bond Issuers submitting qualification criteria applications by August 20, 1984. Pursuant to Minn. Laws 1984, ch. 582 §16, to be codified as 474.19, non entitlement issuers must submit an application, a preliminary resolution, an application deposit and any other supporting documents required.

Balance of competitive pool on July 19, 1984 — \$103,740,000

OFFICIAL NOTICES

Add:

Unused entitlement allocations as of August 31, 1984:

\$ -0-

Returned allocations:

\$ -0-

Total pool available as of August 5, 1984

\$103,740,000

Allocations awarded from the competitive pool during the month ending August 5, 1984, are:

<i>Issuer</i>	<i>Project</i>	<i>No. of Points</i>	<i>Amount</i>
City of Benson/ Town of Torning	Tyler II, Inc.	6	\$500,000
Total allocations awarded:			\$ 500,000
Amount of issuance authority available as of August 5, 1984.			\$103,240,000

Department of Health

Emergency Medical Services Licensure Application

As of August 13, 1984, a complete application for scheduled advanced life support transportation service by air was submitted by Hiawatha Aviation of Rochester, to operate a base of operation at Rochester Airport, Rochester, Minnesota, to provide intra-state and/or inter-state transportation service.

This notice is given pursuant to Minnesota Statutes 1979, Section 144.802, which requires in part that the Commissioner of Health shall publish the notice in the *State Register* at the applicant's expense; and in a newspaper in the municipality in which the service will be provided.

Each municipality, county, community health services agency, and any other interested person wishing to comment on this application may submit comments to the Minnesota State Planning Agency, (Acting as the Southeast Minnesota Health Systems Agency), Room 100 Capitol Square Building, 550 Cedar Street, St. Paul, MN. 55101, Attn: John Dilley, Director, 612/296-2407. The comments must reach the Health Systems Agency before September 12, 1984, or be submitted at the public hearing.

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

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

Department of Labor and Industry Division of Code Enforcement Division

Outside Opinion Sought Concerning Proposed Rules Governing Fees, Permits and Licenses of Pipefitters and Pipefitting Contractors

Notice is hereby given that the Minnesota Department of Labor and Industry, Division of Code Enforcement, is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing fees charged to process applications, issue permits to install or construct high pressure piping systems, and to examine and license individuals to work as pipefitters or pipefitting contractors. The promulgation of these rules is authorized by Chapter 481, Laws of Minnesota, 1984 which requires the agency to charge a filing fee for permits to construct or install high pressure piping systems and permits the agency to charge a fee for examining and licensing of pipefitters and pipefitting contractors.

The Minnesota Department of Labor and Industry, Division of Code Enforcement requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements or information or comment orally or in writing. Written statements should be addressed to:

Steve Keefe, Commissioner
Department of Labor & Industry
5th Floor, Space Center Bldg.
444 Lafayette Road
St. Paul, Minnesota 55101

Any written material received by the Minnesota Department of Labor and Industry, Division of Code Enforcement, shall become part of the record in the event that the rules are promulgated.

Oral statements will be received during regular business hours over the telephone at (612) 296-2342 and in person at the above address.

Information and opinions will be accepted until August 19, 1984.

August 6, 1984

Steve Keefe, Commissioner of the
Department of Labor and Industry

Pollution Control Agency Solid and Hazardous Waste Division

Outside Opinion Sought Regarding Rules for Establishing Fee Systems for Generators of Low-Level Radioactive Waste

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) is seeking information and opinions from sources outside the Agency in preparing rules pursuant to Minnesota Laws 1983, Chapter 353, Article X, Section 4 (Minnesota Statutes, Section 116C.834) which requires establishment of a fee system for generators of low-level radioactive waste, to provide funds for carrying out Minnesota's responsibilities in the Midwest Interstate Low-Level Radioactive Waste Compact.

The law requires the Agency to recover:

1. the State contribution to join the compact;
2. the expenses of the commission member and costs incurred to support the work of the interstate commission;
3. regulatory costs including but not limited to costs of adopting and enforcing regulations if the State enters into a limited agreement with the U.S. Nuclear Regulatory Commission to assume State regulation of transportation and packaging, or disposal of low-level radioactive wastes; and
4. any liability the State may incur as a party state to the compact.

The Minnesota Pollution Control Agency requests information and comments concerning the subject of these rules.

Written technical statements and comments concerning these matters will be accepted for consideration until August 31, 1984, and should be addressed to the following:

Melba M. Hensel
Division of Solid and Hazardous Waste
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113
Telephone: 612/296-7774

Oral statements of technical information and comments will be accepted during regular business hours over the telephone at 612/296-7774 or in person at the above address.

Any written material received by the Minnesota Pollution Control Agency shall become part of the background record regarding these rules.

State Planning Agency Human Services Division Developmental Disabilities Program

Announcement of Meeting of Institutional Care and Economic Impact Planning Board

The next meeting of the Institutional Care and Economic Planning Board will be held on August 17, 1984, in the Capitol Square Building, first floor, Conference Rooms A and B from 10:00 a.m.-12:00 noon. This Board was established by Minnesota Laws 1984 Chapter 654 § 19.

OFFICIAL NOTICES

The planning board consists of the commissioners of the departments of Human Services, Administration, Employee Relations, Economic Security, Energy and Economic Development, and Finance. The director of the State Planning Agency serves as chair.

For additional information contact:

Colleen Wieck, Executive Director
Developmental Disabilities Program
(612) 296-9964

State Planning Agency Human Services Division Developmental Disabilities Program

Announcement of Town Meetings on the Future of State Hospitals

A series of town meetings will be held at nine sites from August 22 through September 25, 1984. These meetings are being held as part of research required by Minnesota Laws 1984 Chapter 654 § 19. The meetings which will take place in each of the eight state hospital regions and the Twin Cities metropolitan area are intended to collect public testimony in preparation for the 1985 legislative session.

Persons unable to attend the meeting in their region are invited to send their suggestions to:

Colleen Wieck, Executive Director
Developmental Disabilities Program
State Planning Agency
201 Capitol Square Building
St. Paul, MN 55101
(612) 296-9964

The schedule of meetings is:

<u>DATE</u>	<u>TIME</u>	<u>PLACE</u>
August 22	7:00 p.m.-9:30 p.m.	Cambridge Elementary School Cambridge, Minnesota
August 29	7:00 p.m.-9:30 p.m.	Faribault Junior High School Faribault, Minnesota
September 6	7:00 p.m.-9:30 p.m.	Anoka City Hall Anoka, Minnesota
September 13	2:00 p.m.-5:00 p.m.	The Central Office Building 611 W. 5th St. Willmar, Minnesota
September 17	7:00 p.m.-9:30 p.m.	St. Peter High School St. Peter, Minnesota
September 24	7:00 p.m.-9:30 p.m.	High School Cafeteria Brainerd, Minnesota
September 25	2:00 p.m.-4:00 p.m. and 7:00 p.m.-9:00 p.m.	Vocational Technical School Detroit Lakes (Regarding the Fergus Falls State Hospital)
October 3	1:00 p.m.-3:00 p.m.	Moose Lake High School Moose Lake, Minnesota
October 9	7:00 p.m.-10:00 p.m.	Prudential Life Insurance Auditorium 3701 Wayzata Boulevard Minneapolis, Minnesota

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.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-2513. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration Procurement Division

Commodities Contracts Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
39-000-03690	Rebid Cellular Mobile Telecomm. Equipment	Governor's Office	St. Paul	Contact buyer
79-000-43816	Diesel Engine	Transportation	Morris	Contact buyer
02-514-44245	Purchase of Inventory Control System	Central Motor Pool	St. Paul	Contact buyer
79-250-00276	Box Beam Guardrail, Etc.	Transportation	Ada	Contact buyer
67-190-10092, 1297	Letter Size File Pockets	Revenue	St. Paul	Contact buyer
04-161-24863, 1210	Official Cert. of State Weight (Manual scale)	Agriculture	St. Paul	Contact buyer
07-100-31648, 1393	What to do before The Burglar Comes	Public Safety	St. Paul	Contact buyer
43-000-05523, 1468	Industrial Dev. Brochure	Iron Range	Eveleth	Contact buyer
02-307-44761, etc.	Furnaces	Administration-Plant Management	St. Paul	Contact buyer
79-450-00277	Concrete Pipe	Transportation	Morris	Contact buyer
79-000-44042	Fiberglass Underground Fuel Storage Tanks	Transportation	Various	Contact buyer
26-074-07574	Rubbish Disposal—Winona St. Univ.	Winona State University	Winona	Contact buyer
27-138-44324	Blanket Student Liability Insurance for Students at the State of Minn. Community Colleges	MN Community College System	Various	Contact buyer
07-500-31382	Single Engine Airplane	Public Safety-State Patrol	St. Paul	Contact buyer
01-000-04018	Truck—Addendum #1	Military Affairs	Little Falls	Contact buyer
79-500-02743	Inertia Barrier	Transportation	Mpls.	Contact buyer
01-000-04032	Rubbish Disposal—Mn Air National Guard Mpls./St. Paul Airport	Military	Mpls./St. Paul Airport	Contact buyer
29-000-36295	Floating Dock Systems	Natural Resources	Various	Contact buyer
01-000-04056	Wire Mesh Partitions	Military Affairs	Little Falls	Contact buyer
07-300-30857	Car	Public Safety	St. Paul	Contact buyer
79-000-41840	Expansion of Drafting System	Transportation	St. Paul	Contact buyer
55-000-89611-12-13-15	Pop Vending Machines	Services for the Blind	Various	Contact buyer
29-000-36152	Salmon Feed	Natural Resources	Altura	Contact buyer
27-157-42516	Coin Operated Lockers	Inver Hills Community College	Inver Grove Heights	Contact buyer

STATE CONTRACTS

26-073-16622	Repair Bleachers	St. Cloud State University	St. Cloud	Contact buyer
55-000-89266, 1138	Appl. & Initial Plan for Social Services	OHS	St. Paul	Contact buyer
29-000-36168, 1347	Decals and Numbers for Canoes, Sailboats and Kayaks	DNR	St. Paul	Contact buyer
29-000-36167, 1348	Watercraft Decals	DNR	St. Paul	Contact buyer
21-200-08402; Contract	Janitorial Service—Inver Grove Heights	Economic Security	Same	Contact buyer
37-001-93697	Swimming Pool Filtering System	Braille & Sightsaving School	Faribault	Contact buyer
79-000-42252	Diskettes	Transportation	St. Paul	Contact buyer

Contact the receptionist at 296-2513 for referral to specific buyers.

Department of Health

Request for Proposal for Banking Services for Women, Infants and Children Program

The Department of Health will be soliciting bids for banking services for its Women, Infants and Children Program for the period 10/01/84 to 09/30/86. These services include, but are not limited to, payment of checks, depositing of funds, and reporting activity on a monthly basis. For a copy of the request for proposal, please contact Mr. David Hovet at (612) 623-5072, 717 Delaware St. SE, P.O. #9441, Minneapolis, MN 55440.

Pollution Control Agency

Request for Proposals for Consultant Services

The Minnesota Pollution Control Agency wishes to retain a consultant for the preparation of draft and final environmental impact statements (EIS) on the proposed construction of the North Shore trunk sewer project in Prior Lake, Minnesota. The proposed construction will consist of approximately 14,000 lineal feet of 15" and 8" diameter sewer. In related action, a municipal water main will be constructed parallel to the interceptor sewer, and paved roadways with storm sewers will be constructed where existing roads are disturbed. The design flow of the proposed interceptor is 0.9 million gallons per day. The draft EIS is to be completed by January, 1985, with the final EIS to be completed by early March, 1985. It is estimated that the completion of the EIS may cost up to \$60,000.

Copies of the Request for Proposals and the scoping environmental assessment worksheet on the project are available from:

Eric J. Kilberg
Office of Planning & Review
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113

Proposals must be submitted to the Minnesota Pollution Control Agency by August 31, 1984.

August 31, 1984

Thomas Kalitowski
Executive Director

State Designer Selection Board

Request for Proposal for State Projects

TO ARCHITECTS AND ENGINEERS REGISTERED IN MINNESOTA:

The State Designer Selection Board has been requested to select a designer for a project at Camp Ripley. Design firms who wish to be considered for this project should submit proposals on or before 4:00 P.M., September 5, 1984, to George Iwan, Executive Secretary, State Designer Selection Board, Room G-10, Administration Building, St. Paul, Minnesota 55155-1495.

The proposal must conform to the following:

1. Six copies of the proposal will be required.
2. All data must be on 8½" × 11" sheets, soft bound.
3. The cover sheet of the proposal must be clearly labeled with the project number, as listed in number 7 below, together with the designer's firm name, address, telephone number and the name of the contact person.
4. The proposal should consist of the following information in the order indicated below:
 - a) Number and name of project.
 - b) Identify of firm and an indication of its legal status, i.e. corporation, partnership, etc.
 - c) Names of the persons who would be directly responsible for the major elements of the work, including consultants, together with brief descriptions of their qualifications. If the applicant chooses to list projects which are relevant in type, scale, or character to the project at hand, the person's role in the project must be identified.
 - d) A commitment to enter the work promptly and to assign the people listed in "C" above and to supply other necessary staff.
 - e) A list of design projects in process or completed in the three (3) years prior to the date of this request for agencies or institutions of the State of Minnesota, including the University of Minnesota, by the firm(s) listed in "b" together with the approximate fees associated with each project.
 - f) A section of not more than fourteen (14) faces containing graphic material (photos, plans, drawings, etc.) as evidence of the firm's qualification for the work. The graphic material must be identified. It must be work in which the personnel listed in "c" have had significant participation and their roles must be clearly described.

The proposal shall consist of no more than twenty (20) faces. Proposals not conforming to the parameters set forth in this request will be disqualified and discarded without further examination.

5. In accordance with the provisions of Minnesota Statutes, 1981 Supplement, Section 363.073; for all contracts estimated to be in excess of \$50,000, all responders having more than 20 full-time employees at any time during the previous 12 months must have an affirmative action plan approved by the Commissioner of Human Rights before a proposal may be accepted. Your proposal will not be accepted until it includes one of the following:

- a) A copy of your firm's current certificate of compliance issued by the Commissioner of Human Rights; or
- b) A statement certifying that your firm has a current certificate of compliance issued by the Commissioner of Human Rights; or
- c) A statement certifying that your firm has not had more than 20 full-time employees in Minnesota at any time during the previous 12 months.

6. Design firms wishing to have their proposals returned after the Board's review must follow one of the following procedures:

- a) Enclose a self-addressed stamped postal card with the proposals. Design firms will be notified when material is ready to be picked up. Design firms will have two (2) weeks to pick up their proposals, after which time the proposals will be discarded.
- b) Enclose a self-addressed stamped mailing envelope with the proposals. When the Board has completed its review, proposals will be returned using this envelope.

In accordance with existing statute, the Board will retain one copy of each proposal submitted.

Any questions concerning the Board's procedures or their schedule for the project herein described may be referred to George Iwan at (612) 296-4656.

STATE CONTRACTS

7) PROJECT—33-84

Wood Fuel Conversion
Camp Ripley
Little Falls, Minnesota

The purpose of this project is to determine the technical and economic feasibility of converting the space heating at Camp Ripley to use Minnesota produced fuels such as wood.

Camp Ripley Military Reservation is a military installation consisting of approximately 53,000 acres of land located in Morrison County, Minnesota. It is owned in the name the State of Minnesota, and it was acquired over a period of years by the Adjutant General of the State of Minnesota for Military training purposes as authorized by Minnesota Statutes Section 190.1 and 190.25. Heating fuels currently used at Camp Ripley are #2 and #5 fuel oil and propane. Total heated building floor area is about 600 thousand square feet.

The designer selected will work closely with the State Department of Military Affairs (DMA) and the Department of Energy and Economic Development (DEED) to conduct this project. The designer will also, as part of this project, provide consultation on conversion of the Bemidji Department of Natural Resources Headquarters to use wood fuel.

Major Tasks: Deliverables and Anticipated Schedules:

It is anticipated that a designer will be under contract for this project by October 1, 1984 at the latest. The sum of \$50,000.00 has been allocated to complete the following major tasks:

1) **Analyze Current Heating Fuel Use:** Provide an interim report describing fuel and energy use at Camp Ripley. Include a brief assessment of the potential for energy conservation in buildings, as well as detail on heat demand, estimated utilization hours, description of current heating systems, buildings and location within Camp Ripley. Also include planned facilities expansion and personnel used for operation and maintenance of heating systems. Report Schedule: November 1, 1984.

2) **Develop Conceptual Designs:** Analyze and describe options for conversion to wood heating at Camp Ripley. Include consideration of central boilers and hot water distribution to clusters of buildings. Describe the cost and benefits of each option. Include in analysis the impact of additional personnel needed to operate, maintain and supply fuel for heating system.

3) **Select Options for Preliminary Design:** Meet with DMA and DEED to select concept or concepts to be developed into preliminary designs.

4) **Preliminary Design and Cost Estimate:** Develop preliminary designs drawings and descriptions. Estimate capital cost within +/- 15%.

5) **Final Report:** Incorporate work and drawings into final report that can be submitted to Legislature. Report Date: January 1, 1984.

6) **DNR Headquarters in Bemidji:** Provide Consulting on wood fired heating system design, to firm currently under contract to design expansion of Natural Resources Headquarters Facility in Bemidji. It is anticipated that not more than 40 hours of time will be needed for this task.

The Firm of Association of Firms:

1) Must demonstrate experience with solid fuel boilers, wood fuel, emission control on wood boilers, hot water central distribution systems, building heating systems, fuel availability.

2) Must have capacity to undertake this project without delays or inefficiencies. The State intends this work completed by January 1, 1984.

CONTACTS:

ENERGY & ECONOMIC DEVELOPMENT

Ronald E. Sundberg, P.E.
Office of Alternative Energy Engineering
900 American Center Building
150 East Kellogg
St. Paul, Minnesota 55101
(612) 297-3067

MILITARY AFFAIRS

Major Wayne Johnson
Facilities Manager
Camp Ripley
P.O. Box 150
Little Falls, Minnesota 56345
(612) 632-6631

John D. Nagel, Chairman
State Designer Selection Board

SUPREME COURT

Decisions of the Court of Appeals Filed Tuesday, July 31, 1984

Compiled by Wayne O. Tschimperle, Clerk

C2-83-1200 State of Minnesota v. Robert Lee Armstrong, Appellant. Hennepin County.

Evidence was sufficient to convict appellant for simple robbery.

Affirmed. Popovich, C.J.

C0-84-248 State of Minnesota, Plaintiff, v. Alvin Harry Rud, Rosemary Ann Rud. Scott County.

Where the only information available to the defense concerning the date and nature of the charges was a generalized complaint and a police report summarizing the alleged victims' statements, the defense was entitled to call the alleged victims to testify at the omnibus hearing.

Certified question answered and remanded. Popovich, C.J.

Dissenting, Forsberg, J.

CX-84-449 Eric Ladon Massey, petitioner, Appellant, v. State of Minnesota. Ramsey County.

Where both consecutive and concurrent sentencing are authorized by the guidelines, the imposition of consecutive sentences is discretionary with the trial court.

The trial court did not abuse its discretion by imposing consecutive sentences despite defendant's alleged passive role and his allegation he "barely" met the statutory prerequisites for the crime.

Affirmed. Popovich, C.J.

CX-83-1896 In the Matter of the Alleged Mental Illness of: Mark Neubauer. Hennepin County.

The trial court properly ordered the commitment of appellant to Anoka State Hospital after appellant admitted the petition.

Because appellant admitted the petition on the record, the transcript shows that he was aware of his right to a hearing, he was advised by counsel, and the order for commitment was based upon the report of the court-appointed examiner, which supported commitment, it was not error for the court to deny appellant's motion, made three months after commitment, to withdraw the admission.

Affirmed. Parker, J.

C1-84-355 Mora Federation of Teachers, Local 1802, Appellant, v. Independent School District #332. Kanabec County.

Where issues of standing to file a grievance, adherence to proper grievance procedures and arbitrability of the dispute were subject to reasonable debate, all issues should have been submitted to an arbitrator for resolution.

Reversed and remanded. Parker, J.

C2-84-90, C4-84-91 State of Minnesota v. Freda Jahnke, Appellant, (C2-84-90). State of Minnesota v. Harvey Jahnke, Appellant, (C2-84-91). Faribault County.

It was error by the trial court to allow extensive inquiry into the details of prior convictions and to allow extrinsic evidence for impeachment and to allow prosecutorial misconduct in probing into a defendant's history of having been a victim of child sexual abuse, in referring to a polygraph examination, and in referring to a photo previously ruled inadmissible.

The cumulative effect of several errors resulted in the denial of a fair trial to both defendants where the defendants were tried jointly and requires that both defendants be given a new trial.

Reversed and remanded for new trial. Parker, J.

C1-83-1768 Lawrence Saliterman v. Hershel Bigos, et al., Appellants. Hennepin County.

The trial court did not abuse its discretion in ordering specific performance where the parties had an enforceable real estate contract. Lack of mutuality of remedies does not preclude specific performance.

The trial court did not err in extending payment dates according to the terms of the contract where the sellers' improper refusal to complete the sale delayed closing.

The trial court adequately compensated the sellers for improvements made to the property while the specific performance action was pending.

Affirmed. Foley, J.

SUPREME COURT

C1-84-16 State of Minnesota v. Robert Henry Blank, Appellant. Winona County.

It was reversible error for the trial court to allow attorneys to comment during their opening statements about the victim's provocative statements to defendant before an assault, then exclude such statements from evidence.

Reversed and remanded. Foley, J.

C6-84-271 Edmund Duevel, Appellant, v. Eugene Jennissen and Claudette Jennissen. Stearns County.

Respondents' drainage system is permissible under the reasonable use rule because it makes additional land available for tillage without harming appellant's property.

Appellant's filling in of the drainage ditch connecting the parties' properties is impermissible under the reasonable use rule because it obstructs the natural flow of water causing damage to respondents' property.

Affirmed. Foley, J.

C6-84-352 Karen Jo Brandenburg v. Auto-Owners Insurance Company, Appellant. Faribault County.

The trial court finding, that appellant failed to prove that respondent intentionally injured herself by jumping from a moving motor vehicle, is not clearly erroneous.

Affirmed. Foley, J.

C6-84-223 State of Minnesota v. James Russell McAlpine, Appellant. Dakota County.

Constitutional and statutory prohibitions against double jeopardy, collateral estoppel, and serialized prosecution were not violated where the defendant, who was previously tried and acquitted in Hennepin County of conspiracy to commit theft, was later charged in Dakota County with possession of a controlled substance and possession with intent to sell, even though evidence of the controlled substance had been submitted in the first conspiracy trial.

Affirmed. Wozniak, J.

C9-84-491 Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, Petitioner, v. John J. Kotlar, et al, Landon B. Swynigan, Appellant. Ramsey County.

The trial court did not abuse its discretion by dismissing appellant's claim with prejudice after appellant failed to produce documents to establish the value of condemned property by a court-ordered deadline.

Affirmed. Wozniak, J.

C5-83-1563, C2-83-1584 Archie C. Hawkinson, et al, Appellants (C2-83-1584), Theodore R. Geyer, et al., Appellants, (C5-83-1563). Hennepin County.

The trial court properly denied defendant's motion for a new trial or remittitur.

Plaintiffs properly preserved their right to appeal the punitive damages issue and are entitled to claim punitive damages when a driver, knowing she was drunk and therefore a risk to the safety of others, recklessly drives a car and injures another.

Defendants are not entitled to a credit for plaintiffs' medicare benefits when a jury awards special damages to plaintiffs.

Affirmed in part, reversed in part, and remanded in part. Sedgwick, J.

C5-84-147 In the Matter of the Welfare of: Michael Adams, Child. Freeborn County.

The trial court did not err in terminating a mother's parental rights where she continued to neglect her child's needs after six years of being provided with every conceivable service to help her overcome her chemical dependency condition and improve her parenting skills.

Affirmed. Sedgwick, J.

C0-83-1910 St. Paul Fire and Marine Insurance Company, Appellant; v. Steeple Jac, Inc., a Minnesota Corporation, and Alpina Aluminum Products, Inc., a Minnesota Corporation. Ramsey County.

Damage to a product caused by a defect in the product itself, which causes no personal injury or damage to other property, constitutes economic loss which is not recoverable under negligence or strict liability theories.

Affirmed. Lansing, J.

C5-83-1692, C4-83-1876 Marjorie A. Koehnle, as Trustee for the Heirs and Next of Kin of Dean A. Koehnle, Decedent, Appellant, (C5-83-1692), v. M. W. Ettinger, Inc. Appellant, (C4-83-1876), Danny Craig Morgan, Pinto Trucking Services, Incorporated, and Pinto Trucking Services, Incorporated, Defendant and Third Party Plaintiff, v. State of Minnesota, Third Party Defendant. Washington County.

Trial court did not err in admitting evidence of worker's compensation payments when not objected to and where it is an issue raised in the case.

Trial court did err in excluding evidence of speed for lack of foundation.

It was not an abuse of discretion for the trial court to exclude an opinion by a so-called accident reconstruction expert.

Trial court did not err in allowing respondent Morgan to testify as to statements made by Paskeuric, since it was for impeachment purposes.

A service contract between Pinto and Ettinger required Ettinger to pay Pinto's attorney's fees.

Affirmed. Forsberg, J.

C6-83-1989 Mark Johnson, d/b/a Mark's Sanitation, Appellant, v. City of Jordan, LeRoy J. Carey, Personal Representative of the Estate of Donald E. Yahnke, Deceased, etc. Scott County.

Where a municipal contract is opened to competitive bidding, the requirement of a written contract by law, or by the request for bids, may indicate that even after acceptance of the lowest bid, no contract is formed.

The test of contractual formation is an objective one to be judged by the words and actions of the parties.

Acceptance of the lowest bid by a city council forms a contract, even though execution of a written contract by city officials is required by ordinance, where the council resolution directs the city officials to execute the contract, and the contract to be executed is included with the request for bids.

Under the circumstance of this case, lack of a timely bid bond was not a material variation.

Reversed. Forsberg, J.

C7-84-179 Hugh C. Johnson, Trustee in Voluntary Liquidation of H & J Investment, Inc., v. A-1 Petroleum, Inc. et al., Appellants, Roger A. Fide, et al. and A-1 Petroleum, Inc., et al., Appellants, v. Hugh C. Johnson, Trustee in Voluntary Liquidation of H & J Investments, Inc. Hennepin County.

Trial court did not err in granting summary judgment in favor of respondent where sales agreement was unambiguous.

The doctrine of impracticability is inapplicable to sales agreement where the sales agreement indicates the risk that each party agrees to bear.

The trial court should not have entered judgment against all four defendants as the stipulation of facts did not define the respective involvement of the individual defendants.

Affirmed in part and remanded for further proceedings. Forsberg, J.

C1-84-386 Charles Ritter, Appellant, v. M. A. Mortenson Company. Hennepin County.

Since the appellant and the respondent's employee were engaged in a common enterprise at the time of appellant's injury and since the appellant had already elected to receive worker's compensation benefits the trial court properly held that the appellant's common law action against the respondent for injuries caused by his employee would be barred by Minn. Stat. § 176.061 (Supp. 1983).

Affirmed. Forsberg, J.

C6-84-111 Johnson Motor Company, Inc., Appellant, v. Willie Cue, Defendant/Debtor, v. Northern Life Insurance Company. McLeod County.

The trial court's determination that an automatic stay in bankruptcy prevented a creditor from serving a supplemental complaint against a garnishee was an appealable order.

Under the facts of this case, a supplemental complaint filed by the creditor could only reach the assets which the garnishee owed to the debtor, and not the independent assets of the garnishee.

Since the supplemental complaint would only reach the assets of the debtor, and not the garnishee's independent assets, this action would be barred by the automatic stay provisions of the Bankruptcy Code, 11 U.S.C.A. § 362.

Affirmed. Forsberg, J.

C0-84-590 In the Matter of Richard Adams. Hennepin County.

The trial court properly ordered continued commitment where the evidence and findings showed that the patient continued to be mentally ill, that involuntary commitment was necessary to protect the patient and others, and that there was no alternative to commitment available.

Affirmed. Forsberg, J.

SUPREME COURT

C0-83-1972 D. J. Enterprises of Garrison, Inc., et al., v. Blue Viking, Inc., et al., Appellants. Crow Wing County.

Equity permits a district court to contract for deed cancellation proceeding after the statutory notice of cancellation period has expired, if the petition for the injunction was heard within that period.

Affirmed. Leslie, J.

C5-84-309 John T. Foy v. J. E. K. Industries, Relator, Commissioner of Economic Security, Department of Economic Security.

There was no evidence in the record reasonably tending to sustain the finding of the commissioner's representative that the employee involuntarily terminated his employment due to a 31 percent cut in salary.

Reversed. Leslie, J.

CX-83-2059 State of Minnesota v. Dennis Hinkel, Appellant. Ramsey County.

A search of defendant pursuant to a warrant authorizing a search of "all persons on the premises" was unconstitutional.

Where a frisk of defendant did not lead the officer to believe a dangerous weapon to be concealed, a subsequent search was not justified and evidence obtained by such search was unconstitutionally seized.

Reversed. Nierengarten, J.

C7-84-182 Robert Joseph Eveslage, Petitioner, v. Commissioner of Public Safety, Appellant. Stearns County.

The issues to be raised at an implied consent hearing must be stated with specificity in the petition for review.

An arrest is the result of a complete and full intrusion on one's liberty, regardless of whether the individual was formally placed under arrest.

A person has a limited statutory right to consult with an attorney before consenting or refusing to take chemical tests under the implied consent law.

Reversed. Nierengarten, J.

C7-83-1273 In Re: the Marriage of: Jerome E. Swanson, Petitioner Appellant, v. Barbara J. Swanson. Ramsey County.

Handing an opposing party's attorney a photocopy of the court's Findings of Fact, Conclusions of Law, Order for Judgment, and Judgment and Decree, with the Clerk of Court's notation on it showing the date of filing, is not sufficient "notice by a party of the filing of the decision or order" under Rule 59.03, R. Civ. P., to start the time running in which to make a motion for amended findings or a motion for a new trial.

Reversed and remanded. Randall, J.

C5-83-1529 State of Minnesota, v. Harvey O. Dow, Appellant. Washington County.

Radar unit results were properly admitted at appellant's trial for speeding.

Affirmed. Randall, J.

Took no part, Popovich, C.J.

C0-83-2054 State of Minnesota, Plaintiff, v. Soua Thao Yang. Ramsey County.

A second search warrant was not needed to allow translation from Hmong to English of a letter which had been properly seized in a lawful search pursuant to a warrant. Its contents could be used against the letter's recipient in a narcotics prosecution.

Certified question answered. Randall, J.

C9-83-1890 State of Minnesota v. John Francis O'Brien, Appellant. Kandiyohi County.

A voluntary statement made after a valid arrest was not tainted by a prior allegedly illegal arrest.

The evidence was sufficient to find defendant guilty of two counts of assault in the fifth degree and one count of disorderly conduct.

The evidence was sufficient to find defendant guilty of two counts of assault in the fifth degree and one count of disorderly conduct.

Affirmed. Crippen, J.

C3-84-180 Peggy Ann Wachsmuth and County of Anoka, v. Kevin Lee Johnson, Appellant. Anoka County.

Appellant invoked the jurisdiction of the court in bringing his motion to reduce arrears and temporarily suspend support such that he cannot later assert a lack of personal jurisdiction.

Affirmed. Crippen, J.

C5-84-214 Western National Mutual Insurance Company v. State Farm Insurance, Appellant. Hennepin County.

An insurer licensed to do business in Minnesota is required to afford basic economic loss benefits to a non-resident policyholder on an accident that occurs in Minnesota even though her vehicle was not present in Minnesota at the time of the accident.

An interpretation of the Minnesota no-fault automobile insurance act requiring a licensed insurer to provide benefits on a Minnesota accident even though an insured is a non-resident whose car is not in the state does not deny the insurer due process.

Affirmed. Crippen, J.

Dissenting, Forsberg, J.

C5-84-228 State of Minnesota, Appellant, v. Christian Lee Wendroth, Stearns County.

In a pretrial appeal of a gross misdemeanor DWI prosecution, the state failed to establish that a suppression order will have a critical impact on the outcome of the trial.

Affirmed. Crippen, J.

CX-84-676 In the Matter of the Welfare of Gina Steffen, Minor Child. Chippewa County.

An initial constructive contempt order is not appealable.

The trial court did not err in finding that the child's interests are served by placing her in the home of her mother and excluding her stepfather from the residence.

Dismissed in part and affirmed in part. Crippen, J.

C3-84-941 In the Matter of Beverly Leebie. Hennepin County.

The trial court properly found appellant mentally ill as defined by Minn. Stat. § 253B.02(13) (Supp. 1983) and committed her to Anoka State Hospital.

Affirmed. Crippen, J.

CX-84-967 State of Minnesota, v. Paul Steven Kvale, Appellant. Hennepin County.

A pre-trial evidentiary ruling favoring the prosecution will not be reviewed on a question certified by the trial court except when discretionary review is appropriate.

The court will not answer a certified question calling for an advisory opinion.

Remanded. Crippen, J.

Decisions of the Supreme Court Filed Friday, August 3, 1984

Compiled by Wayne O. Tschimperle, Clerk

C5-83-204 State of Minnesota, v. Sarah Aguilar, Appellant. Ramsey County.

Search warrant affidavit, which was based primarily on independent police observation of a so-called "controlled purchase," contained sufficient information to justify issuance of search warrant.

Trial court should have consulted with counsel before instituting courtroom security procedures during trial but, contrary to what defendant argues, these procedures did not create an atmosphere that was prejudicial to defendant.

Affirmed. Amdahl, C.J.

C2-83-628 University Education Association and Minnesota Education Association, Appellants, v. The Regents of the University of Minnesota. St. Louis County.

Subjective criteria used to determine promotion and tenure are matters of inherent managerial policy as defined in Minn. Stat. § 179.66, subd. 1 (1982) and therefore are not negotiable under Minn. Stat. § 179.65, subd. 4 (1982).

Criteria, weights and review of faculty evaluations are matters of inherent managerial policy as defined in Minn. Stat. § 179.66, subd. 1 (1982) and therefore are not negotiable under Minn. Stat. § 179.65, subd. 4 (1982).

The academic calendar is a matter of inherent managerial policy as defined in Minn. Stat. § 179.66, subd. 1 (1982) and therefore is not negotiable under Minn. Stat. § 179.65, subd. 5 (1982).

Affirmed. Amdahl, C.J.

Dissenting, Yetka, J., Todd, J., Scott, J., and Wahl, J.

SUPREME COURT

C8-83-729 Patricia Dahle, Trustee of the Estate of Bruce Lee Dahle and Patricia Dahle; Individually, Appellant. v. Aetna Casualty and Surety Insurance Company. St. Louis County.

A posthumous child is included within the definition of surviving dependent, Minn. Stat. § 65B.44, subd. 6 (1982), and is entitled to recover benefits under the no-fault assigned claims plan, Minn. Stat. §§ 65B.63-.65 (1982).

Appellant's failure to respond to respondent's requests for admission in a timely fashion does not result in admission of those requests.

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

C9-83-1078 Apple Valley Red-E-Mix, Inc. v. State of Minnesota, by Its Department of Public Safety, et al., Appellants. Dakota County.

Metal unit attached to cement truck is a "trailer" for the purposes of taxation under Minnesota Statutes chapter 168 and a "variable load axle" for purposes of traffic regulation under Minnesota Statutes chapter 169.

The Motor Vehicle Registration, Taxation, Sales and Dealers Act and the Highway Traffic Regulation Act are not *in pari materia* and need not be construed together.

Affirmed. Amdahl, C.J.

C9-83-1114 State of Minnesota v. Stanford Lee Parker, Appellant. Hennepin County.

Jury verdicts are given substantial deference by appellate courts and will not be disturbed if evidence reasonably supports convictions.

Prosecutor's closing argument was not prejudicial and did not deny appellant his right to a fair trial.

Affirmed. Amdahl, C.J.

C6-83-891 Eugene Hauer, as Trustee for the Heirs of Jeffery Lawrence Hauer, Deceased, v. Integrity Mutual Insurance Company, Appellant. Hennepin County.

Upon repeal of the mandatory offer provision, Minn. Stat. § 65B.49, subd. 6(e) (1978), underinsured motorist coverage will not be read into new policies purchased or existing policies renewed after April 12, 1980, the date of repeal.

Reversed. Peterson, J.

C2-83-1696 State of Minnesota v. John Brechon and Scott Carpenter, et al., Petitioners, Appellants. Hennepin County.

"Claim of right" in a criminal trespass case under Minn. Stat. § 609.605(5) (1982) is not a defense but an essential element of the state's case.

The jury, not the trial court, decides the sufficiency of the evidence presented to establish a claim of right to enter or remain upon the premises of another. The trial court may not require defendants to make a pretrial offer of proof on the claim of right issue.

The existence of criminal intent is a question of fact that must be submitted to a jury. Defendants may not be precluded from testifying about their intent.

Reversed and remanded. Todd, J.

Concurring Specially, Wahl, J. and Yetka, J.

C3-83-637 Richard Enebak, Petitioner, Appellant, v. Arthur Noot, Commissioner of Public Welfare for the State of Minnesota. Ramsey County.

Trial court's application of provisional discharge standards contained in Minn. Stat. § 253B.18, subd. 7 (1982) was proper.

The evidence in the record as a whole supports the denial of petitioner's request for provisional discharge from his involuntary commitment.

Affirmed. Yetka, J.

C3-83-458, C7-83-706 Park-Lake Car Wash, Inc., Appellant, v. Arthur J. Springer, et al. Hennepin County.

A right-of-first-refusal provision in a lease is not ambiguous where the parties clearly indicate that the lessee holder of the right may purchase the leased premises in a cash transaction at the purchase price offered by a third party to the lessor.

A lessee effectively exercises a right of first refusal by accepting the lessor's offer in terms strictly complying with the first-refusal provision contained in the lease agreement between the parties.

The lessee is entitled to specific performance of the modified contract incorporating the exact terms of the purchase agreement with the third party.

Reversed and remanded. Wahl, J.

C0-84-718 In Re: Petition for Admission to the Minnesota State Bar by Craig Rollin Haukebo. State Board of Law Examiners.

Good moral character, for the purpose of bar admission, shall be determined from the applicant's pattern of conduct of behavioral record.

An applicant for admission to the bar may overcome a finding of lack of good moral character by sufficient evidence of reform and rehabilitation from the acts of conduct upon which the negative moral character determination was made.

Remanded. Wahl, J.

C6-83-440, C4-83-565 Gary F. Kaiser, et al., v. Northern States Power Company, Appellant. Ramsey County.

Judgment entered in a prior action commenced by the employer of city firefighters to recover workers' compensation payments made by the employer is not a bar to subsequent action commenced by the firefighters to recover common law damages not recoverable under workers' compensation law.

If the negligence of a landowner, or others in control of an instrumentality, creates risks which are not reasonably apparent of firefighters, or if a landowner, or others in control of an instrumentality, are negligent after firefighters arrive at the fire scene and that negligence materially enhances the risks or creates new risks, the negligent party is not shielded from liability by the "fireman's rule."

The "election of remedies" defense contained in Minn. Stat. § 176.061 (1982) is unavailable to bar firefighters' personal injury actions arising out of negligence of employees of a natural gas company at the scene of the fire.

Under the circumstances existing in this case, it was error to apply offensive collateral estoppel on the issue of a natural gas company's liability to pay damages to injured firefighters.

Affirmed in part, reversed in part and remanded. Kelley, J.

Took no part, Coyne, J.

C6-83-499 State of Minnesota, v. Steven Ray Studdard, Appellant. McLeod County.

Omnibus court did not err in denying defendant's motion to suppress evidence on fourth amendment grounds.

Affirmed. Kelley, J.

C6-82-671 In Re: Petition for Disciplinary Action against Kenneth R. Pearson. Supreme Court.

Indefinitely suspended. Per Curiam.

Order Filed July 26, 1984

C4-84-1256 In the Matter of the Application for the Discipline of James B. McCreary, an Attorney at Law of the State of Minnesota. Supreme Court.

Suspended. Amdahl, C.J.

ERRATA

Department of Labor and Industry Prevailing Wage Division

Correction to Certified Prevailing Wage Rates for Commercial Construction in Nicollet County

The commercial wage rates certified on June 27, 1984 and published in the *State Register* on July 9, 1984 as prevailing for Nicollet county were in error. The correct rates that were intended to be certified are now available at the State Register and Public Documents Division, 117 University Avenue, St. Paul, MN 55155.

Steve Keefe, Commissioner
Department of Labor and Industry

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