PAGES 513-564

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TABLE OF CONTENTS

List of MSAR Rules

List of rules within the Manual of State Agency Rules affected by documents published in the State Register during the current quarter beginning July 1, 1976:

*New rules, both proposed and adopted, and which have never been disseminated or published, are not included in the List of MSAR Rules Affected. Rules which are listed as "uncodified" have been disseminated, but have never been published in the MSAR.

Executive Orders

EXECUTIVE ORDER NO. 92A

Amending Executive Order No. 92 by Creating the Position of Liaison for Spanish-Speaking People; and by Repealing the Position of State Coordinator of Migrant Services and the Minnesota Task Force on Migrant Affairs

I, Wendell R. Anderson, Governor of the State of Minnesota, by virtue of the authority vested in me by the Constitution and applicable Statutes, do hereby issue this Executive Order:

WHEREAS, Executive Order No. 92, issued November 27, 1974, created the position of State Coordinator of Migrant Services, and established a Minnesota Task Force on Migrant Affairs; and,

WHEREAS, it now appears that the charge was too broad and through specific experience means by which state government can improve services to Spanish-speaking people have been subsequently identified;

NOW THEREFORE, I order that Executive Order No. 92 be amended as follows:

1. Paragraph 5 is amended to read: WHEREAS, numerous public and private non-profit organizations and agencies are separately engaged in delivering services to meet the needs of Spanish-speaking people in the State; and,

2. Paragraph 7, Item 1 is amended to read: The Department of Administration, under the authority of the Commissioner of Administration, shall coordinate the development of plans relating to Spanish-speaking people among and between the departments and agencies of the state, and between the agencies of the state and other affected or concerned parties.

3. Paragraph 7, Item 2 is amended to read: The Commissioner of Administration shall create within the Department of Administration in a manner he shall deem advisable, the position of Liaison for Spanish-Speaking People, with such supportive staff and offices as he himself may provide or require to be provided from other departments or agencies of state, the occupant of such position or positions having duties and responsibilities prescribed and fulfilled under the authority of the Commissioner, or his designated agent.

4. Paragraph 7, Item 3 and Sections A, B, C, D, E, and F are hereby repealed.

5. The facilitating of this Order shall be accomplished no later than 30 days following its effective date.

This Order shall be effective October 1, 1976.

IN TESTIMONY WHEREOF, I hereunto set my hand on this 15th day of September, 1976.

Wendell R. Anderson

Rules

DEPARTMENT OF PUBLIC WELFARE

COMMUNITY SERVICES BUREAU

RULES GOVERNING COMMUNITY-BASED RESIDENTIAL AND NON-RESIDENTIAL SERVICES FOR PERSONS WHO ARE MENTALLY ILL

DPW 21

A. Introduction.

1. This rule governs the financing of social and rehabilitative service costs to assist the counties of Dakota, Washington, and Ramsey in providing those nonresidential social and rehabilitative services to mentally ill residents of those counties who would otherwise be hospitalized or who are unable to use currently available after-care services. Services eligible for state financing under this rule shall be those contained in the individualized treatment plans of the mentally ill persons as determined by the above named counties. The goal of the individualized treatment plans shall be to enable those persons to live independently in the community without further hospitalization.

2. Definitions:

a. County welfare board: A legally established board under the authority of Minnesota Statutes 1974, Chapter 393.

b. Human service board: Single county or multicounty board established under the authority of Minn. Stat. ch. 402 (1974), amended.

c. Community mental health board: A board organized under the authority of Minn. Stat. §§ 245.61-245.69 to provide local mental health programs and services.

d. Mentally ill person: A person defined by Minn. Stat. § 253A.02, subd. 3.

e. Social and rehabilitative services: Those activities provided to carry out the individualized treatment plan for each eligible mentally ill person.

f. State agency: Minnesota Department of Public Welfare.

B. Standards for the awarding of grants.

1. The state agency will apportion the available funds to the three above-named counties on the basis of their most current population as determined by the Metropolitan Council. The initial apportionment of available funds will be made for a period not to exceed 14 months, from May 1, 1976 to June 30, 1977. Subsequent apportionments will be made on a fiscal year basis.

2. By mutual agreement of the county welfare board and community mental health board, in such a county where there are separate such boards, or by a human service board where such board exists, a county's share of the available funds under this rule may be assigned directly to a designated intermediary which is willing to accept this responsibility to carry out the purposes of this rule. Such fiscal intermediary shall be a legally established county welfare board, community mental health board, or human service board in one of the three above-named counties. Such designation and acceptance of the designation by the fiscal intermediary shall be in writing. The fiscal intermediary shall maintain such records as the commissioner of public welfare may require, and shall report to the commissioner on such forms and at such times as the commissioner shall indicate.

3. The funds available under this rule may be used to pay for expenses within the budget approved by the commissioner.

4. All vendors providing services eligible for reimbursement under this rule shall maintain records on each person served that document the existence of a written individualized treatment plan for each such person, the services provided to each such person to carry out the individualized treatment, the duration of such service, the outcomes of such services, and their costs. Such records shall be available for review by the county agency responsible for individual case management designated in accordance with B.5. infra.

5. Each of the three counties shall determine the county agency responsible for the case management of eligible persons and such agencies shall periodically review the progress of each eligible person with the fiscal intermediary, if one is designated, and with vendors authorized to provide services contained in each eligible person's individualized treatment plan.

6. By mutual agreement between any two or more of the above-named three counties, those funds available under this rule and apportioned to any one of these counties that are not needed by that county may be made available to the other county, or counties, to carry out the purposes of this rule. Funds may cover approved costs incurred after June 1, 1976.

C. Application.

1. Each of the three above-named counties may apply to the commissioner of public welfare for its share of the funds available under this rule, designating the fiscal intermediary if one is selected. The application shall be jointly signed by the county welfare board and the community mental health center board, or their designees where they are separate boards. In the event that a human service board is established in any of these counties, that board or its designee shall sign the application. In lieu of the above procedure and upon agreement of the county welfare boards and community mental health center boards or human service boards, if such are established in all three of the above-named counties, a designated fiscal intermediary may make a single application to the commissioner of public welfare for funds available under this rule. Such application shall specify the amount of funds being proportionately requested by each county and shall be jointly signed by the county welfare board and the community mental health board, or human service board, in each county.

2. Applications are to be sent to the Commissioner, Department of Public Welfare, Attention: Director, Mental Health Program Division.

3. Applications are to include the following:

a. Narrative description of the proposed services, the number of mentally ill persons expected to use the services, assurance that the individualized treatment programs of these persons will document their need for the proposed services, and a statement of the expected results.

b. A budget which states the cost of the proposed services.

D. Evaluation.

1. In accordance with Laws of 1976, ch. 327, the commissioner of public welfare shall establish the procedures necessary to monitor and evaluate each pilot program funded under this rule and shall make all necessary reports to the legislature. The commissioner may allocate funds for this purpose.

E. Reports to the state agency.

1. The commissioner of public welfare shall require that those local boards and agencies receiving funds under this rule shall report to the state agency the number of persons served, their county of residence, the costs of providing the services to them, the results achieved, and other relevant data as resquested.

DPW 22

A. Introduction.

1. This rule governs state financing for residential and related social and rehabilitative service costs to assist mentally ill persons to use community-based resources rather than state institutional services.

2. Definitions.

a. County welfare board: A board established under the authority of Minn. Stat. ch. 393.

b. Human service board: Single county or multi-county boards established under the authority of Minn. Stat. ch. 402, as amended.

c. Community mental health board: A board organized under the authority of Minn. Stat. §§ 245.61-245.69 to provide local mental health programs and services.

d. Mentally ill person: A person defined by Minn. Stat. § 253A.02, subd. 3.

e. Residential care facility: A living unit established primarily for the accommodation and treatment of mentally ill persons.

f. Social and rehabilitative services: Those activities provided to carry out the individualized treatment plan for each mentally ill person.

g. State agency: Minnesota Department of Public Welfare.

B. Standards for the awarding of grants.

1. The state agency will annually award the available funds primarily, but not necessarily exclusively, to one state hospital receiving district. The state agency shall determine which receiving district on the basis of the legislative record in 1975, the state agency's January, 1975 Comprehensive Plan, and the state agency's January, 1976 report to the Legislature on the closing of a state hospital.

2. The state agency may also allocate funds from

this appropriation to the partial support of community-based residential care facilities initiated and formerly funded by a state hospital for the care and treatment of former mentally ill patients of that state hospital.

3. Effective on July 1, 1976, the state agency will prorate the funds available to the counties in the designated state hospital receiving district on the basis of the most current total population figures as provided by the Metropolitan Council. Unexpended funds may be reallocated after six months to the other counties in the designated receiving district if appropriate uses are demonstrated.

4. These funds shall support additional programs and services and shall not replace the funding of the existing care and maintenance costs. To the extent that other available funds are inadequate, these funds will be used to carry out treatment plans for the individual.

5. Priority will be given to provision of services identified in individualized treatment plans. The funds are to be directed primarily toward programs and services for chronic, longstanding mentally ill persons. For these grants, chronic mental illness is defined as a condition that has required one or more prior hospitalizations for mental illness treatment.

6. Funding of services which will enable residential facilities to qualify for licensure may be allowed.

C. Service priorities.

1. Services eligible for funding under this rule include, but are not limited to:

a. Day programming (day activity, work and pre-work training, recreation and education).

b. Twenty-four hour social crisis intervention aimed primarily at aiding nonmedical crises of people who have had prior hospitalizations for problems of mental illness when those crises can be dealt with without resorting to medication and/or hospitalization, e.g., domestic or family quarrels, unexpected loss of a job, loss of a spouse or child, etc. This function may relate to medical emergency centers.

3. Independent living training unit which is for individuals or groups of individuals who need preparation and/or support in finding and maintaining housing, finding and keeping a job, managing money, developing suitable recreational activities, etc.

d. Drop-in centers for socialization and recreation where people with a history of mental illness may go for semi-structured activities and social support from others with similar backgrounds.

e. Staff/agency training in developing and carrying out individual treatment plans.

f. Residential living costs.

D. Application.

1. Applications for funds under this rule originating in any of the counties in the designated state hospital receiving district shall be jointly signed by the county welfare board and the community mental health center board, where they are separate boards. In the event that a human service board is established in any of these counties, that board shall sign the application.

2. Applications are to be sent to the Commissioner, Department of Public Welfare, Attention: Director, Mental Health Program Division.

3. Applications are to include the following:

a. A narrative description of the proposed services, the number of mentally ill persons expected to use the services, an assurance that the individualized treatment programs document the need for the proposed services and a statement of the expected results.

b. A budget outlining the cost of the proposed services.

c. A design for evaluation of the project.

E. Reports to the state agency.

1. The state agency may require, at such times and in such form as the Commissioner of the state agency may establish, that those local boards and agencies receiving funds under this rule report to the state agency the number of persons served, costs of providing the services, results achieved, and other relevant data requested.

KEY: New rules and both proposed and adopted additions to existing rules are printed in **boldface**. Proposed and adopted deletions from existing rules are printed in [single brackets]. Underlining indicates additions from proposed to adopted rules, while [[double brackets]] indicate deletions from proposed to adopted rules. Existing rules are printed in standard type face.

DEPARTMENT OF PUBLIC WELFARE

COMMUNITY SERVICES BUREAU

RULE GOVERNING COMMUNITY-BASED PROGRAMS FOR PERSONS WHO ARE MENTALLY RETARDED

DPW 23

A. Introduction.

1. This rule governs state financing of the planning and placement of mentally retarded persons into appropriate community alternative programs.

2. Definitions:

a. Community mental health board: A board organized under the authority of Minn. Stat. § 245.61-245.69, to plan for and facilitate programs in mental retardation and assure delivery of services.

b. Human service board: A single county or multi-county board established under the authority of Minn. Stat. ch. 402, as amended.

c. County welfare board: A board established under the authority of Minn. Stat. ch. 393.

d. Mentally retarded person: Any person who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior such as to require supervision and protection for his or the public welfare (Minn. Stat. § 253A.02, subd. 5).

e. Residential facility: An out-of-family home setting for purposes of acquiring self-care, remedial, developmental or social skills, or for a long-term living arrangement.

f. State agency: Minnesota Department of Public Welfare.

g. State institution: State-operated residential facilities for mentally retarded persons.

h. Supportive Services: Any non - residential services included in the treatment plan such as day activity centers, work activity program and homemaker services.

B. Purposes for the awarding of grants.

1. Joint application to the state agency for grants may be made by the county welfare board, community mental health board or human service board to pay local costs in planning developing alternatives, making appropriate placements, and financing residential and supportive services for mentally retarded persons in community-based programs after existing state and federal resources are fully utilized.

2. Applications may be made for the following purposes:

a. The placement of mentally retarded residents of state institutions into community-based residential facilities. This may include:

(1) Staff and consultation costs for individualized program planning and the planning of appropriate services in cooperation with state institution staff.

(2) Costs per individual to the county after federal and state resources are utilized. This may include costs now paid by the county because of the following reasons:

(a) Reimbursement rate paid by the state agency is less than that authorized in law for placement of children under DPW 30 (Cost of Care).

(b) Grant-in-aid paid by the state agency is less than authorized in law for daytime activity center (DAC) services.

(c) Federal Title XIX Medicaid and state supplementary appropriations do not pay all costs of ICF/MR placement. Remaining costs may be included after the federal share and state supplement is paid.

b. The placement of mentally retarded residents of community based residential facilities into independent living. This may include costs of:

(1) Multi-disciplinary case planning in cooperation with residential facility operators.

(2) Financing of residential and supportive services costs.

(3) Reduction of inappropriate placements of mentally retarded persons in skilled nursing facilities (SNF), and general intermediate care facilities (ICF/general). This may include:

(a) Implementing the recommendations of the DPW study (Mentally Retarded Persons Reported to be in Non-MR Residential Placement in Minnesota - A Report to the Minnesota Department of Public Welfare), dated December, 1975.

(b) Assessing mentally retarded residents of certified SNF's, in order to determine whether they can be programmed more appropriately in a residential facility certified as an ICF/MR facility.

(c) To place mentally retarded persons in ICF/general facilities who are under 65 years of age into residential facilities certified as intermediate care facilities for mentally retarded (ICF/MR) if appropriate.

(d) Assessing the needs of mentally retarded residents of ICF/general facilities who are over 65 years of age, in order to determine whether debilitating conditions warrant continued residence in ICF/general, or whether ICF/MR placement would be more appropriate.

(e) To finance supportive services.

C. Application.

1. All applications are to be made jointly between one or more county welfare boards and the community mental health board or human service board.

2. Applications are to be sent to the Commissioner, Department of Public Welfare, Attention: Director, Mental Retardation Division.

3. Applications are to include the following:

a. Identify the particular group of mentally retarded persons affected by the project application.

b. A narrative description of the proposed project and a statement of expected results.

c. A budget plan which will be reviewed for its appropriateness in relation to the group of persons to be affected. It is recognized that the types of persons addressed in B.1.a. & c. are more difficult to place in the community and may require more intense programming and highly specialized staff.

d. The number of retarded persons expected to be affected in each of the project purposes.

e. A design for the evaluation of the project.

D. Evaluation.

1. A report to the state agency shall be made by the applicants receiving grants. Such evaluation shall be submitted within 30 days of termination of the project, describing the impact and results of the project upon individuals.

E. State agency criteria for determination of grant award.

1. Standards for the provision of services.

a. To provide the person who is mentally retarded with an existence as close to normal as possible. This include making available the patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

b. To provide the person who is mentally retarded with an individual service plan designed so that new and progressively difficult skills are acquired. Such plan must take into consideration the presentation of learning and developmental experiences appropriate to his adaptive behavior levels, physical condition and degenerative status.

The individual service plan for the mentally retarded person must be based on a comprehensive assessment of needs, and periodic evaluation to determine appropriateness and effectiveness of the individual service plan.

c. To implement the client's service plan, plans shall be made in a manner which least restricts personal freedom but carries out the goals and objectives for the individual. This shall mean:

(1) Providing assistance to enable him to live in his home.

(2) Providing a community-based residential facility with appropriate services when the mentally retarded person must leave his home for a specified purpose and period of time.

d. Providing placement in a state institution when the mentally retarded persons cannot be served at home or in a community facility for a specified purpose and period of time.

2. Relevance of the application to:

a. Priorities of the community mental health or human service board's plan for the mental retardation target population.

b. Priorities of the county welfare department's plan.

c. Implementation of the Community Alternatives and Institutional Reform (CAIR) report recommendations (Developmental Disabilities Program Office, Minnesota State Planning Agency, 550 Cedar Street, Room 110, St. Paul, Minnesota 55101).

d. Community placement of current state institution residents.

e. State receiving institution — priority shall be given to proposals in accord with the above standards and expectations, relating to mentally retarded persons in the Cambridge State Hospital or in its receiving district.

Proposed Rulemaking

DEPARTMENT OF EDUCATION

STATE BOARD OF EDUCATION

PROPOSED RULES PROHIBITING DISCRIMINATORY PRACTICES IN EDUCATION

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the State Office Building, Room 83, St. Paul, Minnesota, on Thursday, November 4, 1976, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Room 300, 1745 University Avenue, St. Paul, Minnesota 55104 to the attention of Hearing Examiner Peter Erickson, Phone number (612) 296-8118, either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would (1) amend EDU 623 by eliminating a clause requiring school districts to report the number of certificated staff belonging to each race and (2) establish new rules (Chapter 33, EDU 660-679) governing the prohibition of discriminatory practices in education. Additional copies of the proposed rules will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained within Minn. Stat. § 121.07 (1974) and Minn. Stat. § 124.15, subd. 2a (1975). A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Under Minn. Stat. § 10A.01, subd. 11 (1974), any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

Howard B. Casmey
Commissioner of Education

Rules as Proposed

Chapter Thirty-One: Equality of Educational Opportunity and School Desegregation

EDU 623 Submission of data.

A. Each local board shall submit to the commissioner [within 60 days of the effective date of these regulations and annually thereafter] by November 15[,] of each year[,] such data as are required by subsection B of this section[, to determine the existing racial composition of the enrollment of each school in the district]. If a local board fails to submit such data by November 15[,] annually, the [C]commissioner shall notify the [B]board of non-compliance. A reasonable time of 15 days[,] shall be allowed for compliance.

B. Each local board shall submit a report showing the number of students enrolled which belong to each race [and the number of certificated personnel employed which belong to each race] for each of the schools under its jurisdiction. The information required to be submitted may be based upon sight count or any other method determined by the local board to be accurate. The clerk of the local board of education shall certify the accuracy of the report.

Chapter Thirty-Three: Prohibition of Discriminatory Practices in Education

EDU 660 Policy.

The policy of the state board of education is to assure compliance with state and federal law prohibiting discrimination because of age, race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability, and to promote the elimination of these discriminatory practices in public schools and public educational agencies under its general supervision.

EDU 661 Duties of local boards, penalty for failures to comply.

A. Each local board shall submit to the commissioner such data as specified in EDU 662 for purposes of determining that the educational program is meeting provisions of state and federal law prohibiting discrimination on the grounds listed in EDU 660.

B. Each local board shall comply with all state and federal law prohibiting discrimination on the grounds listed in EDU 660.

C. Each local board shall direct the superintendent to coordinate, implement, and report to the local board the district's efforts to comply with these rules.

D. Each local school board shall, pursuant to Title IX of the Educational Amendments of 1972 (P.L. 92-318), disseminate on a continuing basis its policy of non-discrimination on the basis of sex.

E. The penalty for non-compliance with this chapter shall be the reduction of state aids pursuant to Minn. Stat. § 124.15.

EDU 662 Compliance reports and submission of data.

A. Annually, on November 15, each school board shall submit to the commissioner a statement of compliance with state and federal law prohibiting discrimination on the grounds specified in EDU 660 and, in support of that statement, shall complete the form contained in EDU 662 C, and submit a report as required by 29 CFR 1602.41 (EEO-5 report), showing the number of certificated and non-certificated personnel employed which belong to each race and sex for each of the schools under its jurisdiction.

B. The statement of compliance required by Minn. Stat. § 124.15, subd. 2a, shall be as specified in Exhibit A.

C. The form to be completed in support of the assurance statement shall be as specified in Exhibit B.

EDU 663 Notices.

A. The content of any notice of non-compliance shall be such as is specified in Minn. Stat. § 124.15, subd. 3.

B. Any notice to a local board which is required by this chapter shall be written and shall be sent by certified mail to the superintendent and to the clerk of the local board of the district at their respective business addresses. For the purposes of this chapter, the business address of the clerk of the local board is deemed to be the main administrative office of the district.

EDU 664 Appearance before the state board. Any school district aggrieved by a decision required of the commissioner under this chapter may serve a written request on the state board of education, within 30 days of any such decision, to appear before said board.

The appearance shall be made at the next regular state board meeting following receipt of such request. Following such appearance the board may, in writing, support, modify, or reject the commissioner's decision. Any such notice served by a school district shall stay any proceeding pursuant to Minn. Stat. § 124.15, to reduce state aids for non-compliance with this chapter until a determination by the board.

EDU 665 Duties of the commissioner.

A. Upon receipt of the school board's assurance of compliance and the supporting data, the commissioner shall process the data and forward it to the commissioner of human rights, pursuant to Minn. Stat. § 124.15, subd. 2a.

B. Within 90 days of the receipt of the data, the commissioner of education shall review it to determine whether a school district is in compliance with federal law prohibiting discrimination.

C. If, after review of the data, it appears to the commissioner that a violation of federal law exists, he shall make a prompt investigation.

D. If the investigation indicates non-compliance with federal law, the commissioner shall inform the school district.

E. If the non-compliance cannot be resolved by informal means, the commissioner may proceed to suspend or terminate federal assistance.

EDU 666

No district shall be exempt from this chapter.

EDU 667-679 Reserved for future use.

Exhibit A

Assurance of Compliance with State and Federal Law Prohibiting Discrimination

_____

Name of School District

The undersigned hereby affirm that the above named school district is in compliance with the following state and federal laws prohibiting discrimination:

1. Minn. Stat. § 363.03, Minnesota Human Rights Act, which prohibits discrimination in education programs and activities on

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grounds of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability.

2. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the district receives federal financial assistance.

3. Title VII of the Civil Rights Act of 1964 (P.L. 88-352), as amended by the Equal Employment Opportunity Act of 1972 (P.L. 92-261), which prohibits discrimination in employment because of an individual's race, color, religion, sex, or national origin.

4. Title IX of the Education Amendments of 1972 (P.L. 92-318), which prohibits discrimination on the basis of sex in education programs and activities receiving or benefiting from federal financial assistance.

5. The Age Discrimination in Employment Act of 1967 (P.L. 90-202), which prohibits discrimination on the basis of age (40 through 64).

6. Minn. Stat. § 126.21, which prohibits sex discrimination in athletic programs.

7. EDU 4, curriculum, which provides that "No school shall provide any course or activity on the basis of sex. This includes health, physical education, home economics, and industrial education."

8. EDU 620-639, relating to equality of educational opportunity and school desegregation.

This assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discount, or other federal and state financial assistance extended after the date hereof to the district by the Department of Health, Education, and Welfare and the State Department of Education, including installment payments after such date on applications for federal financial assistance and state aid allotments which were approved before such date. The district recognizes and agrees that such federal and state financial assistance will be extended in reliance on the representations, supporting information required by Minn. Stat. § 214.15, subd. 2a, and agreements made in this assurance. This assurance is binding on the district and the person or persons whose signatures appear below and who are authorized to sign this assurance on behalf of the district.

The attached form, Information Needed to Evidence Compliance, with this assurance statement is made a part thereof.

Dated_____ By_____
(School Superintendent)

By_____
(President or Chairman of School Board)

By_____
(Clerk of School Board)

Exhibit B

In support of its "Assurance of Compliance with State and Federal Law Prohibiting Discrimination", each school board shall affirm annually that it has as reference all documents listed in 1 (a-1) and that it has complied with all items 2-19.

Yes No 1. Does the district have a copy of the following documents available for references?

a. Minn. Stat. § 363.03, Minnesota Human Rights Act.

b. Minn. Stat. § 126.21, relating to sex discrimination in athletic programs.

c. Minn. Stat. § 124.15, relating to reduction of state aid for non-compliance with state and federal law prohibiting discrimination.

d. EDU 4, curriculum, relating to course offerings on the basis of sex.

e. EDU 620-639, relating to equality of educational opportunity and school desegregation.

f. Regulations under Title VI of the Civil Rights Act of 1964 as amended (45 CFR Part 80).

g. May 25, 1970, Office of Civil Rights memorandum "Identification of Discrimination and Denial of Services on the Basis of National Origin" (See Exhibit C.).

h. August, 1975, Office of Civil Rights memorandum, "Identification of Discrimination in the Assignment of Children to Special Education Programs" (See Exhibit D.).

i. Title VII of the Civil Rights Act of 1964 (P.L. 88-352), as amended by the Equal Employment Opportunity Act of 1972 (P.L. 92-261).

j. Record keeping and filing requirements for report EEO-5 (29 CFR 1602.39-1602.46).

k. Final Title IX regulations implementing education amendments of 1972, prohibiting sex discrimination in education, effective, July 21, 1975 (45 CFR Part 86).

l. The Age Discrimination in Employment Act of 1967 (P.L. 90-202).

2. Has the district designed and implemented an information program to acquaint the district staff with its civil rights responsibilities?

3. Has at least one employee been appointed to coordinate the district's efforts to comply with Title IX and investigate complaints as required by CFR 86.8(a)? That regulation requires that each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under 45 CFR Part 86, including any investigation of any complaint communicated to such recipient alleging its non-compliance with this part or alleging any actions which would be prohibited by this part.

4. Has the district adopted and published Title IX grievance procedures providing for prompt and equitable resolution of student and employee complaints as required by 45 CFR 86.8(b)? That regulation requires that each recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by 45 CFR Part 86.

Yes No

5. Has the district adopted and disseminated a nondiscrimination policy as required by 45 CFR 86.9? That regulation requires each recipient school district to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in educational programs or activities which it operates.

6. Does the district have on file a signed copy of HEW Form No. 441, "Assurance of Compliance with the Department of Health, Education, and Welfare Regulation under Title VI of the Civil Rights Act of 1964?" (See Exhibit E.)

7. Has the district completed a self-evaluation as required by 45 CFR 86.3? That regulation requires that each recipient education institution shall, by July 21, 1976, evaluate current policies and practices in terms of the requirements of 45 CFR Part 86, modify any policies and practices which don't meet the requirements, and take appropriate remedial steps to eliminate the effects of past sex discrimination.

8. Do guidelines of the district regarding procedures and/or criteria to be used in assigning students to classes ensure compliance with state and federal law prohibiting discrimination?

9. Do district curriculum policies or guidelines ensure compliance with state and federal law prohibiting discrimination?

10. Do district guidelines or requirements for physical education programs, including course outlines, instructional methodologies, class activities, and skill measurement criteria, ensure compliance with state and federal law prohibiting discrimination?

11. Do district policies regarding the provision of counseling and testing services ensure compliance with state and federal law prohibiting discrimination?

12. Do counseling materials currently employed in the district ensure compliance with state and federal law prohibiting discrimination?

13. Do district policy and program guidelines ensure compliance with state and federal law requirements for non-discrimination with regard to student marital or parental status?

14. Do district policies pertaining to student access to athletics ensure that males and females are provided equal access to interscholastic, intramural, or club athletics as required by state and federal law prohibiting discrimination?

Yes No

15. Do statements or documents concerning district employment and personnel policies, practices, criteria, and procedures ensure compliance with state and federal law prohibiting discrimination in all areas, including:
   — recruitment
   — selection
   — assignment (including extra-duty assignment)
   — transfer
   — referral
   — promotion
   — retention
   — dismissal
   — fringe benefits?

16. Does the district preserve all personnel and employment records for at least two years, as required by 29 CFR 1602.40? Has the record of applicant flow for the past two years been examined to assure that all district employment policies, criteria, and procedures are being applied in a fashion which complies with state and federal laws prohibiting discrimination?

17. Do position descriptions, job classifications, and salary schedules:
   — ensure job-relatedness of employment criteria?
   — ensure equity in job classification?
   — ensure equity in compensation for comparable jobs?

18. Does the local board have a policy statement which affirms that it does not enter into any contract with any person, agency, or organization if it has knowledge that such person, agency, or organization discriminates on the grounds listed in EDU 660, either in employment practices or in provisions, benefits, or services to students or employees?

Exhibit C

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

Washington, D.C. 20201

May 25, 1970

MEMORANDUM

TO: School Districts with More Than Five Percent National Origin-Minority Group Children

FROM: J. Stanley Pottinger
Director, Office for Civil Rights

SUBJECT: Identification of Discrimination and Denial of Services on the Basis of National Origin

Title VI of the Civil Rights Act of 1964, and the Department

KEY: New rules and both proposed and adopted additions to existing rules are printed in boldface. Proposed and adopted deletions from existing rules are printed in [single brackets]. Underlining indicates additions from proposed to adopted rules, while [[double brackets]] indicate deletions from proposed to adopted rules. Existing rules are printed in standard type face.

Regulation (45 CFR Part 80) promulgated thereunder, require that there be no discrimination on the basis of race, color or national origin in the operation of any federally assisted programs.

Title VI compliance reviews conducted in school districts with large Spanish-surnamed student populations by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils. Similar practices which have the effect of discrimination on the basis of national origin exist in other locations with respect to disadvantaged pupils from other national origin-minority groups, for example, Chinese or Portuguese.

The purpose of this memorandum is to clarify D/HEW policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin-minority group children deficient in English language skills. The following are some of the major areas of concern that relate to compliance with Title VI:

(1) Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

School districts should examine current practices which exist in their districts in order to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district immediately communicate in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where compliance questions arise as to the sufficiency of programs designed to meet the language skill needs of national origin-minority group children already operating in a particular area, full information regarding such programs should be provided. In the area of special language assistance, the scope of the program and the process for identifying need and the extent to which the need is fulfilled should be set forth.

School districts which receive this memorandum will be contacted shortly regarding the availability of technical assistance and will be provided with any additional information that may be needed to assist districts in achieving compliance with the law and equal educational opportunity for all children. Effective as of this date the aforementioned areas of concern will be regarded by regional Office for Civil Rights personnel as a part of their compliance responsibilities.

Exhibit D

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

Washington, D.C. 20201

AUGUST, 1975

MEMORANDUM FOR CHIEF STATE SCHOOL OFFICERS AND LOCAL SCHOOL DISTRICT SUPERINTENDENTS

SUBJECT: Identification of Discrimination in the Assignment of Children to Special Education Programs

Title VI of the Civil Rights Act 1964 and the Departmental Regulation (45 CFR Part 80) promulgated thereunder require that there be no discrimination on the basis of race, color, or national origin in the operation of any programs benefiting from federal financial assistance. Similarly, Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs or activities from federal financial assistance.

Compliance reviews conducted by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity on the basis of race, color, national origin, or sex in the assignment of children to special education programs.

As used herein, the term "special education programs" refers to any class or instructional program operated by a state or local education agency to meet the needs of children with any mental, physical, or emotional exceptionality including, but not limited to, children who are mentally retarded, gifted and talented, emotionally disturbed or socially maladjusted, hard of hearing, deaf, speech-impaired, visually handicapped, orthopedically handicapped, or to children with other health impairments or specific learning disabilities.

The disproportionate over- or underinclusion of children of any race, color, national origin, or sex in any special program category may indicate possible noncompliance with Title VI or Title IX. In addition, evidence of the utilization of criteria or methods of referral, placement or treatment of students in any special education program which have the effect of subjecting individuals to discrimination because of race, color, national origin, or sex may also constitute noncompliance with Title VI and Title IX.

In developing its standards for Title VI and Title IX compliance in the area of special education, the Office for Civil Rights has carefully reviewed many of the requirements for state plans contained in Section 613 of the Education Amendments of 1974 (P.L. 93-380), which amended Part B of the Education of the Handicapped Act.

Based on the above, any one or more of the following practices may constitute a violation of Title VI or Title IX where there is an adverse impact on children of one or more racial or national origin groups or on children of one sex:

1. Failure to establish and implement uniform nondiscriminatory criteria for the referral of students for possible placement in special education programs.

2. Failure to adopt and implement uniform procedures for insuring that children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement including, but not limited to the following:

a. prior written and oral notice to parents or guardians in their primary language whenever the local or state education agency proposes to change the educational placement of the child, including a full explanation of the nature and implications of such proposed change;

b. an opportunity for the parents or guardians to obtain an impartial due process hearing, examine all relevant records with respect to the classification of the child, and obtain an independent educational evaluation of the child;

c. procedures to protect the rights of the child when the parents or guardians are not known, unavailable, or the child is a ward of the state, including the assignment of an individual, who is not an employee of the state or local educational agency involved in the education of children, to act as a surrogate for the parents or guardians;

d. provisions to insure that the decisions rendered in the impartial due process hearing referred to in part (b) above shall be binding on all parties, subject only to appropriate administrative or judicial appeal; and

e. procedures to insure that, to the maximum extent appropriate, exceptional children are educated with children who are not exceptional and that special classes, separate schooling, or other removal of exceptional children from the regular education environment occur only when the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily.

3. Failure to adopt and implement procedures to insure that test materials and other assessment devices used to identify, classify and place exceptional children are selected and administered in a manner which is nondiscriminatory in its impact on children of any race, color, national origin or sex.

Such testing and evaluation materials and procedures must be equally appropriate for children of all racial and ethnic groups being considered for placement in special education classes. In that regard procedures and tests must be used which measure and evaluate equally well all significant factors related to the learning process, including but not limited to consideration of sensorimotor, physical, socio-cultural and intellectual development, as well as adaptive behavior. Adaptive behavior is the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of her or his age and cultural group. Accordingly, where present testing and evaluation materials and procedures have an adverse impact on members of a particular race, national origin, or sex, additional or substitute materials and procedures which do not have such an adverse impact must be employed before placing such children in a special education program.

4. Failure to assess individually each student's needs and assign her or him to a program designed to meet those individually identified needs.

5. Failure to adopt and implement uniform procedures with respect to the comprehensive reevaluation at least once a year of students participating in special education programs.

6. Failure to take steps to assure that special education programs will be equally effective for children of all cultural and linguistic backgrounds. School officials should examine current practices in their districts to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately devise and implement a plan of remediation. Such a plan must not only include the redesign of a program or programs to conform to the above outlined practices, but also the provision of necessary reassessment or procedural opportunities for those students currently assigned to special education programs in a way contrary to the practices outlined. All students who have been inappropriately placed in a special education program in violation of Title VI or Title IX requirements must be reassigned to an appropriate program and provided with whatever assistance may be necessary to foster their performance in that program, including assistance to compensate for the detrimental effects of improper placement.

Some of the practices which may constitute a violation of Title VI or Title IX may also violate Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), as amended by the Rehabilitation Act of 1973 (P.L. 93-516) which prohibits discrimination on the basis of handicap; and other practices not addressed by this memorandum and not currently prohibited by Title VI or Title IX may be prohibited by that Section. The Office for Civil Rights is currently formulating the regulation to implement Section 504.

School districts have a continuing responsibility to abide by this memorandum in order to remain in compliance with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

Martin Gerry
Acting Director
Office for Civil Rights

Exhibit E: HEW Form No. 441

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1974

_____(hereinafter called the "Applicant")
(Name of Applicant)

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health, Education, and Welfare (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the federal financial

assistance is exended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts or other federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons who signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated_____ _____
(Applicant)

By _____
(President, Chairman of Board, or comparable authorized official)

_____

_____
(Applicant's Mailing Address)

DEPARTMENT OF LABOR AND INDUSTRY

PREVAILING WAGE DIVISION

PROPOSED RULES GOVERNING PREVAILING WAGE RATES PAID TO WORKERS ON STATE PROJECTS

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the State Office Building Auditorium, St. Paul, Minnesota, 55155, on November 8, 1976, commencing at 9:00 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Mr. Peter C. Erickson, State Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104 (296-8118), either before the hearing or within twenty (20) days after the close of the hearing.

These rules are intended to implement and make specific the procedures which will be utilized in determining all future prevailing wage rates which must be paid to workers employed on state projects.

Those procedures include the following:

1. Clarification of the terms, definitions, and classes of labor which will be utilized in determining prevailing wage rates;

2. General guidelines for all wage rate determinations;

3. Procedures to effectuate determinations based upon physical surveys;

4. Procedures to be utilized for wage determinations made in the absence of a physical survey;

5. Contractor's duties regarding the submission and documentation of wages paid on all projects the contractor worked on;

6. Provision for notifying all interested persons of the new prevailing wage rate determinations;

7. Procedures and timetables for the review of wage rate determinations.

These rules are proposed pursuant to the general authority vested in the Department of Labor and Industry by the provisions of Minn. Stat. § 175.171, subd. 2 (1974), and the statutory requisites of Minn. Stat. § 15.0412, subd. 3 (Supp. 1975).

A copy of the proposed rules may be obtained by writing the Department of Labor and Industry, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies of the proposed rules will be available at the door on the day of the hearing.

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence

administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five (5) days of the commencement of such activity by the individual.

E. I. Malone
Commissioner

PWD 1 Authority, scope and purpose.

A. These rules are promulgated pursuant to the authority provided to the Minnesota Department of Labor and Industry by the provisions of Minn. Stat. § 175.171, subd. 2 (1974), and the requisites of Minn. Stat. § 15.0412, subd. 3 (Supp. 1975).

B. Minn. Stat. § 177.43 (Supp. 1975) requires the Department of Labor and Industry to ascertain the prevailing wage rates for all trades and occupations required in any contemplated state project. Thereafter, the state agency contemplating the project must include those rates in their proposed contracts.

Minn. Stat. § 177.44 (1974) requires the Department of Labor and Industry to conduct investigations and hold public hearings necessary to define classes of laborers and mechanics, and to inform itself as to the wage rates prevailing in all areas of the state for all classes of laborers, workmen and mechanics commonly employed in highway construction. The Commissioner must determine and certify these prevailing wage rates at least once a year and those rates must be contained in all highway construction contracts to which the state is a party.

These rules and regulations apply to all wage rate determinations made pursuant to Minn. Stat. §§ 177.43 and 177.44.

Laws of 1976, ch. 331, §§ 37 and 38 (1976) provide that an aggrieved party may request a reconsideration of any wage rate determination. These rules are intended to implement those provisions and shall apply to all future requests for wage rate reconsiderations.

C. These rules implement and make specific the procedures to be utilized in determining prevailing wage rates for each "area" as that term is defined in Minn. Stat. § 177.42 (1974). Their purpose is to provide consistent guidelines in making those determinations and to assure that the wages of laborers, workmen and mechanics engaged in state projects are comparable to wages paid for similar work in the community as a whole, consistent with the purpose and intent of the prevailing wage law.

D. These rules may be cited as the Rules and Regulations of the Prevailing Wage Division, PWD 1 through PWD 14.

PWD 2 Definitions. For purposes of all wage rate determinations, the following definition shall apply;

A. "Area" means the county or other locality from which labor for any project would normally be secured (Minn. Stat. § 177.42, subd. 3 (1974)).

B. "Wage rate" means the basic hourly rate of pay plus any contribution for health and welfare benefits, vacation benefits, pension benefits or any other economic benefit paid for work done.

C. "Prevailing wage rate" means the wage rates paid to the largest number of workmen within a given class of labor.

D. "Largest number of workmen" means the largest number of workmen engaged in the same class of labor within the area considered as determined in accordance with these rules.

PWD 3 Classes of labor.

A. In each area to be considered, a prevailing wage rate shall be determined for each individual class of labor within the following general classifications.

1. Laborers: each class of labor customarily used on highway and other construction projects within this general classification shall constitute a separate class of labor.

2. Operating Engineers: each class of power equipment operators customarily used on highway and other construction projects within this general classification shall constitute a separate class of labor.

3. Truck Drivers: each class of driver based upon the nature of the vehicle driven shall constitute a separate class of labor.

4. Special Crafts: the following crafts shall constitute separate classes of labor; Bricklayers, Carpenters, Cement Masons, Lineman, Electricians, Iron Workers, Painters, Pipefitters, Plumbers, Plasterers, Roofers, Sheet Metal Workers, and other labor or work which is customarily considered as an individual trade or craft based upon its character and skills required.

B. The classifications and classes of labor described herein are for illustrative and guidance purposes only and are not intended to limit or extend the number of classes requiring wage rates in a particular area.

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PWD 4 General guidelines for all determinations.

A. Each prevailing wage rate shall be determined at least once a year and shall be based upon work performed within the preceding one year period. If in the opinion of the commissioner, a change in the certified prevailing wage rate is required, the commissioner may at any time certify that change in accordance with the requisites of these rules.

B. For purposes of determining individual prevailing wage rates, each county shall comprise a separate "area" and each prevailing wage rate shall be based solely upon work done in that county;

1. Where the work done or wage rates paid in a given county are insufficient to determine the prevailing wage rate or where an individual classification is insufficient, the prevailing wage rate(s) for that county shall remain at their previously determined wage rates until such time that data is sufficient upon which to adequately base a new determination.

2. Data shall be considered insufficient where the work done in a county for the prior year consists of less than $25,000 in total project cost.

C. All individual prevailing wage rates shall be based solely upon work performed within the corresponding class of labor.

D. All prevailing wage rates for each class of labor shall reflect the wage paid to the largest number of workers.

1. The largest number of workers shall be determined upon a project-by-project basis. Thus where the same worker performs work on more than one project, he shall be counted as an additional worker for each project work.

2. Where a project involves work in more than one county, the county where the greater part of the work was performed shall be determined. The project shall only be utilized in determining wage rates for the county where the greatest part of the work was performed.

E. All initial determinations shall include a physical survey of the county. Thereafter, wage determinations may be made in accordance with PWD 8 where applicable.

PWD 5 Determinations based upon physical surveys.

Where the prevailing wage rates are based upon a physical survey of the county, that survey shall include the following procedures:

A. Contacting county, state district, and city engineers for information pertaining to projects upon which work was performed in the county and the names of contractors who performed work on those projects.

B. Contacting each accessible contractor who performed work in the county and auditing his payroll records relating to that work.

C. Collecting and retaining verified "Project Worksheets" for each project.

PWD 6 Specific procedures for survey determinations.

A. The labor investigator shall contact each contractor believed to have performed work within the county and shall request identification of all projects on which work was performed and the payroll records relating thereto.

1. Where a particular contractor having worked in the county during the applicable time period cannot be located or where his records are not available for inspection, a certified form approved by the department shall be left at his main office or shall be sent by certified mail. The form shall contain appropriate instructions to be completed by the contractor or his representative and returned to the department via certified mail.

2. Where forms so left by the department are not returned within 45 days, the work or projects for which they were intended to document wage rates shall not be considered in that current determination for that area.

B. A "Project Worksheet" shall be compiled for each project upon which work was performed.

1. The worksheet shall identify the contractor and the project, its location, the dates of the project and its total dollar cost.

2. Based on the payroll records for the project, the worksheet shall list each class of labor within which work was performed, the total number of workers who worked on that project within that class of labor and the wage rates paid those workers.

3. On each project, the department shall determine the number of workers who were subject to collective bargaining agreements and so designate on its worksheet for that project.

4. The worksheet shall contain appropriate language for the contractor or its representative to sign and acknowledge indicating that he has reviewed the contents of the worksheet and that to the best of his knowledge and belief, its contents are true and correct. The project worksheet shall be signed by the contractor and a copy left with him.

5. All completed worksheets shall be separated into two categories one representing work performed on highway and heavy construction and one representing work performed on other projects. Wage determinations for one category shall not be based upon projects performed within the other category.

C. The number of workers in each class of labor and their respective wage rates shall be totaled from all

project worksheets and reflected on a "County Survey Report."

D. Except as provided in F. through G. herein, the prevailing wage rate shall be based upon the wage rate paid to the largest number of workers in each class of labor.

E. Where an equal number of workers worked at different wage rates, the prevailing wage rate shall be based upon the highest wage rate paid.

F. In each county survey; where it appears that the largest number of workers in a given class of labor are subject to a collective bargaining agreement which provides for a different rate of pay than that required to be paid under the previously determined prevailing wage rate, and which would have been paid in the absence of the previously determined wage rate, the new prevailing wage rate shall be based upon those agreed to rates without regard to wages paid under the prior prevailing wage determination. Collective bargaining agreements or written understandings between employers and bona fide organizations of labor currently in force may be utilized in determining the hourly rates of pay which would have been paid in the absence of the previous wage determination.

G. In each county survey; where it appears that the largest number of workers in a given class of labor are non-union employees not subject to collective bargaining agreements whose wages would have been at a different rate in the absence of the previously determined prevailing wage rate, the new prevailing wage rate shall be determined without regard to wages paid under the prior prevailing wage rate. In addition where the largest number of workers within a given class of labor are non-union workers, the prevailing wage rate shall be based upon the highest wage rate paid to those non-union workers.

PWD 7 Contractor's duties.

A. Each contractor contacted in the course of a survey shall be prepared to present copies of all payroll records representing work done on projects in the county for the preceding twelve months.

B. For each worker, the contractor shall document for the investigator, the class of labor and the rate of pay for that worker.

1. Contractors may utilize the Master Job Classifications specified in PWD 14 in documenting classes of labor.

2. Where the investigator is unable to determine the class of labor for a particular employee, he is authorized to determine from the information available, an appropriate classification for that employee.

3. Where a payroll record describes a particular worker as performing work within several different classes of labor and the contractor does not indicate a specific class of labor for that worker, the investigator may classify him in the class of labor which he deems appropriate.

PWD 8 Determinations without survey.

A. Where it appears to the Department, based upon all information available to it, that in a given county the number of AFL-CIO represented workers or the number of independent union represented workers comprised more than 70% of the total number of workers in that county of where AFL-CIO contractors or independent union contractors performed more than 70% of the dollar volume of total projects in that county, the prevailing wage rates for all classifications of laborers in that county need not be based upon a survey but may be based upon the rates contained in the applicable current collective bargaining agreement, provided that:

1. Nothing contained herein shall preclude an aggrieved person from petitioning for a redetermination under Minn. Stat. §§ 177.43-177.44;

2. Any redetermination of a wage rate which has been determined under this rule and which is not resolved at an informal conference conducted pursuant to PWD 13 B. shall be based upon a physical survey of the county.

B. For purposes of this rule, it shall be the duty of every contractor performing work within the State of Minnesota to furnish the Department with copies of all payroll records relating to each project or in lieu thereof, to furnish a summary of those payrolls for each project upon which work is performed.

C. Where the contractor elects to furnish the Department with a summary of each project's payroll records, that summary shall include the following:

1. Identification of the project and its location, its completion date, approximate dollar total cost and identification of subcontractors involved on the project;

2. The number of workers in each class of labor who performed work on the project and their respective rates of pay.

D. All summaries of payroll records shall be signed by the contractor or his representative and shall certify that the contractor has reviewed the contents of the

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summary and that they are an accurate and correct summary of the information contained in the payroll records for that project.

E. All summaries submitted to the Department shall be date-stamped on the day of their receipt and filed in accordance with the county within which the work was performed.

F. The Department shall periodically request from the Minnesota Highway Department all data indicating state projects let by that department, the counties in which work will be performed, the contractors awarded the contracts and their costs. This data shall be kept on file and may be utilized in making wage determinations under this rule.

PWD 9 Multi-county projects.

Where a state project will extend into more than one county, the prevailing wage rate to be certified and utilized on that project shall be based upon the prevailing wage rate for the county within which the greatest volume of work will be performed.

PWD 10 Notice of wage determinations.

A. Upon certification of wage rates for a given county, the department shall publish notice of such certification in the *State Register* but need not publish the individual rates so certified.

B. The notice published in the *State Register* shall indicate where copies of the determined rates may be obtained upon request.

C. The Department shall maintain a list of all persons who request that copies of wage rate determinations be sent to them.

D. Copies of wage rate determinations shall be mailed within five days of their certification to those persons who have requested such notice and whose names appear on the list maintained by the Department.

PWD 11 Utilization of additional information.

A. Voluntary information received by the Prevailing Wage Division from contractors or their representatives, contractors associations, labor organizations, public officials, individual laborers and other interested parties shall be kept on file by the Department but shall not provide the sole basis for new wage rate determinations.

B. Illustrative of the type of information which will be kept on file if submitted are:

1. Notarized statements showing wage rates and hours worked on projects (such statements should indicate the names and addresses of contractors, including subcontractors, the locations, approximate cost, dates of construction and types of projects, the number of workers employed in each class of labor on each project, and the respective wage rates paid to each worker.

2. Signed collective bargaining agreements or understandings between an employer or a group of employers and bona fide organizations of labor.

3. Wage rate determinations and other information furnished by federal agencies.

4. Contract and bidding information submitted by the Department of Highways or other state agencies.

5. Reports or records of county or city engineering offices.

6. Other information pertinent to the determination of prevailing wage rates.

PWD 12 Apprentices and trainees.

A. Apprentices, under programs approved by the U.S. Department of Labor, will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a state apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a state, under a program registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprenticeship wage rate, who is not a trainee as defined in subparagraph B. of this paragraph or is not registered as above, shall be paid the wage rate determined by the Commissioner of the Department of Labor and Industry, State of Minnesota, for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the Department of Labor and Industry written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any apprentices on the contract work. The term "apprentice" means (1) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the Bureau, or (2) a person in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program but who has been certified by the Bureau of Apprenticeship and Training, or a State Apprenticeship Council (where appropriate) to be eligible for probationary employment as an apprentice.

B. Trainees: Trainees will be permitted to work as such if they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor,

Manpower Administration, Bureau of Apprenticeship and Training.

C. Apprentices and Trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal employment opportunity in connection with federal-aid highway construction programs are not subject to the requirements of PWD 11. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs.

PWD 13 Petition for reconsideration of prevailing wage rates.

A. Any person including contractor associations or labor organizations aggrieved by a final determination of a prevailing wage rate may petition the commissioner for reconsideration of that wage rate within 30 days following its certification. The petitioner shall indicate the county and class(es) of labor contested, the reason the petitioner believes the rate to be inaccurate, and the rates the petitioner believes to be correct.

B. Within 10 days following receipt of a Petition for Reconsideration, the Department shall informally meet with the petitioner and any other interested person, associations or labor organizations, to review the contested wage determination(s).

1. The petitioner shall be prepared to support his contentions with any documents or data he deems necessary.

2. The department shall be prepared to produce and review the data, summary sheets and other documents upon which its determinations were based.

C. Following the informal conference, the Department shall, within 10 days, notify the petitioner of any decision modifying, changing, or reaffirming the contested wage rate or indicate to the petitioner that a survey will be necessary to resolve the contested wage rate(s).

1. Where the department determines that a new survey is necessary, such survey shall be conducted within 30 days. Thereafter, the department shall inform the petitioner by certified mail of its final decision based on that survey.

2. Where the department determines that a new survey is necessary in order to resolve a contested wage rate, the wage rate which will be certified and contained in any contracts to be let prior to the completion of the survey shall be the most recent wage rate determination for that classification prior to the wage determination in dispute.

D. Except as provided in subpart C. above, no prevailing wage rate will be deemed to be vacated or suspended pending the resolution of a Petition for Reconsideration nor will the department request any state agency contemplating a state project to suspend, delay or otherwise change its contract and bidding schedules due to any pending proceedings resulting from a Petition for Reconsideration.

E. Any person aggrieved by a final decision following reconsideration of a prevailing wage rate may, within 20 days after the decision, petition the Commissioner for a public hearing in the manner of a contested case under the administrative procedures act, Minn. Stat. §§ 15.0418 to 15.0421.

1. Upon receipt of a petition for a public hearing the commissioner shall order the initiation of a contested case in accordance with Minn. Stat. § 15.052.

2. All contested case hearings initiated herein shall be conducted in accordance with the rules of operation of the Office of Hearing Examiners.

PWD 13 Application.

These rules shall apply to all prevailing wage determinations certified subsequent to the effective date of these rules.

PWD 14 Master job classifications.

For purposes of these rules, the following code numbers shall be utilized to describe the applicable classes of labor.

Highway Laborers

(In Mpls. - St. Paul Metropolitan Wage Areas)

CODE NO.	POSITION TITLE
103	Bituminous batcherman (stationary plant)
105	Bituminous raker, floater and utility man
107	Bituminous tamper
113	Blacksmith helper
116	Bottom man (sewer, water or gas trench)
117	Bottom man (sewer, water or gas trench) (more than 8' below starting level of manual work)
123	Brick or block paving setter
125	Bricklayer tender
132	Cement coverman (batch trucks)
134	Cement gun operator (1½" and over)
136	Cement handler (bulk or bag)
138	Chain saw operator
140	Chipping hammer operator
141	Concrete batcherman (proportioning plant)

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CODE NO.	POSITION TITLE
143	Concrete longitudinal floatman (manual bullfloat on paving)
145	Concrete mixer operator (1 bag capacity)
147	Concrete shoveler, tamper and puddler (paving)
149	Concerete vibrator operator
153	Conduit layers (without wiring)
156	Curb setter (stone or precast concrete)
163	Dumper (wagon, truck, etc.)
165	Dumpman
167	Dumpman (paver) (dumper batch truck at mixer)
173	Drill runner (blasting)
175	Drill runner (heavy, including churn drill)
181	Flagman
185	Formsetter (municipal type curb and sidewalk)
186	Formsetter (pavement)
192	Hydrant and valve setter
194	Jackhammer man and paving buster
196	Joint filler (concrete pavement)
203	Kettleman (bituminous or lead)
207	Mortar mixers
213	Pipe derrickman (tripod, manual)
215	Pipe handler (water, gas, cast iron)
217	Pipe layer (sewer, water or gas)
223	Powderman
224	Powder monkey
225	Power buggy operator
227	Pump operator (3" and under, semi-skilled)
233	Reinforced steel labor
235	Reinforced steel setter (pavement)
241	Sand cushion and bed maker
243	Service connection maker (water or gas)
245	Squeegee man (bituminous brick or block pavement)
247	Stabilizing batcherman (stationary plant)
249	Stone mason tender
253	Tunnel laborer (atmospheric pressure)
255	Tunnel men (air pressure)
257	Tunnel miner
263	Unskilled laborers
265	Watchmen
267	Winch handler (manual)
273	Caisson work
275	Cofferdam work
277	Open ditch work
279	Tunnel work
281	Underground laborers
283	Underpinning work
285	Other work more than 8' below starting level of manual work
286	Water well driller helper
287	Nozzelman (gunite)
288	Joint sawer
289	Carpenter tender
290	Wreck and demolition

Highway Laborers

(Rural Wage Areas)
Classification:

463	Laborer, highway & heavy, unskilled

Pavement:

336	Cement handler
367	Dumper
353	Conduit layer
347	Concrete shoveler, tamper and puddler
384	Formsetter, curb, walk and pavement
394	Jackhammer
338	Chain saw operator
397	Joint sawer
349	Concrete vibrator operator
423	Powderman
435	Reinforced steel setter (pavement)
334	Cement coverman
335	Sack shaker

Blacktop:

305	Bituminous, raker, floater and utility man
363	Dumper
308	Tamper operator
381	Flagman
465	Watchman

Sewer, Water and Tunnel:

417	Pipelayer
403	Kettleman, bituminous or lead
453	Tunnel laborer — atmospheric pressure
452	Tunnel laborer — air pressure
456	Tunnel miner — atmospheric pressure
454	Tunnel miner — air pressure
315	Bottom man or ditchman
418	Pipe handler

Miscellaneous:

372	Drill runner
374	Drill runner wagon drill or churn drill
376	Drill runner helper
475	Cofferdam work
473	Caisson work
345	Concrete mixer operator (1 bag capacity)
346	Nozzelman (gunite)
427	Pump operator — 3 inches and under
486	Work 8 feet or more below adjoining ground where excavation is not more than 8 feet wide
426	Power buggy operator
430	Bricklayer tender
431	Carpenter tender
432	Mortar mixer
433	Stone mason tender
464	Wrecking and demolition laborer

Power Equipment Operators

(Statewide)

501	Air compressor operator
502	
503	Asphalt, bituminous stabilizer plant operator
504	
505	Backfiller operator
506	Batch plant (concrete)
507	Bituminous spreader & finishing operator (power) (Adnum or Jaeger)
508	Bituminous spreader & bituminous finishing machine operator (helper) (power) (Adnum or Jaeger)
509	Brakeman or switchman
510	Boom Truck (power operated boom)
511	Cableway operator
512	Conveyor operator
513	Concrete distributor & Spreader operator, finishing machine, longitudinal float operator, joint machine operator & spray operator
514	Concrete mixer operator, on job site over 14S
515	Concrete mixer operator, on job site 14S and under
516	Concrete mixer, stationary plant operator, over 34E
518	Concrete saw operator (multiple blade) (power op-
517	

CODE NO.	POSITION TITLE
518	Concrete saw operator (multiple blade) (power operated)
519	Crushing plant operator (gravel & stone) or gravel washing, crushing & screening plant operator
520	Curb machine
521	Derrick (Guy or stiffleg) (power) (skids or stationary)
522	Dope machine (pipeline)
523	Dredge deck hand
524	Dredge operator or engineer, dredge operator (power) & engineer
525	Elevating grader operator
526	Drill rigs, heavy duty rotary or churn drill
527	Drilling machine
528	Euclid loader operator
529	Engineer in charge of plant requiring first class license
530	
531	Fine grade operator
532	
533	Fireman or tank car heater operator
534	Fork lift or lumber stacker (for construction job site)
535	Fork lift or straddle carrier operator
536	Form trench digger (power)
537	
538	Front end loader operator (under 30 h.p. rubber tired)
539	Front end loader operator, all types 30 h.p. and over
540	
541	Grader or motor patrol, finishing, earthwork and bituminous
542	Grader operator (motor patrol)
543	Power Actuated Horizontal boring machine over 6"
544	Gravel screening plant operator (portable not crushing or washing)
545	Lead greaser on grease truck (where no mechanic is employed)
546	Greaser (truck and tractor)
547	Gunite operator gunall
548	Hoist engineer (power)
549	Self-propelled chip spreader (Flaherty or similar)
550	Self-propelled soil stabilizer
551	Launchman (tankerman or pilot license)
552	Leverman
553	Loader operator (Barber Green or similar type)
554	Locomotive, all types
555	Locomotive crane operator
556	Master mechanic
557	Mechanic or Welder
558	Mechanical space heater (temporary heat)
559	Mixer (paving) concrete paving operator, road
560	Pipeline Wrapping Cleaning or Bending Machine
561	Oilers (power shovel, crane, dragline)
562	Paving breaker or tamping machine operator (power driven) (Mighty-Mite or similar type)
563	Pick-up Sweeper, (not including Tennant or similar types)
564	Power shovels and/or other equipment with shovel type controls, 3½ cu. yrds. & over
565	Power shovels and/or other equipment with shovel type controls, up to 3½ cu. yds.
566	Power plant engineer, 100 K.W.H. and over
567	Pugmill operator
568	Pump operator
569	Pumpcrete operator
570	Mucking machine
571	Refrigeration plant engineer
572	Mole operator including power supply
573	Roller operator, self-propelled roller for compaction, including stabilized base
574	Roller operator, self-propelled, rubber-tired for compaction including stabilized base
575	Roller operator, up to & including 6 tons for bituminous finishing and/or wearing courses
576	Roller operator, over 6 tons for bituminous finishing and/or wearing courses
577	Scraper, 32 cu. yds. and over
578	Self-propelled vibrating packing operator (pad type)
579	Rubber-tired farm tractor, back hoe attachment
580	Sheet foot roller (self-propelled) (3 drum and over)
581	Shouldering machine operator (power) (Apsco or similar type)
582	Slip Form (power-driven) (paving)
583	Tie tamper & ballast machine operator
584	Stump chipper
585	Turnapull operator (or similar type)
586	Tandem scraper
587	Tractor operator — boom type
588	Tractor operator, D2, TD6 or similar h.p. with power take-off
589	Tractor operator, over D2, TD6, or similar h.p. with power take-off
590	Tractor operator, 50 h.p. or less without power take-off
591	Tractor operator, over 50 h.p. without power take-off
592	Trenching machine operator (sewer, water, gas)
593	Power Actuated Augers & Boring Machine
594	Truck crane operator
595	Truck crane oiler
596	Tugboat (100 h.p. and over)
597	Well point installation, dismantling or repair mechanic
598	Two or more pumps, compressors or welding machines
599	Power Actuated Jacks
	Truck Drivers
	(Statewide)
601	Bituminous distributor driver
602	Bituminous distributor spray operator (Rear end oiler)
603	Bituminous distributor driver (one man operation)
605	Boom and "A" frame driver
606	Dumpman
608	Dumpster operator (no h.p. limit)
611	Greaser and truck serviceman
615	Mechanical broom driver
617	Pilot car driver
621	Ready-Mix driver (mixer capacity up to and including 4 cu. yds.)
622	Ready-Mix driver (mixer capacity over 4 cu. yds. up to and including 6 cu. yds.)

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CODE NO.	POSITION TITLE
623	Ready-Mix driver (mixer capacity over 6 cu. yds.)
626	Self-propelled packer operator
629	Tank truck helper (gas, oil, road oil and water)
631	Teamster or stableman
633	Tractor operator (wheel type used for any purpose)
641	Truck driver (up to and including 6 cu. yds. box water level)
642	Truck driver (over 6 cu. yds. up to and including 8 cu. yds. box water level)
643	Truck driver (over 8 cu. yds. up to and including 12 cu. yds. box water level)
644	Truck driver (over 12 cu. yds. up to and including 16 cu. yds. box water level)
645	Truck driver (over 16 cu. yds. box water level)
648	Truck driver (hauling machinery for contractor's own use including operation of hand or power operated winches)
650	Truck mechanic (in cases where an operating engineer mechanic is not employed)
651	Truck welder
	Truck Driver:
662	Single axle or 2 axle unit
663	Tandem axle or 3 axle unit
664	Four axle unit
665	Five axle unit
	For each additional axle, 10¢ additional per hour
666	Slurry driver
667	Slurry operator
	Special Crafts
	(Statewide)
711	Bricklayers
712	Bricklayers apprentice (6 mos. interval)
721	Carpenters
722	Carpenters apprentice (1000 hr. interval)
731	Cement masons
732	Cement masons (6 mos. interval)
733	Cement masons (1 year intervals)
740	Cable splicer
741	Electricians
742	Electricians apprentice
743	Electricians (on work up to $4,000)
744	Electricians on work over $4,000
745	Electricians apprentice (3 mos. interval)
746	Electricians apprentice (6 mos. interval)
747	Electricians apprentice (year intervals)
748	Lineman
749	Groundman (1st year, 2nd year, 3rd year)
751	Ironworkers, ornamental
752	Ironworkers, reinforcing
753	Ironworkers, structural
754	Ironworkers apprentice (1000 hrs. interval)
755	Ironworkers (6 mos. intervals)
761	Painters
762	Painters; brush
763	Painters, structural steel and bridge
764	Painters apprentice (1000 hrs. interval)
765	Painters (6 mos. intervals)
766	Painters, spray
771	Piledriverman
773	Plumbers
775	Plumbers apprentice (928 hours)
781	Stone masons
791	Sheet metal workers
784	Stone masons (6 mos. interval)

STATE PLANNING AGENCY

ENVIRONMENTAL QUALITY COUNCIL

PROPOSED RULES FOR ASSESSING THE COST OF PREPARING ENVIRONMENTAL IMPACT STATEMENTS

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 15.0412 and Laws of 1976, Conference Room A of the Capitol Square Building at 9:00 a.m. on November 17th. The hearing will be continued to such time and place as the Hearing Officer may designate until all representatives of associations or other interested groups or persons have had an opportunity to participate and be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted to the Office of Hearing Examiners; Myron Greenberg, Hearing Examiner; Room 300; 1745 University Avenue; St. Paul, Minnesota 55104, without appearing at the hearing and will be accepted for a period of 20 calendar days following the close of the hearing.

The purpose of these rules is generally as follows: To provide a method that is both predictable and accountable, which will allow local units of government and state agencies to assess a private person the reasonable costs of preparing and distributing an Environmental Impact Statement; to provide a mechanism by which the assessed cost of preparing an Environmental Impact Statement can be determined either by the parties or by the MEQC in the situation where the private person and the responsible agency are not in agreement; and to provide a predictable process for the making of all required assessments and refunds.

Copies of the proposed rules are now available for review at the following locations:

Minnesota Environmental Quality Council
100 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

Offices of Regional Development Commissions

Office of County Auditor — all Minnesota Counties

Office of City Clerk — Cities over 10,000 population according to the 1970 Census

Minnesota Environmental Quality Council's designated distribution points — Regional Libraries:

Region 1
Polk County—Crookston Library
120 North Ash Street
Crookston, MN 56716
218/281-4522

Region 2
Bemidji Public Library
Sixth & Beltrami
Bemidji, MN 56601
218/751-3963

Region 3
Duluth Public Library
101 West Second
Duluth, MN 55802
218/722-5803

Region 4
Fergus Falls Public Library
125 North Union
Fergus Falls, MN 56537
218/739-9387

Region 5
Kitchigami Regional Library
Pine River, MN 56474
218/587-2171

Region 6E
Crow Wing Regional Library
410 West Fifth
Willmar, MN 56201
Attn: Burt Sundberg
612/235-3162

Region 6W
Chippewa County Library
224 South First Street
Montevideo, MN 56265
612/269-6501

Region 7E
East Central Regional Library
240 Third Avenue S.W.
Cambridge, MN 55008
612/689-1901

Region 7W
Great River Regional Library
124 South Fifth Avenue
St. Cloud, MN 56301
612/251-7282

Region 8
Marshall-Lyon County Library
301 West Lyon Street
Marshall, MN 56258
507/532-2849

Region 9
Minnesota Valley Regional Library
120 South Broad Street
Mankato, MN 56001
507/387-3431

Region 10
Rochester Public Library
Broadway at First Street, S.E.
Rochester, MN 55901
507/288-9070

Region 11
St. Paul Public Library
90 West Fourth Street
St. Paul, MN 55102
Attn: Ralph Huebscher
612/224-3383

ECOL
Environmental Conservation Library
(ECOL)
300 Nicollet Mall
Minneapolis, MN 55401
Attn: Nancy Johnson
612/372-6609

Notice is also given that under Minn. Stat. § 10A.01, subd. 11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. The State Ethics Commission is located at 410 State Office Building, St. Paul, Minnesota 55155.

MEQC 22 Definitions.

(aa) "EIS Estimated Cost" means the total of all expenditures of the Responsible Agency and the Pro-

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poser anticipated to be necessary for the preparation and distribution of the EIS.

(bb) "EIS Assessed Cost" means that portion of the EIS estimated cost paid by the Proposer either by a cash payment to the Council or to the Local Agency or for the collection and analysis of technical data incorporated in the EIS.

(cc) "EIS Actual Cost" means the total of all allowable expenditures incurred by the Responsible Agency and the Proposer in preparing and distributing the EIS.

(dd) "Final Determination" means the final decision made by the Responsible Agency or the Council that an EIS will be prepared on an action.

(ee) "Private Person" means a human being, unincorporated association, partnership, trust, or corporation.

(ff) "Project Estimated Cost" means the total of all allowable expenditures of the Proposer anticipated to be necessary for the implementation of an action.

MEQC 27 Selection of preparers, preparation of EAW and notice of EAW conclusions.

(a) (6) The Proposer of an action or a Public Agency may request the Council to designate a Responsible Agency before the final determination has been made that an EIS will be prepared on that action. The Council may designate a Responsible Agency for the purpose of identifying the information and data needed by the Responsible Agency for preparation of the EIS. Delete Existing MEQC 41 Effective date.

Chapter Fifteen: Assessing the Cost of Preparing Environmental Impact Statements.

MEQC 41 Actions requiring an assessment of the EIS preparation cost.

When a private person proposes a governmental or a private action and the final determination has been made that an EIS will be prepared on that action, the Proposer shall be assessed for the reasonable costs of preparing and distributing that EIS in accord with MEQC 42-45.

MEQC 42 Determining the EIS assessed cost.

(a) Within 30 days after the final determination has been made that an EIS will be prepared, the Responsible Agency shall submit to the Council a written agreement signed by the Proposer and the Responsible Agency. The agreement shall include the EIS estimated cost, the EIS assessed cost, and a brief description of the tasks and the cost of each task to be performed by each party in preparing and distributing the EIS. Those items identified in MEQC 44 (a) (1) and (2) may be used as a guideline in determining the EIS estimated cost. The EIS assessed cost shall identify the Proposer's costs for the collection and analysis of technical data to be supplied to the Responsible Agency and the costs which will result in a cash payment by the Proposer to the Council if a state agency is the Responsible Agency or to a Local Agency when it is the Responsible Agency. If an agreement cannot be obtained, the Responsible Agency shall so notify the Council within 30 days after the final determination has been made that an EIS will be prepared.

(b) The EIS assessed cost shall not exceed the following amounts unless the Proposer agrees to an additional amount.

(1) There shall be no assessment for the preparation and distribution of an EIS for an action which has a project estimated cost of one million dollars or less.

(2) For an action whose project estimated cost is more than one million dollars but is ten million dollars or less, the EIS assessed cost shall not exceed .3 percent of the project estimated cost except that the project estimated cost shall not include the first one million dollars of such cost.

(3) For an action whose project estimated cost is more than ten million dollars but is 50 million dollars or less, the EIS assessed cost shall not exceed .2 percent of each dollar of such cost over ten million dollars in addition to the assessment in (2) above.

(4) For an action whose project estimated cost is more than 50 million dollars, the EIS assessed cost shall not exceed .1 percent of each dollar of such cost over 50 million dollars in addition to the assessment in (2) and (3) above.

(c) The Proposer and the Responsible Agency shall include in the EIS assessed cost the Proposer's costs for the collection and analysis of technical data which the Responsible Agency incorporates into the EIS. The amount included shall not exceed one-third of the EIS assessed cost unless a greater amount is agreed to by the Responsible Agency. When practicable, the Proposer shall consult with the Responsible Agency before incurring such costs.

(d) Federal/State EIS. When a joint Federal/State EIS is prepared pursuant to MEQC 25(f) (4), and the Council designates a non-federal agency as the Responsible Agency, only those costs of the state Responsible Agency may be assessed to the Proposer. The Responsible Agency and the Proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the Council in accord with these rules.

(e) Related Actions EIS. When specific actions are included in a Related Actions EIS, only the portion of the EIS estimated cost that is attributable to each spe-

cific action may be used in determining the EIS assessed cost for its Proposer. The Responsible Agency and each Proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the Council in accord with these rules.

MEQC 43 Revising the EIS assessed cost.

(a) If the Proposer substantially alters the scope of the action after the final determination has been made that an EIS will be prepared and the EIS assessed cost has been determined, the Proposer shall immediately notify the Responsible Agency and the Council.

(1) If the change will likely result in a net change of greater than 5% in the EIS assessed cost, the Proposer and the Responsible Agency shall make a new determination of the EIS assessed cost. The determination shall give consideration to costs previously expended or irrevocably obligated, additional information needed to complete the EIS and the adoption of existing information to the revised action. The Responsible Agency shall submit either a revised agreement or a notice than an agreement cannot be obtained following the procedures of MEQC 42(a) except that such agreement or notice shall be provided to the Council within 20 days after the Proposer notifies the Responsible Agency and the EQC of the change of the action. If the changed action results in a revised project estimated cost of one million dollars or less, the Proposer shall not be liable for further cash payments to the Council or to the Local Agency beyond what has been expended or irrevocably obligated by the Responsible Agency at the time it was notified by the Proposer of the change in the action.

(2) If the Proposer decides not to proceed with the proposed action, the Proposer shall immediately notify the Responsible Agency and the Council. The Responsible Agency shall immediately cease expending and obligating the Proposer's funds for the preparation of the EIS.

(aa) If cash payments previously made by the Proposer exceed the Responsible Agency's expenditures or irrevocable obligations at the time of notification, the Proposer may apply to the Council or to the Local Agency for a refund of the overpayment.

(bb) If costs have been incurred or irrevocably obligated by the Responsible Agency at the time of notification exceeding the amount previously paid by the Proposer, the Responsible Agency shall notify the Proposer and the Council within 10 days after it was notified of the project's withdrawal. Such costs shall be paid by the Proposer within 10 days after the Responsible Agency notifies the Proposer and the Council.

(b) If, after the EIS assessed cost has been determined, the Responsible Agency or the Proposer uncovers a significant environmental problem that could not have been reasonably foreseen when determining the EIS assessed cost, the party making the discovery shall immediately notify the other party and the Council. If the discovery will likely result in a net change of greater than 5% in the EIS assessed cost, the Proposer and the Responsible Agency shall make a new determination of the EIS assessed cost. The Responsible Agency shall submit either a revised agreement or a notice that an agreement cannot be obtained following the procedures of MEQC 42 (a) except that such agreement or notice shall be provided to the Council within 20 days after both parties and the Council were notified.

MEQC 44 Disagreements regarding the EIS assessed cost.

(a) If the Proposer and the Responsible Agency disagree about the information to be included in the EIS or the EIS assessed cost, the Proposer and the Responsible Agency shall each submit a written statement to the Council identifying the information each recommends be included in the EIS, the EIS estimated cost, and the project estimated cost within 10 days after the Responsible Agency notifies the Council that an agreement could not be obtained. The statements shall include a discussion of the need to include the information in the EIS, the identification of the information and data to be provided by each party, the EIS preparation costs identified below as they pertain to the information to be included in the EIS, a brief explanation of the costs, and a discussion of alternative methods of preparing the EIS and the costs of those alternatives.

(1) In determining the EIS estimated cost or the EIS actual cost, the following items shall be included:

(aa) The costs of the Responsible Agency's staff time including direct salary and fringe benefit costs.

(bb) The cost of consultants hired by the Responsible Agency.

(cc) The Proposer's costs for the collection and analysis of technical data expended for the purpose of preparing the EIS.

(dd) Other direct costs of the Responsible Agency for the collection and analysis of information or data necessary for the preparation of the EIS. These costs shall be specifically identified.

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(ee) Indirect costs of the Responsible Agency not to exceed the Responsible Agency's normal operating overhead rate.

(ff) The cost of printing and distributing the Draft EIS and the Final EIS.

(gg) The costs of any public hearings or public meetings held in conjunction with the preparation of the Final EIS.

(2) The following items shall not be included in determining the EIS estimated cost or the EIS actual cost.

(aa) The costs of collecting and analyzing information and data incurred before the final determination has been made that an EIS will be prepared unless the information and data was obtained for the purpose of being included in the EIS.

(bb) Costs incurred by a private person other than the Proposer or a public agency other than the Responsible Agency, unless the costs are incurred at the direction of the Responsible Agency for the preparation of material to be included in the EIS.

(cc) The capital costs of equipment purchased by the Responsible Agency or its consultants for the purpose of establishing a data collection program, unless the Proposer agrees to including such costs.

(b) If the Proposer and the Responsible Agency disagree about the project estimated cost, the Proposer shall submit in writing a detailed project estimated cost in addition to the requirements of section (a) above. The Responsible Agency may submit a written detailed project estimated cost in addition to the requirements of section (a) above. The statements shall be submitted to the Council within 10 days after the Responsible Agency notifies the Council that an agreement could not be obtained. The project estimated cost shall include the costs as identified below and a brief explanation of the costs. The estimates shall be prepared according to the categories in section (1) below so as to allow a reasonable examination as to their completeness.

(1) The following items shall be included in determining the project estimated cost:

(aa) The current market value of all land interests, owned or to be owned by the Proposer, which is included in the boundaries of the action. The boundaries shall be those defined by the action which is the subject of the EIS Preparation Notice.

(bb) Costs of architectural and engineering studies for the design or construction of the action.

(cc) Expenditures necessary to begin the physical construction or operation of the action.

(dd) Construction costs required to implement the action.

(ee) The cost of permanent fixtures.

(c) If the Proposer and the Responsible Agency disagree about a revision of the EIS assessed cost prepared following the procedures in MEQC 43, the Proposer and the Responsible Agency shall use the applicable procedures described in MEQC 44 (a) or (b) in resolving their disagreement except that all written statements shall be provided to the Council within 10 days after the Responsible Agency notifies the Council that an agreement cannot be obtained.

(d) If the Proposer and the Responsible Agency disagree about the EIS actual cost as determined by MEQC 45 (b), the Proposer and the Responsible Agency shall prepare a written statement of their EIS actual cost and an estimate of the other party's EIS actual cost. The items included in MEQC 44 (a)(1) and (2) shall be used in preparing the EIS actual cost statements. These statements shall be submitted to the Council and the other party within 20 days after the Council has accepted the Final EIS.

(e) The Council at its first meeting held more than 15 days after being notified of a disagreement shall make any determination required by sections (a) through (d) above. The Council shall consider the information provided by the Proposer and the Responsible Agency and may consider other reasonable information in making its determination. This time limit shall be waived if a hearing is held pursuant to MEQC 44 (f).

(f) If either the Proposer or the Responsible Agency so requests, the Council shall hold a hearing to facilitate it in making its determination. The hearing shall follow the procedures outlined in MEQC 28(a)(3).

(g) Nothing in sections (a) through (f) above shall prevent the Proposer from making one-half of the cash payment as recommended by the Responsible Agency's proposed EIS assessed cost for the purpose of commencing the EIS process. If the Proposer makes the above cash payment, preparation of the EIS shall immediately begin. If the required cash payment is altered by the Council's determination, the remaining cash payments shall be adjusted accordingly.

MEQC 45 Payment of the EIS assessed cost.

(a) The Proposer shall make all cash payments to the Council or to the Local Agency according to the following schedule:

(1) At least one-half of the Proposer's cash payment shall be paid within 10 days after the EIS assessed cost has been submitted to the Council pursuant to MEQC 42 (a) or has been determined by the Council pursuant to MEQC 44 (e) or (f).

(2) At least three-fourths of the Proposer's cash

payment shall be paid within 10 days after the Draft EIS has been submitted to the Council.

(3) The final cash payment shall be paid within 10 days after the Council has accepted the Final EIS.

(aa) The Proposer may withhold final cash payment of the EIS assessed cost until the Responsible Agency has submitted a detailed accounting of its EIS actual cost to the Proposer and the Council. If the Proposer chooses to wait, the remaining portion of the EIS assessed cost shall be paid within 10 days after the EIS actual cost statement has been submitted to the Proposer and the Council.

(bb) If the Proposer has withheld the final cash payment of the EIS assessed cost pending resolution of a disagreement over the EIS actual cost, such payment shall be made within 10 days after the Council has determined the EIS actual cost.

(b) The Proposer and the Responsible Agency shall submit to each other and to the Council a detailed accounting of the actual costs incurred by them in preparing and distributing the EIS within 10 days after the Council has accepted the Final EIS. If the cash payments made by the Proposer exceed the Responsible Agency's EIS actual cost, the Proposer may apply to the Council or to the Local Agency for a refund of the overpayment.

(c) If the Responsible Agency is a state agency, the Proposer shall make all cash payments of the EIS assessed cost to the Council which shall deposit such payments in the state's general fund.

(d) If the Responsible Agency is a Local Agency, the Proposer shall make all cash payments of the EIS assessed cost directly to the Local Agency.

(1) The Local Agency shall notify the Council in writing of receipt of each payment within 10 days following its receipt.

(e) No Responsible Agency shall commence with the preparation of an EIS until at least one-half of the Proposer's required cash payment of the EIS assessed cost has been paid. Notwithstanding other sections of these rules, the Responsible Agency shall prepare and file the Draft EIS within 120 days of the date of this payment. This time limitation may be extended by the Council only for good cause upon written request by the Responsible Agency.

(f) Upon receipt or notice of receipt of the final payment by the Proposer, the Council shall notify each state agency having a possible governmental permit interest in the action that the final payment has been received.

(1) Other laws notwithstanding, a state agency shall not issue any governmental permits for the construction or operation of an action for which an EIS is prepared until the required cash payments of the EIS assessed cost for that action or that portion of a Related Actions EIS have been paid in full.

(g) All time periods included in MEQC 42-45 may be extended by the Council Chairman only for good cause upon written request by the Proposer or the Responsible Agency.

MEQC 46 Effective Date.

The amendments to these rules (MEQC 21-46) shall become effective upon filing with the Secretary of State with the exception that Rules MEQC 41-45 shall apply only to projects for which an EIS Preparation Notice has been issued after February 15, 1977. All petitions received, environmental assessments ordered or received, and EIS's ordered before the effective date of the amendments shall at the request of the preparer of the document be processed and reviewed as if amended Rules MEQC 21-40 were not in effect. Projects previously reviewed or exempted by the MEQC are not subject to these Rules except for those actions included in MEQC 25(f)(1).

DEPARTMENT OF PUBLIC WELFARE

PROPOSED RULE DETERMINING WELFARE PER-DIEM RATES FOR NURSING-HOME PROVIDERS

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1974), as amended, regarding the above-entitled matter, in the State Office Building, Room 81, Wabasha Street (be-

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tween Aurora and Fuller), St. Paul, Minnesota, on Friday, November 12, 1976, commencing at 9:00 A.M., and continuing until all representatives or other interested groups or persons have had an opportunity to be heard concerning amendment of Rule 49, by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted without appearing at the hearing. This hearing is authorized by Minn. Stat. chs. 15, 246, 253A, 256, and 257.

DPW Rule 49 establishes the criteria by which welfare rates for nursing homes are established. The proposed changes implement Laws of 1976 chs. 107 and 282 or clarify areas determined to be unclear as a result of the appeal hearing process.

The proposed rule would include non-certified board and care facilities; replaces the current 93% utilization incentive, minimum cost of capital allowances, earnings allowance, income tax allowance, interest allowance for proprietary facilities with the Legislatively mandated 9% of facility value; replaces the 93% utilization incentive and minimum cost of capital allowance for non-proprietary facilities with the Legislatively mandated 2% of facility value allowance; limits amount allowed as lease costs to an amount no greater than an owner would receive for property related costs; provides a cost index system for inflating facility values each seven years; lists unallowable costs as contained in Chapter 282; alters appeal provisions to reflect the new procedures relative to the State Office of Hearing Examiners; limits the exception to maximum rates for skilled facilities with average length of stay of less than 180 days to skilled rate only; provides that over or under payments follow the facility in the case of a change of ownership or management; revises the allowance for unknown cost increases to reflect a cost index formula; establishes separate overall maximums on direct and indirect costs; and permits waiver of nursing and investment per bed limitations when Medicare cost allocations are utilized.

Under Minn. Stat. 10A.01, subd. 11 (1974), any individual representing persons or associations attempting to influence administrative action, such as promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five (5) days of the commencement of such activity by the individual. (The State Ethics Commission is located at Room 410, State Office Building, St. Paul, Minnesota 55155.)

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand and may be presented either orally or in writing at the public hearing or by mailing a statement to Steve Mihalchick, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104, within 20 days following conclusion of the hearing. If the person submitting a written document cannot be present to read his statement at the hearing, the document will be entered into the record. For those persons wishing to submit written statements or exhibits, it is requested that at least three (3) copies of each statement, exhibit or summary be furnished at the hearing. It is suggested that to save time and avoid duplication, those organizations or associations sharing common viewpoints or interests in these proceedings join together where possible and present a single statement on behalf of such interests.

Copies of the rules are now available and a free copy may be obtained by writing: Rosie Krumrie, Minnesota Department of Public Welfare, Fourth Floor, Centennial Office Building, St. Paul, Minnesota 55155. Additional copies will be available at the door on the date of the hearing.

Vera J. Likins
Commissioner

Rule as Proposed

DPW 49 Regulations for determining welfare per-diem rates for nursing-home providers under the Title XIX Medical Assistance Program.

A. Applicability and purpose.

1. Authority. This regulation is enacted pursuant to the statutory authority vested in the Commissioner of Public Welfare pursuant to Minn. Stat. § 256b.27 to require reports, information and audits, and pursuant to Minn. Stat. § 256B.14, subd. 2, to promulgate rules and regulations for carrying out and enforcing the provisions of Minn. Stat. ch. 256B. This regulation is further promulgated pursuant to the procedures set out in Minn. Stat. § 15.0412, of the Minnesota Administrative Procedures Act.

2. Objectives. The procedures embodied herein define a system for the determination of a per-diem welfare rate for all nursing homes participating in the Medical Assistance Program **and board and care licensed facilities participating in the Minnesota Supplemental Aid Program** that promotes efficiency and economy and treats all providers of nursing home care on a uniform basis. Facilities that provide care to other than nursing patients must comply with these regulations if nursing-home patients account for 50 per cent or more of the facility population.

Procedures have been defined to satisfy the State Plan for Medical Assistance and HEW Medical Services Administration Program Regulation Guide 19, which prescribe reasonable charges/cost-related rate-

setting methods. The rate-setting procedures have also been defined to comply with the state statute that requires that cost differences between individual providers be recognized (Minn. Stat. 256B.04, subd. 2) while at the same time establishing cost limitations to satisfy federal requirements that the welfare rates be consistent with efficiency, economy, and quality of care.

The welfare rate-setting procedures include herein also recognize required level and quality of care as defined by all governmental entities (including, but not limited to federal, state and local entities), establish effective accountability over the disbursement of Medical Assistance appropriations, and provide for a regular review mechanism for rate changes.

While the rate-setting procedures are intended to compensate the provider for the reasonable cost incurred by prudent management, including a return of capital through depreciation, they are not intended to provide funds for financing working capital needs or purchase of facilities. It is not intended that the regulations provide for reimbursement of actual cost through retroactive settlement.

B. Rate determination.

1. Method of calculating per diem rate.

a. Historical rate. The method of calculating the nursing-home provider per-diem rate for skilled, ICF I, and ICF II facilities will be to determine reasonable costs for the most current fiscal year and divide by adjusted patient days according to reasonable cost provisions of D. and cost-reporting regulations contained in C.

b. Incentive factor. In no case will the historical rate so determined under B.1.a. be less than the historical rate calculated for the previous year minus one-half of the difference. This provision shall not apply for rates for newly established providers under B.3.a. rates set by applying exceptions provided by D.8.d. and flat rates established under B.3.e. For multi-level providers this provision will be applied to the facilities average historical rate.

c. Allowance for known cost changes.

(1) Future cost increases or decreases that are in accordance with the reasonable cost principles of D.1. known as of the report filing date, must be added to or deducted from the historical rate determined according to B.1.a. and b. Such adjustment will be restricted to the elements defined in B.1.c.(1)(a) through (h) and shall be the annualized cost effect of such cost changes exclusive of any portion of the cost change included in the historical rate.

(a) Salary and wage changes to occur during the effective period of the welfare rate:

(i) Future changes according to labor contracts, board resolutions, written policies, or minimum wage laws.

(ii) Changes that are in effect as of the end of the fiscal period covered by the historical cost portion of the welfare per-diem rate.

(b) Changes in facilities or equipment.

(c) The annualized cost effect of complying with federal, state, or local laws and regulations and Department of Public Welfare announced policies on care or facilities.

(d) All taxes except for income taxes.

(e) Interest

(f) Depreciation

(g) Utilities and insurance

(h) Rental payments pursuant to a written lease.

(i) Raw food cost increase computed initially by multiplying $1.20 times one-half the percentage increase in the wholesale price index for raw food during calendar 1973. The initial increase is $.14. For reports covering periods ending December 31, 1974 or later, this cost increase shall be calculated as follows:

(i) Calculate the percentage increase in the wholesale price index for raw food for the period December through November.

(ii) If the increase is greater than that computed for the prior year, add the difference to (i).

(iii) If the increase is less than that computed for the prior year, subtract the difference from (i).

(iv) Multiply one-half of the resulting figure times the sum of $1.20 plus all of the annual increases allowed pursuant to this section.

[(j) Unidentified cost increases equal to one per cent of the facility's historical cost portion of the welfare rates or one per cent of the regional B.4.b. average historical cost portion of the welfare rate, whichever is lower.]

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(j) Unidentified cost increases equal to changes in the annual percentage increase in the consumer price index in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics, using the October indices (new series index 1976 equals 100) as applied to the historical cost portion of the facilities previous year's costs less those costs relating to areas where the facility is seeking specific allowances for known cost changes. In no case may the increase be applied against the historical cost of salaries, changes in facilities or equipment, property taxes, interest, depreciation, rental payments or food costs.

(2) Cost changes determined under this provision must be based upon facts and commitments in existence as of the original filing date of the report C.1.e.1. If the provider cannot substantiate that such facts and commitments did exist as of the filing date, the welfare rate will be subject to adjustment according to B.2.c. If known cost changes calculated under (a) through (h) above do not in fact occur, the welfare rate will similarly be subject to adjustment under B.2.c. If actual cost increases exceed the known cost changes determined under (a) through (i) above, no adjustment in welfare rate will be made.

2. Effective date, notifications and adjustments.

a. Effective date. A new per-diem rate determined by the Department will be effective the first day of the month following the provider's normal fiscal year-end except in instances in which penalty provisions of regulation C.1.f. are applicable. If the new rate results in a lower rate than the previous rate, the provider has 120 days from the original filing date in which to pay back any difference received during the period the new rate was to be effective. If the new rate results in a higher rate than the previous rate, payment shall be made to the provider within 45 days after receiving notification of the rate adjustment.

b. Rate notifications. A temporary rate notification consisting of the previous year's allowed historical cost per patient day plus 80% of the indicated allowed known cost changes per patient day will be issued and paid on receipt of the report. **The temporary rate shall be limited by all maximums contained in Rule 49. Individual as well as overall maximums apply.** The Commissioner will notify the provider in writing and the respective county welfare boards of the final rate determined under these regulations and the effective date of such rate. Included in the notification will be a detailed statement of the reason for any difference between the rate requested by the provider and the rate determined.

c. Adjustments for errors or omissions. All rates determined according to DPW Rule 49 may be subject to adjustment as a result of errors or omissions determined through audit of the provider's accounting and statistical records or by amended reports as provided by C.1.i. Such adjustments are limited to the three complete fiscal years preceding the date an audit commences. **If a change in ownership and/or management occurs between the audited fiscal period and date of welfare rate adjustment, the overpayment or underpayment will be applicable to the current ownership and/or management.** If the adjustment results in a payment from the provider to the county welfare board(s), the provider will have up to 120 days from the date the provider receives written notification of the adjustment. If the adjustment results in a payment to the provider, payment shall be made within 45 days after the date of receiving written notice of the adjustment.

3. Special rate setting procedures.

a. Newly constructed facilities.

(1) Required reports. Providers with newly constructed facilities may request an interim welfare rate. Providers who increase the facility's capacity by at least 50% may at their option be considered in this classification. The provider must submit reports as required in C.1.a. for the immediate future fiscal year forecast results.

(2) Report compliance. Reports will comply with all applicable sections of these regulations governing cost finding, reporting, and allowable costs to the extent feasible in the individual circumstances. Noncompliance with any provision of these regulations must be so stated together with the reason why the provider cannot comply.

(3) Interim rate establishment. The Commissioner will establish an interim rate in accordance with regulations B.1. retroactive to the first day a Medical Assistance recipient is placed in the home. Such rate shall be subject to retroactive upward or downward adjustment in accordance with all provisions of DPW Rule 49 except B.1.b. on the basis of first cost report covering actual results for the period in which the rate has been applied. Adjustments to the interim rate will be in accordance with B.2.a. and C.1.i.

b. Rates for lesser care levels in facilities without certification classification. Providers who provide care to welfare recipients requiring less care than the care level to which the provider is certified will receive a per diem rate as follows:

(1) ICF I care per diem rate in a skilled nursing-care facility will not exceed 85 per cent of the established skilled nursing-care rate for that facility [.] **except that facilities whose skilled rates are affected by B.4.c.(2) shall receive up to 85% of what their skilled rate would have been without application of B.4.c.(2).**

(2) ICF II care per diem rate in an ICF I

facility will not exceed 60 per cent of the established ICF I rate for that facility.

(3) ICF II care per diem rate in a skilled nursing-care facility will not exceed 50 per cent of the established skilled nursing-care rate for that facility.

This provision shall be applied in conjunction with C.3.c.(2).

c. Private room rate. A private room rate of 115 per cent of the established welfare per diem rate for the applicable care level in an individual home shall be allowed for a Medical Assistance recipient when deemed a medical or other necessity for the individual patient or as the patient's condition affects others; such condition must be determined by the attending physician and approved by the county welfare board. This provision, together with the provisions of D.8.d. shall apply only to facilities applying for a Certificate of Need after August 15, 1972.

d. Care classification additions. Providers who add certified care classifications may file an amended report under C.1. that includes known cost changes associated with care classification additions to obtain a welfare per diem rate for care not previously provided. At the provider's option he may accept the lesser care rates under B.3.b. in lieu of filing reports according to this provision.

e. Election of flat rate for small providers. Providers with a capacity of less than 30 licensed beds may annually elect to receive a flat per diem rate for providing required care of welfare patients by filing a flat rate report in lieu of receiving a rate complying with reporting requirements of C.1 and otherwise being subject to provisions of DPW Rule 49. The flat rate for skilled, ICF I, and ICF II for each region or group of regions as defined in B.4.b. shall be the regional average rates as determined from filed reports before the maximum rate limitation and excluding rates for providers electing the flat rate. These rates will be adjusted annually through policy bulletins.

Such an election must be filed within reporting deadline provided by C.1.e. or be subject to penalty provisions of C.1.f. Such rates elected by providers will be in effect for one year.

f. Incidental welfare rate. Providers may elect to receive a flat rate under B.3.e. for care of welfare recipients if welfare recipients account for less than twenty per cent of the certified capacity of the home.

4. Rate limitations.

a. Limitation based on private pay rates or relevant federal or state laws and regulations. Notwithstanding any other provisions of these regulations, the established provider rates for nursing-home care will not exceed the normal provider's rate charged private patients for comparable nursing-care services. This rate limitation shall be applied when the welfare rate is anticipated to exceed the private pay rate for a comparable time period. Welfare rates may further be limited to federal laws or regulations that affect the Medical Assistance Program.

[b. Maximum rate. Individual welfare rates will be subject to a maximum of 125 per cent of regional average costs plus known cost changes exclusive of this limitation and flat rates under B.3.e. Regions will be those areas designated by the Governor for regional planning and economic-development purposes. Regions may be combined when deemed appropriate by the Commissioner as announced through policy bulletins. The regional averages will be calculated separately for proprietary, non-proprietary and hospital-attached facilities except the regional average costs for hospital-attached facilities shall be included in the regional average calculation for non-proprietary free-standing facilities. The maximum-rate limitations will be adjusted annually through policy bulletins. The regional average will be determined by the Commissioner, using all available information from reports that indicate a fiscal-year end during a calendar year and will be applied to rates that become effective during the second succeeding calendar year. Facilities that have a non-calendar-year end and have been previously subject to the maximum rates may adjust the rates to the new maximum rates if previously justified by the reports.]

b. Maximum rate. Notwithstanding any other section of the rule which establishes allowable costs, welfare rates for each level of care in individual facilities will be subject to separate overall limitations on the cost for items which directly relate to the provision of patient care to residents of nursing homes and those which do not directly relate to the provision of care. The initial overall limitations will be calculated on the basis of 125 per cent of regional average costs plus known cost changes in each of these categories exclusive of these limitations and flat rates under B.3.e. Cost of depreciation, real estate taxes, investment or capital allowance, interest, rent, and those costs reported as general administration on rule 49 cost reports shall be included in the maximum relative to indirect costs. All other cost items are included in the direct care maximum calculations. However, in calculating overall limi-

tations, the Commissioner shall include without adjustment actual costs for depreciation, real estate taxes, investment or incentive allowances, rent, interest and those costs reported as general administration on Rule 49 cost reports. Separate rate limits will be calculated for regions 11 and 3 as if they were one region and for all other regions as if they were one region. Regions will be those areas designated by the Governor for regional planning and economic-development purposes. The regional averages will be calculated separately for proprietary, non-proprietary and hospital-attached facilities except the regional average cost for hospital-attached facilities shall be included in the regional average calculation for non-proprietary free-standing facilities. The maximum-rate limitations will be adjusted effective January 1 of each year as determined by the Commissioner using all available information from reports that indicate a fiscal year end during a calendar year and will be applied to rates that become effective during the second succeeding calendar year. Facilities that have a non-calendar year-end which have been previously subject to the maximum rates may adjust rates to the new maximum rates upon computation of new maximum rates each year, if justified by cost reports previously filed.

c. Maximum rate exemptions.

(1) Welfare per diem rates in excess of the maximum rate limitation will be allowed in the initial year to the extent that the welfare rate requested includes cost increase required to increase wages to the minimum standards of federal or state wage laws.

(2) Provision B.4.b. will not apply to homes that qualify for exception under D.8.i. (3) or facilities licensed under DPW Rule 80.

(3) Provision B.4.b. will not apply to providers with newly constructed facilities or providers who increase the facility's capacity by 50 per cent for the first two immediate fiscal years.

(4) Welfare per diem rates in excess of the **total of the** maximum rate limitations **contained in B.4.b.** will be allowed to the extent of 85 per cent of the first $2.00 per patient day over the maximum welfare rate when total allowable costs are divided by actual patient days or 93 per cent of total capacity patient days, whichever is greater.

(5) Provision B.4.b. will not apply to those salary cost changes which exceed 6% of the historical salaries if the salary cost changes are reasonable and are required to bring facility salaries to the salary range of comparable facilities. The salary cost changes for top management compensation are excluded from this exception.

d. Minimum rate. The minimum welfare per diem rates will be 75 per cent of the regional average as defined in B.4.b.

5. Appeals procedures.

a. Scope of appeals procedures. These procedures describe the manner by which unresolved individual provider or county welfare board disputes that may arise concerning application of these regulations excluding regulation B.5. will be settled. Unresolved disputes are defined as those disagreements which cannot be resolved informally between the provider and the Department staff normally assigned responsibility for administration, or the provider and a county welfare board.

[b. Composition of appeals committee. Unresolved disputes will be heard by an appeals committee composed of no more than nine members. No more than three persons representing nursing homes or nursing home associations shall serve at any one time. The Commissioner shall consult with various professional organizations and select the members of the appeals committee for terms not to exceed his own term of appointment.]

[c. Compensation of committee members. Members of the Appeals Committee shall be compensated for time and expenses incurred in performance of required duties.]

[d. Frequency of committee meetings and hearings. The Appeals Committee will meet at least quarterly at a predetermined time and place to hear and determine disputes.]

[e.]

b. Time limit. The provider, or the county, has 30 days to appeal from the date of the Department's notification of the new per diem rate. **Appeals will be heard by a Hearing Examiner of the Office of Hearing Examiners and will be according to rules of that office in addition to the provision of this of this rule.**

[f. Appeals procedure. If the provider and the Department's staff normally assigned responsibility for the administration or the provider and a county welfare board cannot agree to a settlement of the dispute, then each party will submit in writing the facts, arguments and any other appropriate data to the Appeals Committee within 60 days of the department's notification of the new per diem rate. The Committee will review the dispute and may require additional information or analyses to be submitted by the Department or the provider, and then recommend to the Commissioner disposition of the dispute. Because existing state law does not permit the Commissioner to delegate his powers, final authority on disposition of disputes must be retained by the Commissioner. Unless otherwise agreed to by the parties, neither the Department nor the provider

may introduce exhibits at the appeal hearing unless a copy has been provided to the other party at least 14 days prior to the hearing date or five days after receipt of an exhibit from the other party if it is in direct response to the exhibit received from the other party.]

[g.]

c. Effective date of resolved disputes. If the dispute is related to a change in the provider's rate, the new per diem rate will prevail until final determination according to these appeal procedures is made. The total dollar amount due the provider or the county resulting from the resolved disputes will be subject to payment provision of B.2.c.

[h. Findings and conclusions. Any data, findings, conclusions, or opinions of the Appeals Committee and any department data in regard to any provider appeal will be made available to the provider and will become part of the Department record. The Department will prepare quarterly a summary of the decisions of the Appeals Committee rendered during the preceding quarter.]

C. Reports.

1. General reporting requirements and submittal procedures.

a. Required reports. Except as provided by B.3.e. and f. to receive a per diem rate for providing care to welfare recipients, the provider must submit reports covering the provider's normal fiscal year conforming to the uniform accounting system defined in forms supplied by the Department. Reports, supporting documentation, and worksheets will consist of the following:

(1) General provider information and statistical data.

(2) Financial statements consisting of a comparative balance sheet, statement of changes in equity, and comparative statement of earnings or operations.

(3) Reports of historical costs and known cost changes together with supporting calculations and worksheets.

(4) Rate-determination worksheets.

(5) Other relevant data may be required by the Commissioner to support a welfare rate request. If such data are not provided within 30 days, the Commissioner must calculate a rate, making whatever assumptions deemed appropriate to arrive at the rate in the absence of the requested data.

(6) A complete statement of fees and charges.

(7) The names of all persons other than mortgage companies owning any interest in the facility including stockholders with an ownership interest of ten per cent or more of the facility.

(8) When requested by the state agency, a separate audited balance sheet and statement of revenues and expenses for each nursing home owned by the same owner is required.

Specific report formats and preparation instructions will be contained in a provider manual prepared and revised periodically by Department personnel. Copies of said manual will be made available to all interested parties through the Documents Section of the Department of Administration. Newly established providers or providers who change their fiscal year must file short-period reports if the period covered is more than five months.

b. Method of accounting. The accrual basis of accounting in accordance with generally accepted accounting principles shall be the only method acceptable for purposes of satisfying reporting requirements. In a unique situation, such as the use of government providers, the use of the accrual basis of accounting may not be applicable. In such an instance, the Commissioner may permit the provider to use a cash or modified cash basis of accounting if the provider can establish that no difference in rate would result.

c. Records. The provider, where applicable, will maintain statistical and accounting records to support information in no less detail than that required by C.1.a. required reports. The provider shall also make available federal and state income tax returns upon request of Department personnel.

d. Report certification.

(1) Reports required in regulation C.1.a. will be accompanied by a certification of (a) the majority owner defined as the person having over 50 per cent effective ownership, or the chief financial officer if there is no majority owner, and (b) the administrator or the chief operating executive. If reports have been prepared by someone other than the above individual, a separate statement signed by the preparer shall be included stating the terms of the preparer's employment.

(2) If the provider has either audited or unaudited financial statements prepared by an independent public accountant, such statements must be submitted as a part of reports required by C.1.a.

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e. Reporting deadlines and extensions.

(1) Deadlines. Required reports shall be submitted directly to the Department within three calendar months after the close of the provider's normal fiscal year. **A final rate will be established within 60 days of receipt by the Department of completed reports and required documentary information.**

(2) Report deadlines exceptions. The Commissioner may grant exceptions to the reporting deadline for just cause. A routine extension of 60 days will be granted when a written request is received by the Department prior to the reporting deadline.

f. Penalties.

(1) Report preparation and submittal. The penalty for non-compliance with Regulation C.1.a. and C.1.e. will be to reduce the reimbursement rate to 80 per cent of the rate then in effect on the first day of the fourth calendar month after the close of the provider's normal fiscal year. This penalty is not to apply for minor errors and omissions on reports. If the required reports are subsequently submitted, retroactivity of the established rate will be limited to the first day of the month following the month in which acceptable reports are received, unless retroactivity to a prior date is otherwise designated by the Commissioner.

(2) False reports. Incorrect or false information supplied by the provider on required reports resulting in overpayments to the provider will result in one or more of the following:

(a) Immediate adjustment of the welfare rate, along with retroactive recovery by the county welfare board of funds incorrectly paid to the provider.

(b) Termination of the provider contractual agreement.

(c) Prosecution under applicable federal and Minnesota statutes.

g. Audits. All reports will be subjected to desk audit and may be subjected to field examination of supporting records and compliance with regulations by state and federal auditors or auditing firms under contract to the state. If such audits reveal inadequacies in provider record keeping and accounting practices, the Commissioner may require that the provider engage competent professional assistance to properly prepare required reports. Penalties of C.1.f.(1) or (2) may be applied to ensure compliance with this provision.

h. Application of reasonable cost principles. Reports required by C.1.a. must be prepared in accordance with reasonable cost principles in Section D.

i. Amended reports. Except as provided in B.1.c.(2) providers may file amendments to previously filed reports when errors or omissions are uncovered or when federal or state minimum wage laws changes occur unexpectedly or when long term labor contracts expire and are renegotiated subsequent to the reporting deadline in C.1.e.(1). The cost change omissions to comply with minimum wage law changes or labor contracts will be limited to the wage increases required to meet the minimum standards of federal or state wage laws or reasonable labor agreements. Such changes in the welfare per diem rate must result in at least a five cent per patient day of $2,000 adjustment, whichever is less, for each annual period. The payment and period covered by this provision are governed by B.2.c.

2. Special provisions for multi-home providers and providers involved in other activities.

a. Reporting exceptions. Providers who operate several homes or who are engaged in activities other than nursing care may not be able to comply with the required reports referred to in C.1.a. In that case, the provider must indicate reasons for noncompliance.

b. Charges from related organizations. Costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control are includable in the allowable cost of the provider at the cost to the related organization. If the related organization in the normal course of business sells services, facilities or supplies to the outsiders, the cost to the provider shall be the outsider's price; however, sales to outsiders must constitute at least 25 per cent of its sales.

c. Cost allocation of top-management salaries and management fees. The allocated portion of compensation for the chairman of the board, directors, presidents, or other similarly titled individuals allocated to an individual nursing home shall be subject to the limitation provided in regulation D.3.a. Other corporate charges or costs allocated to a nursing home must represent the cost of services actually rendered and be identified as to the type of service provided.

3. Definitions.

a. Care definitions. The following care classifications are used in cost reporting required by these regulations. The definitions of these terms included in DPW Rule 47 ad appropriate federal regulations governing Title XIX are hereby adopted.

(1) Skilled Nursing Home (Skilled)

(2) Intermediate-Care Facility I (ICF I)

(3) Intermediate Care Facility II (ICF II)

b. Cost categories. Costs used for rate-setting purposes and related to patient care are to be grouped according to major cost categories used in required reports. Such categories are defined as follows:

(1) Nursing — All directly identifiable costs

associated with nursing care defined in Section C.3.a. In general, these include bedside care; administration of medications, irrigations, and catherizations; application of medications, dressings, bandages; rehabilitative nursing techniques; and definition of modified diets, as well as other treatments prescribed by a physician that require professional or technical knowledge, skills, and judgment as possessed by a professional nurse. Included are comfort medications, medical supplies, devices, and other routine supplies not separately reimbursed as listed in Regulation C.3.b.(8). Personnel costs to be included in nursing are the salaries of the director of nursing, supervising nurses, registered professional nurses, licensed practical nurses, nurses aides, orderlies, and attendants (ICF II care only). The salaries or fees of physicians performing consulting services not reimbursed by separate fee schedule are also to be included in this cost category.

(2) Dietary — All directly identifiable costs of normal and special diet food including food preparation and serving. Personnel costs to be included in dietary are the salaries of dieticians, chefs, cooks, dishwashers, and all other employees assigned to the kitchen and dining room.

(3) Laundry and linen — All directly identifiable costs of linen and bedding, laundering, and laundry supplies. Personnel costs to be included in laundry are the salaries of laundry employees, seamstresses, laundrymen, and ironers.

(4) Housekeeping — All directly identifiable costs of housekeeping, including cleaning and lavatory supplies. Personnel costs to be included are the salaries of housekeepers, maids, and other cleaning personnel.

(5) Plant operation and maintenance — All directly identifiable costs for maintenance and operation of the buildings and grounds, including fuel, electricity, water, supplies and parts to repair and maintain equipment and facilities, and tools. Personnel costs to be included are the salaries of engineers, painters, heating-plant employees, plumbers, electricians, carpenters, and watchmen.

(6) Other care-related services — All directly identifiable costs of other services, such as recreational activities, religion, rehabilitation, arts and crafts, and social services.

(7) General and administration — All directly identifiable costs for administering over-all activities of the facility, including business-office functions, travel expense, motor vehicle operating expense, telephone charges, office supplies, advertising, licensing fees, and professional services. Personnel costs are the salaries of administrators, assistant administrators, accounting personnel, and all clerical personnel. Also included in administration are fringe benefit costs of all employees, such as employment taxes, health insurance, pensions, and life insurance; also included are other costs not otherwise classified under definitions in C.3.b.

(8) Miscellaneous nonreimbursable services and expenses —

(a) All directly identifiable costs of functions normally reimbursed by charges to patients, employees, or outsiders, such as the operating costs of a pharmacy, beauty shop, or coffee and gift shop are included here.

(b) Also included are specific costs that may be incurred by the provider and reimbursed separately according to a fee schedule. These include but are not limited to the following:

(i) Services provided by licensed medical, therapeutic, or rehabilitative practitioners.

(ii) Oxygen at prevailing prices.

(iii) Wheel-chair alterations for specific Medical Assistance recipients.

(c) Also included in this section will be costs associated with operating activities financed by gifts or grants from private or public funds.

(d) All costs classified in C.3.b.(8) are not allowable for purposes of determining a per diem rate under these regulations.

c. Patient days.

(1) General definition. For purposes of determining a per diem rate, a patient day is defined as a day for which full and normal billings were rendered.

(2) Special care rates. Facilities that provide care to a patient requiring less care than the care level to which the facility is certified may adjust lesser-care patient days for rate-calculation purposes as follows:

Level of Care Provided	Certification	
	Skilled	ICF I
Skilled	1.00	N/A
ICF I	.85	1.00
ICF II	.50	.60

The lesser care patient day adjustment cannot

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exceed 15 per cent of actual patient days. This limitation may be waived temporarily to accommodate a transition period during which the provider obtains the proper facility certification.

4. Cost allocation procedures.

a. General provisions for all providers.

(1) Costs will be classified in accordance with categories defined in Regulation C.3.b. and, if applicable, by care level defined in Regulation C.3.a.

(2) Classification of costs to cost categories C.3.b. will involve one or more of the following steps:

(a) Direct identification, without allocation, which will be accomplished in the routine classification of transactions when costs are recorded in the books and records of the provider.

(b) In instances in which individuals have multiple duties, the person's salary cost will be allocated to categories C.3.b. on the basis of management's estimate of time spent on various activities. This procedure will not be applied to administrators or other chief executives' salaries in facilities with 60 or more licensed beds.

(c) Other costs that cannot be classified to cost categories through use of procedure C.4.a.(2)(a) and C.4.a.(2)(b) will be classified in the administrative category.

(3) Adjustments for costs otherwise reimbursed. Recorded costs will be reduced for costs related to other activities not subject to rate determination as defined in Regulation C.3.b.(8).

(4) Non-allowable cost adjustments. Recorded costs will be adjusted when such costs exceed reasonable cost principals defined in Section D of these regulations. All adjustments will be footnoted with the applicable regulation number. Costs previously excluded by C.3.b.(8) will not require further adjustment.

b. Specific care level allocation procedures for multi-level providers. Cost allocation procedures are necessary to determine costs among different care level facilities. Allocation procedures are defined in the following sections and will be applied in the order stated except where noted otherwise. Regardless of method selected, a reasonable identification of costs to care level must result.

(1) Nursing care. — Any combination of allocation procedures (a), (b), and (c) below can be used as long as the result is a reasonable approximation of actual costs incurred by care level.

(a) Direct identification (without allocation) in the routine classification of transactions when costs are recorded in the books and records of the provider (e.g., invoice and time record account classifications).

(b) Cost allocation on the basis of regularly validated time or cost studies.

(c) Remaining costs (e.g., nursing supervisor, supplies, etc.) not classified under methods (a) or (b) above will be allocated on the ratio of costs identified to care levels (using (a) and/or (b) above), one care level to another.

(d) If methods (a), (b), or (c) above cannot be used, costs will be allocated on the basis of actual patient days weighted by the ratio of maximum allowable nursing care and attendant hours as defined in regulation D.2.

(2) Dietary.

(a) Cost allocation on the basis of regularly validated time or cost studies.

(b) Cost allocation based on the number of meals served.

(c) Cost allocation based on the actual patient days.

(3) Laundry and linen, housekeeping, and plant operation and maintenance. The following allocation procedures can be applied to individual department costs or the combination of these three departments at the option of the provider.

(a) Same as C.4.b.(1)(b) — time or cost studies.

(b) Allocation on the ratio of square feet of floor space devoted directly to each care level.

(c) Same as C.4.b.(1)(c) — patient days.

(4) Other care related services.

(a) Same as C.4.b.(1)(b) — time or cost study.

(b) Same as C.4.b.(1)(c) — patient days.

(5) General and administration — Cost allocation on the ratio of the combined cost by care level determined for categories C.4.b.(1) through (4) and (6).

(6) Depreciation, interest and real estate and personal property taxes.

(a) Location of equipment when determinable.

(b) Same as C.4.b.(3)(b) — square feet.

(c) Same as C.4.b.(2)(c) — patient days. This allocation procedure must be used if actual patient days in any care level exceeds certified capacity patient days.

(7) Earnings allowance — Cost allocation on the ratio of the combined cost by care level determined for categories C.4.b.(1) through (4) and (6).

c. Hospital attached facilities. **The nursing care limitation under D.2.a. and the investment per bed limitation under D.4.b.(1) will be waived when the Medicare cost allocation factors result in these limitations being exceeded.** Costs between hospitals and attached facilities must be allocated by the "Medicare Worksheet B" using Medicare allocation factors for the following three cost groups:

(1) All expense classifications without depreciation, administration and general.

(2) Depreciation.

(3) Administration and general.

D. Reasonable cost principles.

1. General provisions.

a. Reasonable costs. Costs to be allowable for rate setting purposes must satisfy the following overall criteria:

(1) They must be necessary and ordinary costs related to patient care.

(2) They must be costs that prudent and cost-conscious management would pay for a given item or service.

b. Costs not allowable. Costs that relate to management inefficiency, unnecessary care or facilities, and activities not common and accepted in the nursing care field are not allowable.

c. Reasonable compensation. Reasonable compensation of individuals employed in the facility is an allowable cost, provided the services are actually performed in a necessary function and the costs reported are actually incurred. To be reasonable the compensation allowance must be such an amount as would ordinarily be paid for comparable services by comparable facilities. To be necessary the function must be such that had the individual not rendered the services, the facility would have had to employ another person to perform the services. The function must also be pertinent to the operation and conduct of the facility. Where the services are rendered on less than a full-time basis, the allowable compensation should reflect an amount proportionate to a full-time basis. Compensation shall include payment to individuals as well as to organizations of non-paid workers that have arrangements with the provider for the performance of services by non-paid workers.

d. Substance over form. The cost effect of transactions that are conceived for the purpose of circumventing the regulations contained in DPW Rule 49 will be disallowed under the principle that the substance of the transaction shall prevail over form.

e. Costs due to changes in federal or state requirements. Costs incurred to comply with changes in federal or state laws and regulations on increased care and improved facilities are allowable costs for purposes of determining a historical per-diem rate under B.1.a.

f. Reduction in costs. Purchase discounts, allowances, and refunds are a reduction of the cost of whatever was purchased.

g. Annual review of cost limitations. The Commissioner shall review annually the dollar limitations for top management compensation limitation D.3.a. and depreciation basis limitation D.4.b. and adjust the limitations accordingly if justified by current data. The data used as a basis for this determination shall be made available to all providers.

h. Application of principles and specific limits. The reasonable cost principles defined in D.1. apply to all reported costs and have been specifically defined for certain cost elements in D.2. through D.8.

2. Nursing care and attendant limitations.

a. Nursing care. Nursing-care costs will be limited by a maximum number of nursing hours per patient day as follows:

Skilled — 2.9 hours
ICF I — 2.3 hours

If the actual average nursing hours per patient day exceed the above limit, the reasonable cost limitation will be calculated by multiplying the ratio of the above stated limit to the average actual nursing hours per patient day for the year times the actual cost per patient day. This limitation will not apply to facilities that qualify for exception under D.8.d.(3) or facilities licensed under DPW Rule 80.

b. Attendants (ICF II facilities only). Reasonable costs for attendants in ICF II facilities will be limited to one hour per patient day. If the actual average attendant hours per patient day exceeds this limit, the reasonable cost limitation will be calculated by multiplying the ration of the stated limit to the average actual attendant hours per patient day for the year times the actual cost per patient day.

3. General and administrative expenses. Reason-

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able cost criteria for general and administrative expenses are as follows:

a. Top-management compensation limitation. Top-management compensation includes that of owners, administrators, president, chairman of the board, board members, or other individuals receiving compensation as executives but not performing duties of a department head. Compensation includes the costs of non-cash compensation such as residences, salaries, and deferred compensation except IRS qualified pension or profit sharing plans. The average annual cost limitation for rate-setting purposes on compensation is determined according to the average number of combined licensed nursing-home and boarding-care beds according to the following schedule:

Number of Beds	Cumulative Annual Compensation Per Bed Limitation
First 50	$264
Next 51-100	132
Over 100	66

The minimum annual compensation limitation is $10,000 or actual compensation, whichever is less, and the maximum shall be $35,000. For each full percentage point increase in the consumers price index in Minneapolis-St. Paul as published by the Bureau of Labor and Statistics for the months October, 1973, and October, 1974, new series index (1967 = 100), the accumulation annual compensation per paid limitation listed above shall be increased by one percent. The increase, if any, generated by this formula shall be effected in January 1, 1975. Similar calculations shall be made for each successive year using the October indices for two successive years with the increases beginning effective the following January.

b. Assistant administrator. Reasonable compensation of assistant administrators is not subject to the limitation in D.3.a.

c. Other management services. The costs of other directors' fees, unidentified management fees, and physician compensation for performing administrative functions are allowable to the extent that such costs together with compensation of top management do not exceed the limitations defined in D.3.a.

d. Other general and administrative costs.

(1) Owners life insurance. The costs of premiums are not allowable.

(2) Personal expenses. Personal expenses of owners or employees, such as homes, boats, airplanes, vacation expenses, etc., are not allowable costs. The costs of residences for administrators and key staff are allowable costs if such costs together with other compensation do not exceed the limitations of D.1.c. and D.3.1.

(3) Professional, technical, or business-related organizations. These costs are allowable if their function and purposes can be reasonably related to the development and operation of nursing facilities, patient-care facilities, and programs for the rendering of patient-care services.

(4) Social, fraternal, and other organizations. Costs incurred in connection with memberships in all organizations not included in D.8.d(3) are not allowable.

(5) Travel and automobile. These expenses are not an allowable expense unless they are related to activities of managing the nursing home.

(6) Entertainment. These expenses are not allowable costs.

[(7) Advertising. Costs incurred in connection with maintaining or maximizing occupancy are allowable.]

(7) Pension and profit-sharing plans. Contributions to either an Internal Revenue Service approved pension or profit-sharing plan, but not both, are allowable costs.

(8) Employee education costs, orientation, and on-the-job training. Costs relating to providing improved patient care or, where required by state law, are allowable costs. If part or all of these costs are reimbursed by private or public funds, only the excess of cost over reimbursed funds are allowable costs. All such costs should be included in respective cost categories, C.3.b. unless not identifiable.

(9) Training programs for non-employees. Costs of training programs conducted for non-employees other than for volunteers are not allowable.

(10) Telephone, television, and radio service. These are allowable costs where furnished to the general patient population in areas of provider day rooms, recreation rooms, lounges, etc. The cost of these services when located in a patient accommodation is not allowable.

(11) Noncompetitive agreement. Costs of these agreements are not allowable.

(12) Pre-opening costs. One time pre-opening costs of new facilities incurred prior to admittance of patients must be capitalized as a deferred charge. Costs in the form of amortization will be recognized as allowable costs over a period no less than 120 consecutive months beginning with the month in which the first patient is admitted for care. Examples of these costs are wages paid prior to the opening of the facility. Construction financing, feasibility studies, and other costs related to construction must be depreciated over the life of the building.

(13) Bad debts. Amounts considered to be uncollectible patient accounts are not allowable costs.

(14) Fund-raising costs. Costs incurred for such purposes including advertising, promotional, or publicity costs are not allowable in the year in which they are incurred except in the form of amortization as allowed by D.6.a.

(15) Charitable contributions. These are not allowable costs.

(16) Political contributions. Political contributions are not allowable costs.

(17) Salaries/expenses of a lobbyist. Salaries or expenses of a lobbyist as defined in M.S. 10A.01, subd. 11, for lobbying are not allowable costs.

(18) Advertising. Advertising designed to encourage potential residence to select a particular nursing home is not an allowable cost.

(19) Health Department assessments. Assessments levied by the Health Department for uncorrected violations are not allowable costs.

(20) Legal fees. Legal fees for unsuccessful challenges to decisions by state agencies are not allowable.

(21) Dues. Dues paid to a nursing home or hospital association are not allowable costs.

4. Depreciation.

a. Basis for depreciation calculation.

(1) Cost. Historical cost of nursing facilities shall be the basis for calculating depreciation as an allowable cost, except as provided by D.4.a.(2).

(2) Change in ownership of facilities. In a case in which a change in ownership of a nursing-home facility occurs, and the new owner's investment is greater than the old owner's investment, if a bona fide sale is established by the new owner, the basis for depreciation will be adjusted as follows:

(a) In the case of a complete change in ownership, the basis for calculating depreciation will be the lower of:

(i) The portion of the purchase price properly allocable to depreciable nursing home facilities; or

(ii) The appraised value of the depreciable nursing home facilities calculated under the replacement cost, depreciated method.

(b) In the case of a partial change in ownership, as defined below, the basis for calculating depreciation shall be determined according to provision of D.4.a.(2)(a) the case of a complete change in ownership except that all relevant figures will be placed on a scale proportionate to the percentage of ownership change. For purposes of this provision, a partial change in ownership occurs only in the case of an organization with ten or fewer owners, after the change in ownership, and when the ownership change exceeds 20 per cent. Any increase allowed by this section will then be adjusted according to Section D.4.a.(6).

(3) Redemption of ownership interests. In a case in which the remaining owners establish the fact that a bona fide redemption of an ownership interest has occurred, the basis for calculating depreciation will be increased by the excess, if any, of the redemption price over the former owner's investment. The adjusted basis shall be determined by applying the provision of D.4.a.(2)(b).

(4) Donated assets. The basis of donated assets, except for donations between providers or related parties, shall be fair market value defined as the price than an able buyer would pay a willing seller in an arms-length sale or appraised value defined in D.4.a.(2)(a)(ii) whichever is lower. An asset is considered donated when the provider acquires the asset without making any payment for it in the form of cash, property, or services. In the instance of the exception stated, the net book value to the donor shall be the basis for the donee.

(5) Subsequent acquisitions. The basis for calculating depreciation may be increased for the actual cost of equipment additions or facility modification or renovation.

(6) Recapture of depreciation resulting from sale of facility. The sale of depreciable nursing-home property, or substantial portion thereof, at a price in excess of the cost of the property as reduced by accumulated depreciation calculated in accordance with D.4. indicates the fact that depreciation used for purposes of computing allowable costs was greater than the actual economic depreciation.

(a) The amount of the recapture will be determined as follows:

(i) The gross recapture amount will be the lesser of the actual gain on the sale or the depreciation after the effective date of DPW Rule 49 (November 1, 1972).

(ii) The gross recapture amount as determined in (i) above shall be allocated to fiscal periods

from November 1, 1972, through the date of sale. The gross recapture amount shall be allocated to each fiscal period in the same ratio as depreciation amounts claimed under DPW Rule 49. The amount allocated to each period shall be divided by the total actual patient days in that period, thereby determining a patient-day cost for the period. The total net recapture shall then be determined by multiplying the actual welfare days times the patient-day cost for each fiscal period.

(iii) The total net recapture amount determined according to (ii) above will be reduced by one per cent for each month of ownership since the date of acquisition of the facility. The net recapture paid to the State of Minnesota is includable in the new owner's basis for depreciation subject to the provisions of D.4.a.(2).

(b) The net recapture amount so determined in (iii) above will be paid by the new owner to the State of Minnesota within a time period agreed to by the Commissioner and the new owner. The time period should effectuate an orderly payment schedule and must not exceed two years after the date of sale.

(7) Gains and losses on disposition of equipment. Gains and losses on the sale or abandonment of equipment can be included in computing allowable costs. A gain shall be an offset to depreciation expense to the extent that such gain resulted from depreciation reimbursed under these regulations. Gains or losses on trade-ins should be reflected in the asset basis of the acquired asset. Losses will be limited to five cents per patient day annually; however, any excess over this limitation can be carried forward to future years.

b. Limitations.

(1) The total basis of depreciable nursing-facility assets shall not exceed an average of $13,000 per bed for licensed beds in two or more beds per room and $19,500 per bed for licensed private rooms built or purchased after January 1, 1974. This limitation will be adjusted annually beginning January 1, 1975 according to a construction index as determined by the Commissioner. The depreciable basis for licensed beds built or purchased prior to January 1, 1974 shall not exceed an average of $11,000 per bed for licensed beds in two or more beds per room and $16,500 per bed for licensed private room which satisfy the certificate of need provision of B.3.c. However, the depreciable basis for licensed private rooms built prior to August 15, 1972 shall not exceed an average of $16,500 per bed for a maximum of 5% of licensed beds.

(2) In no instance can accumulated depreciation calculated in accordance with D.4 exceed the basis defined in Section D.4.a.

(3) Accumulated depreciation as of the beginning of the first fiscal year covered by this regulation shall be calculated retroactively using the useful life concept defined in Sections D.4.c and D.4.d.

(4) Regardless of the applicability of the limitation stated in D.4.b.(1) above, depreciation on investments in facility modifications and new equipment will be allowed if they were required by governmental requirements.

c. Depreciation rates for new facilities and equipment. Depreciation shall be calculated using the basis determined under Section D.4.a. applying one of the "useful life" schedules defined in Section D.4.c.(1) or D.4.c.(2).

(1) Building — 35 years

Major building improvements (depreciated over the remaining life of the principal asset or useful life, but not less than 15 years).

Land improvements — 20 years

Equipment — 10 years

Vehicle — 4 years

(2) American Hospital Association depreciation guidelines.

d. Other useful lives.

(1) Depreciation rates for used facilities and equipment. The useful life shall be assigned by the provider considering the individual circumstances; however, the useful life will not be shorter than one-half of the useful life provided by Sections D.4.c.(1) or D.4.c.(2).

(2) Leasehold improvements. The useful life of the improvement or the remaining term of the lease, including renewal periods, shall be used, whichever is shorter.

e. Depreciation method. The straight-line method of depreciation should be used except, at the option of the provider when the principal payments on capital indebtedness (as defined in Section D.6.a.(1)) exceed the total depreciation allowance calculated in accordance with Section D.4. In such instances, depreciation may be increased to equal principal payments on capital indebtedness amortized over actual amortization periods; however, the amortization period cannot be less than 20 years for building and six years for equipment. Accumulated depreciation cannot exceed the basis defined in Section D.4.a. **Depreciation on any new construction or expansion of facilities commenced on or after January 1, 1971, other than governmentally owned facilities, shall be on a basis of not less than 30 years. For facilities constructed or expanded prior to January 1, 1977, and for facilities purchased after January 1, 1977, presently existing depreciation rules will apply.**

f. Facilities financed by public funds. Depreciation will not be allowed on the portion of facilities

financed by federal, state or local appropriations or grants unless the intent of such appropriation or grant was that to be repaid through operating revenue of the facility.

g. Non-depreciable assets. Nursing-facility assets that are not depreciable include but are not restricted to:

(1) Land. Includes the land owned and used in provider operations included in the cost of land and the costs of permanent roadways and grading of a non-depreciable nature, the cost of curbs and sidewalks whose replacement is not the responsibility of the provider, and other land expenditures of a non-depreciable nature.

(2) Goodwill. Includes amounts that result from purchase of property or stock in excess of determinable value as determined in D.4.a.(2).

h. Capitalization vs. expense. Expenditures for equipment that has a useful life of more than one year shall be capitalized except that the provider may show as expenses small equipment purchases normally capitalized if such items do not exceed two cents per patient-day annually.

5. Leased facilities or equipment.

a. Rental charges. Reasonable rental charges incurred by a provider through a lease entered into an arms length transaction are includable in allowable costs. Unless:

(1) Rental charges result from a sale, lease-back arrangement, or lease with option to buy at a price less than anticipated value.

(2) Rental charges are paid to a related or controlled organization. If either D.5. a.(1) or (2) exists, the provisions of D.5.b. will be applied.

(3) The rental fee is in excess of the total amount it would pay to the owner of the facility as interest, investment allowance and depreciation. In these cases, the allowed rental amount will be limited to the amount that would be paid the owner for interest, investment allowance and depreciation.

b. If rental charges are not allowed, the rate of the provider will be determined as for any other provider as though the lease did not exist. In this case allowable costs would include both costs of the lessor and the lessee.

[c. Rental charges incurred on leases entered into before the effective date of these regulations are includable as allowable costs except as provided in parts a. and d.]

[d.]

c. Limitation. Allowable rental charges are subject to the investment per bed limitations of D.6.b.(1)(a) determined by calculating the present value of lease payments exclusive of real and personal property taxes and other costs assumed by the lessor. Interest rates used in capitalizing lease payments shall be the mortgage rate of the lessor or, if the mortgage rate is not available, 2.15 percentage points above the interest rate of Federal Hospital.

Insurance Fund obligations as of the effective date of the lease. The formula for determination of this provision is as follows:

(1) present value of lease = Lease payment per period x present value factor per period.

(2) Investment per bed = Present value of lease ÷ Licensed Beds.

(3) The present value factor can be determined from annuity tables according to the present worth of $1 per period for the term of the lease.

6. Cost of capital.

a. Interest.

[(1) Interest expense is an allowable cost and will be classified as follows:]

(1) Except as provided in Section D.6.a.(6), interest is an allowable cost for non-proprietary facilities only and will be classified as follows:

(a) Interest on capital indebtedness includes amortization of bond premium and discount and related financing costs. Capital indebtedness is defined as any loan that is applied to purchase fixed assets related to providing nursing care as defined in D.6.b.(1)(a). The form of indebtedness will include mortgages, bonds, notes, and debentures, when the principal is repaid over a period in excess of one year.

(b) Other interest for working capital and operating needs that directly relate to providing nursing care is an allowable cost. The form of indebtedness will include, but is not limited to, notes, advances, and various types of receivable financing the principal of which will be generally repaid within one year.

(2) Interest income will be a deduction from interest allowable under provision D.6.a.(1)(a) or

D.6.a.(1)(b). Interest income on restricted funds will not be deducted from interest expense. Restricted funds are defined as all unexpended donated funds carried by the institution that are restricted for other than operating costs. The operating or building funds cannot be included as part of restricted funds for this purpose.

(3) Interest rate. The interest rate incurred must not be in excess of what a borrower would have had to pay in an arms-length transaction in the money market when the loan was made. When a non-proprietary provider borrows from its own restricted fund, interest paid by the general fund to the restricted fund is allowable at a rate not to exceed the interest rate the fund is currently earning. Interest on liens between operating and building funds is not allowable.

(4) Construction interest. Interest cost incurred during and related to construction must be capitalized as a part of the cost of the facility. The period of construction is considered to extend to the date the facility is put into use for patient care.

[(5) Allowable interest limitation for proprietary providers. Because of the provision of D.6.b. for proprietary providers, the allowable interest expense defined in Section D.6.a.(1)(a) shall not exceed the providers average interest rate times 65 per cent of net allowable assets as defined in D.6.b.(1)(a).]

(5) After the first three years that a non-proprietary or governmentally owned nursing home has been owned by its current owners, the state agency shall not recognize as an allowable cost the expense of interest on net debt for any indebtedness and loans which exceed 100 percent of the net asset value of the facility.

(6) A proprietary nursing home which pays interest on capital indebtedness at an interest rate in excess of nine percent may be reimbursed for one-half of its interest expenses in excess of the nine percent up to 12 percent if (a) the proceeds of the indebtedness are used for the purchase or operation of the nursing home and (b) the interest rate is not in excess of what a borrower would have had to pay in an arms-length transaction at the time the loan was made.

[b. Earnings allowance for proprietary providers.

(1) Determination of allowance. An allowable cost for rate setting purposes is a return on capital provided by owners of proprietary facilities. The return will be applicable only to the portion of investment devoted to welfare recipients, and the return represents an earnings opportunity, not a guarantee. This return does not represent an attempt to regulate the actual return realized by proprietary] [providers. The earnings allowance will be determined individually for each provider considering the following factors:

(a) Net allowable fixed assets employed will include actual cost of land, land improvements, buildings and equipment, less cumulative depreciation calculated in accordance with regulation D.4. and further limited to $1,000 in excess of the limitations provided in D.4.b.(1).

(b) The amount of capital provided by owners will be assumed to be 35 per cent of net allowable fixed assets employed in providing nursing care.

(c) The after-tax rate of return allowed on capital provided by owners, caluculated on the basis of D.6.b.(1)(a) and D.6.b.(1)(b) will be ten per cent.

(d) To obtain an after tax rate of return of ten per cent requires that the earnings allowance include an amount for average effective federal and Minnesota corporate income tax rates of 31.3 per cent to 54.24 per cent depending upon the tax bracket that would result from applying the rate of return to net allowable fixed assets.

(e) An additional earnings allowance will be allowed on the remaining 65 per cent of net allowable fixed assets not otherwise covered by capital indebtedness. The allowance will be 6 per cent of this amount.

c. Minimum cost of capital allowance. Notwithstanding the provision of D.6.a.(5) and D.6.b., the cost of capital allowance shall be no less than the combination of:

(1) Actual interest on capital indebtedness, and

(2) An earnings amount determined by multiplying 93 per cent of capacity patient days for a fiscal year, or part thereof if a short period report is being filed, by thirty-five cents.

d. Minimum cost of capital allowance for non-proprietary providers and non-proprietary leased facilities. The cost of capital allowance for non-proprietary providers and leased facilities determined in D.6.c.(2) shall be reduced by the per-diem effect of facility utilization incentives under D.8.a.]

[e. Minimum cost of capital allowance for proprietary leased facilities. The minimum cost of capital allowance for proprietary leased facilities determined in D.6.c. and the facility utilization incentive determined in D.8.a. will not exceed the aggregate cost per patient day of seventy-five cents plus disallowed interest.]

b. Investment allowance.

(1) Determination of allowance. Proprietary homes where cost reports are received after January 1, 1977, shall receive an investment allowance of nine per cent of the original value of the facility for depreciation purposes. Non-proprietary homes whose

fiscal year begins after June 30, 1977, shall receive an investment allowance of two per cent of the original value.

(2) For purposes of this section the following terms shall have the meaning given to them.

(a) Facility means the building in which a nursing home is located and all permanent fixtures attached to it. Facility does not include the land or any supplies and equipment not permanently attached to it.

(b) Original value means the lesser of purchase price or appraised value at the time of purchase. Appraisals at the tiem of purchase shall be on the depreciated replacement cost basis. If a nursing home expands its facility or makes any other capital expenditure which increases the value of the facility, the cost of the expansion or capital expenditure shall be added to the original value. If the Department disputes the cost of the expansion or capital expenditure it may request an appraisal and use the appraised value as the allowed cost. The original value may be increased each seven years on the basis of a comparative cost multiplier used by the State Department of Taxation, Property Appraisal Section, in setting assessed values. This formula shall be applied to the facility as if it were an appraisal with the resulting value decreased by a figure representing depreciation calulated on the inflated value of the facility. The first seven year period comences with a date of purchase and subsequently periods occur each seven years following the date this provision was actually used to reestablish original value.

c. Capital allowance for non-proprietary facilities. If it is determined that the investment allowance contained in D.6.b. for non-proprietary facilities is not allowable under federal regulations then non-proprietary nursing homes shall receive an allowance determined by multiplying 93 per cent of capacity patient days for a fiscal year or part thereof if a short period report is being filed by fifty-five cents (55¢) which total shall be reduced by the per diem effect of facility utilization incentives in D.8.

7. Welfare. All directly identifiable costs associated exclusively with the welfare program and benefiting welfare patients exclusively will be calculated in a manner that results in an assignment of the incremental costs stated above wholly to welfare patients. Such costs may include reasonable expenditures for utilization review, preparation and processing of a cost statement under these regulations[, limited to $500 for each reporting period on actual cost, whichever is less), interest payments on federal or state loans taken to purchase or remodel equipment required for federal certification if it is clearly shown that these expenditures are associated exclusively with the welfare program and benefit welfare patients exclusively].

8. Facility utilization incentives.

[a. Capacity limitation. The allowable cost amount per patient day for depreciation, interest, property taxes, administration and earnings allowance will be calculated by dividing such allowable costs by 93 per cent of total capacity patient days for licensed beds. Facilities qualifying for the special care rate of C.3.c.2. may adjust the capacity limitation by the same formula. The capacity limitation cannot be reduced below 90 per cent of total capacity patient days for licensed beds.]

a. Capacity limitations. The allowable cost amount per patient day for depreciation, interest, property taxes, administration, investment allowance, and capital allowance shall in the case of non-proprietary homes be divided by ninety-three per cent of total capacity patient days for licensed beds and for proprietary facilities shall be divided by ninety-three per cent of total capacity patient days for licensed beds or actual patient days, whichever is greater. If the allowance in D.6.2. is permitted by federal regulation for non-proprietary nursing homes, then the allowance cost amount per patient day for the depreciation, interest, property taxes, administration, investment allowance for non-proprietary nursing homes shall be divided by ninety-three per cent total capacity patient day for licensed beds or actual patient days, whichever is greater.

b. Calculation of patient days. For purposes of calculating patient days at 93 per cent of licensed capacity and to assign a greater proportion of costs to private rooms, a factor of 1.5 times the number of licensed private beds will be used to determining the number of patient days. This provision shall apply only to facilities applying for a Certificate of Need after August 15, 1972.

c. Licensed bed capacity. Usable or operable bed capacity may be used for purposes of the calculation required by D.8.a. and b. if the provider can justify in writing, to the satisfaction of the Commissioner that licensed beds is an inappropriate measure of capacity.

d. Waiver of limitation. Providers may apply for a waiver of the provisions of D.8.a. and b. in the following instances:

(1) For new facilities or facilities with major changes in capacity, that are applying for a certificate of need after the effective date of these regulations, the

KEY: New rules and both proposed and adopted additions to existing rules are printed in **boldface**. Proposed and adopted deletions from existing rules are printed in [single brackets]. Underlining indicates additions from proposed to adopted rules, while [[double brackets]] indicate deletions from proposed to adopted rules. Existing rules are printed in standard type face.

Commissioner may grant a waiver of this capacity calculation and allow a rate based on anticipated actual patient days for the period through the end of the first full fiscal year.

(2) In cases of extreme hardship, nursing homes not covered by D.8.d.(1) and having over 65 per cent welfare patient days may be granted an annual waiver by the Commissioner of this capacity calculation and be allowed a rate based on actual patient days. "Extreme hardship" will include a financial situation in which projected cash flow indicates the fact that debt and operating obligations cannot be met.

(3) Skilled care facilities which have a patient population with an annual average length of stay of 180 days or less. **The average length of stay is determined by dividing the actual patient days for the historical fiscal year by the total discharges for the historical fiscal year.**

E. Implementation procedures.

1. Effective date of DPW Rule 49 revisions.

[a. All revisions of this revised DPW rule 49 shall take effect beginning with reports covering fiscal years ending after July 31, 1974.

b. Providers may request, by letter, no later than December 31, 1974, a revised rate as affected only by sections B.1.c.(1)(i) and B.4.c.(4) and (5). The revised rate may be effective as of September 1, 1974.]

a. Unless noted otherwise, all changes are effective for rates set for cost reports received by the Department of Public Welfare after January 1, 1976.

Official Notices

ENVIRONMENTAL QUALITY COUNCIL

EQC MONITOR

Actions Taken at the September 14, 1976 EQC Meeting

1. Approved ozone monitoring program on CPA-UPA* transmission line (CU-TR-1).

2. Denied CURE* petition to reopen hearing on health effects of CU-TR-1; resolved to held generic hearings at future date not yet determined.

3. Adopted guidelines for review of petitions.

4. Determined Environmental Assessment (EA) on PIK Terminal in Roseville is adequate and no Environmental Impact Statement (EIS) is required.

5. Determined EA on Foley Woods in Coon Rapids is adequate and no EIS is required.

6. Determined EA on Foxrun 11 in Brooklyn Center is adequate and no EIS is required.

7. Determined EA on Countryside West in Bloomington be sent to hearing to determine whether or not an EIS should be required.

8. Determined EA on Williams Pipeline is adequate and that an EIS is required.

9. Ordered combined EA on Croixgate/Hooley P.U.D.s* in Stillwater with Washington County designated responsible agency.

10. Reconsidered EIS order on Red Rock Tank farm and Asphalt plant in St. Paul and revised order so that EIS address only the asphalt plant portion of project.

11. Found Winona Riverfront Final EIS adequate.

12. Determined to review Final EIS on "The Preserve" in Eden Prairie.

13. Accepted federal Draft EIS on Trans-Union P.U.D. as state EA and determined no state EIS is required.

14. Directed state agencies address any concerns regarding the Maple Grove/Boundary Creek P.U.D. to the federal draft document.

15. Determined to review Final EIS on 3M/Oakdale center.

16. In response to petition, determined no EA required on Worthington municipal pool.

17. In response to petition, determined no EA required on proposed Pleasant Pines campground near Hackensack.

18. Tabled Bergen Lake petition until specific project information available for review.

19. In response to petition, determined no EA required on St. Alban's Green housing near Lake Minnetonka.

20. Informed MP&L* no site designation would be made for MP&L-P-2 (Brookston, Floodwood area) until application for Certificate of Need has been made.

21. Adopted Findings of Fact, Conclusions and Recommendations regarding section of EIS rules relating to Power Plant siting.

22. Sent to hearing rules relating to charging of cost for EISs.

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* CPA - UPA — Cooperative Power Association - United Power Association
CURE — Counties United for Rural Environment
P.U.D. — Planned Unit Development
MP&L — Minnesota Power and Light Company

(End of EQC Monitor)

DEPARTMENT OF ADMINISTRATION

BUILDING CODE DIVISION

Proposed Rules Governing Solar Energy

Notice of Intent to Solicit Outside Opinion

Notice is hereby given that the State of Minnesota Building Code Division has begun consideration of proposed rules governing solar energy systems standards of performance. In order to adequately determine the nature and utility of such rules, the Building Code Division hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to the State of Minnesota Building Code Division, 408 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota, 55101. Oral statements of information and comment will be received during regular business hours over the telephone at 612-296-4627, and in person at the above address. All statements of information and comment must be received within 20 days of the above date.

The proposed rules, if adopted, would establish solar energy systems standards of performance regarding quality and performance of solar energy systems, including material, workmanship, design and performance.

Richard A. Brooks,
Acting Director
Building Code Division

DEPARTMENT OF NATURAL RESOURCES

Inclusion of the Rum River in the Minnesota Wild Scenic and Recreational Rivers System

Notice of Intention to Solicit Outside Opinion

Notice is hereby given that the Department of Natural Resources has begun consideration of the possible designation of the Rum River as a state Wild and Scenic River. In order to adequately determine the nature and utility of any rules associated with this designation, the Department of Natural Resources hereby requests information and comments from all interested individuals or groups concerning the subject matter of this proposed designation.

All interested or affected persons/or groups are requested to participate. Statements of information and comment may be made orally or in writing.

Please address these comments to:

Department of Natural Resources
Rivers Section
B-95 Centennial Office Building
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the phone at 612-296-6784, and in person at the above address.

No final action on this proposal can be taken until public hearings are conducted according to the rule making provisions of Minn. Stat. ch. 15. Sixty days notice of these public hearings will be published in the State Register. All statements of information and comment will be received until the hearing record closes.

Any proposed rules, if adopted, could regulate land uses, recreational development, and use of this river. Designation as a state Wild and Scenic River would also give the Department of Natural Resources the authority to purchase riverside lands or interests in land from willing sellers.

Robert L. Herbst,
Commissioner

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Room 211 Capitol
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