

85, July 22

# STATE REGISTER

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STATE OF MINNESOTA

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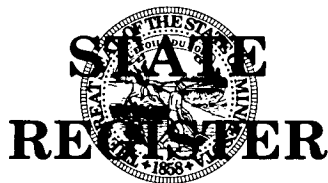
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July 22, 1985

Pages 133-260



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### Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME, 10			
5	Monday July 15	Monday July 22	Monday July 29
6	Monday July 22	Monday July 29	Monday August 5
7	Monday July 29	Monday August 5	Monday August 12
8	Monday August 5	Monday August 12	Monday August 19

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

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

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

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

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How to Follow State Agency Rulemaking Action in the State Register

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

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

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

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

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

Table with 2 columns: Issue range and Issue number. Includes: Issues 1-13, inclusive (Issue 39, cumulative for 1-39); Issues 14-25, inclusive (Issues 40-51, inclusive); Issue 26, cumulative for 1-26 (Issue 52, cumulative for 1-52); Issues 27-38, inclusive.

The listings are arranged in the same order as the table of contents of the Minnesota Rules 1983.

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# PROPOSED RULES

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

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

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

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

## Department of Energy and Economic Development

### Proposed Rules Governing the Waste Tire Recycling Grant Program

#### Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Energy and Economic Development Authority proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, section 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes 116M.08, subd. 4.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

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

Terry Brown  
Financial Management Division  
900 American Center Building  
150 East Kellogg Boulevard  
St. Paul Minnesota 55101  
Telephone: 612/297-1981

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule.

These rules specify procedures and criteria for grants from the Waste Tire Recycling Program of the Minnesota Energy and Economic Development Authority for studies to demonstrate the technical and economic feasibility of a proposed waste tire recycling project.

(A copy of the rule is available for review from Terry Brown at the above address upon request.)

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Terry Brown at the above address upon request.

If no hearing is required, upon adoption of the noncontroversial rule, the rule and the required supporting noncontroversial rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons

who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, must submit the written request to Terry Brown at the above address.

July 1, 1985

Mark B. Dayton, Chairman  
Minnesota Energy and Economic  
Development Authority

### **Rules as Proposed (all new material)**

#### **WASTE TIRE RECYCLING GRANT PROGRAM**

##### **8300.3091 SCOPE.**

Parts 8300.3092 to 8300.3097 specify procedures and criteria for grants from the waste tire recycling grant program of the authority for studies necessary to demonstrate the technical and economic feasibility of a proposed waste tire recycling project.

##### **8300.3092 DEFINITIONS.**

**Subpart 1. Scope.** The definitions in Minnesota Statutes, section 116M.03, part 8300.3082, and this part apply to parts 8300.3092 to 8300.3097.

**Subp. 2. Grant.** "Grant" means an award of funds for a study of a waste tire recycling project.

**Subp. 3. Study.** "Study" means the preparation and compilation of technical and economic data and analysis necessary to demonstrate the technical and economic feasibility of a proposed waste tire recycling project.

##### **8300.3093 APPLICATION AND PROCESSING PROCEDURE.**

To apply for a grant, an applicant shall submit an application to the authority on a form to be prepared by the commissioner. The application shall be processed under parts 8300.3014 [Emergency] and 8300.3091 to 8300.3097.

##### **8300.3094 CONTENTS OF GRANT APPLICATION.**

A grant application must include the following:

A. The information specified in part 8300.3012 [Emergency], subparts 1; 2; and 3, items A, B, F, and J.

B. The application must include a detailed work plan explaining how the applicant intends to prepare the study. The work plan must include a breakdown of tasks, personnel assigned to and responsible for each task, estimate of time required to complete each task, and a study schedule including beginning and ending dates for each task. Expected results and products of each task must be identified. The study must include the following information:

- (1) identification of individuals responsible for the proposed eligible project;
- (2) development of detailed information about construction costs of the proposed eligible project;
- (3) development of a business profile and market analysis for the proposed eligible project;
- (4) development of an engineering plan for the proposed eligible project;
- (5) development of an economic analysis for the proposed eligible project; and
- (6) development of a funding strategy for successive stages of the proposed eligible project development.

C. The study must include an estimate of expenditures by categories and an estimate of costs by study plan task.

D. The study must include a personnel organization chart and plan for use of consultants, if any.

##### **8300.3095 AUTHORITY REVIEW AND APPROVAL.**

**Subpart 1. Authority review and approval.** The authority will use the following criteria to evaluate applications:

A. thoroughness of study plan, up to a maximum of 40 points;

B. priority and public purpose of the proposed eligible project up to a maximum of 30 points;

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

## PROPOSED RULES

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C. qualifications of study personnel, up to a maximum of ten points;

D. benefit to the community based upon favorable preliminary economic analysis of the proposed eligible project up to a maximum of ten points; and

E. clarity and conciseness of the proposed study plan up to a maximum of ten points.

The authority shall approve grants that comply with Minnesota Statutes, section 116M.07, subdivision 3, and parts 8300.3096, subpart 3, and 8300.3097 on a first-come-first-serve basis based on the order in which eligible and complete grant applications are received by the authority and make the grant if funds are available.

**Subp. 2. Authority review and disapproval.** The authority shall disapprove the application if it finds that the criteria in parts 8300.3091 to 8300.3097 are not satisfied.

### 8300.3096 GRANT CONDITIONS.

**Subpart 1. Grant agreement; execution of grant agreement and disbursement of funds.** Upon approval of a grant, the authority shall send a grant agreement to the applicant. The applicant shall have a duly authorized official execute and return the grant agreement to the authority for execution of the grant agreement by state officials and for disbursement of the grant funds. Grant funds must be issued upon execution of and according to the terms of the grant agreement.

**Subp. 2. Funding period.** Grants will be approved for a period of up to one year if the applicant demonstrates the study will take more than one year to complete.

**Subp. 3. Grant limitations.** Grants shall not exceed 75 percent of the cost of the study. No single grant shall exceed \$30,000.

**Subp. 4. Disbursement schedule.** Eighty percent of grant money must be disbursed at the outset upon receipt of a grant request from the grantee. The remaining 20 percent must be disbursed upon completion of the project, and receipt of a complete final report.

**Subp. 5. Required reports.** The grantee shall submit to the commissioner on the first of each month a one to two page report briefly stating the activities that have taken place during the month. The grantee shall provide the commissioner with three copies of the final planning report, one of which shall be camera-ready copy.

**Subp. 6. Records.** The grantee shall maintain financial records according to generally recognized accounting methods for a period of not less than three years from the date of the execution of the contract of all transactions relating to the receipt and expenditure of grant money.

**Subp. 7. Contract deviations.** No grant funds may be used for work done prior to the time the grant is awarded. No grant funds may be used to finance activities by consultants or local staff if the activities are not included in the grant contract, unless agreed upon in writing by the commissioner.

### 8300.3097 EVALUATION.

**Subpart 1. Evaluation.** The commissioner shall conduct an evaluation of the final report and all required reports and financial documents within 60 days of submission by the grantee to the commissioner. The evaluation must assess whether the agreed upon work program was completed.

**Subp. 2. Review.** Upon completion of an evaluation, the remaining 20 percent of the grant must be disbursed to the grant recipient, if the commissioner determines that the grantee has complied with the grant agreement. If the commissioner determines the grantee has not complied with the terms of the grant agreement, the commissioner shall not disburse the remaining 20 percent of the grant funds and shall inform the applicant in writing of the reason for the commissioner's determination. Within 30 days of receipt of the notice, the grantee may request in writing that the commissioner submit the question of disbursement of grant funds to the authority for review at the next regularly scheduled authority meeting, for which the agenda has not been established.

## Department of Energy & Economic Development

### Withdrawal of Proposed Emergency Rules Governing the Waste Tire Recycling Grant Program

The emergency rules for the Waste Tire Recycling Program, Minnesota Rules 8300.3091-.3097, published in the *State Register* on Monday, June 24, 1985, pages 2742-2744 (9 SR 2742), are withdrawn because the authority of the Minnesota Energy and Economic Development Authority to write emergency rules under 116M.08, subd. 4, expired June 30, 1985.



## **Department of Human Services**

### **Proposed Rules Governing the Funding and Administration of Home and Community-based Services for Persons with Mental Retardation**

#### **Notice of Intent to Adopt a Rule without a Public Hearing and Notice of Intent to Adopt a Rule with a Public Hearing if Twenty-Five or More Persons Request a Hearing**

Notice is hereby given that the State Department of Human Services proposes to adopt the above-mentioned rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, sections 256B.092, subdivision 6; 256B.501, subdivision 2; 256B.502 and 256B.503.

Persons interested in this rule shall have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule and comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUEST FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON AUGUST 28, 1985 IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services before August 28, 1985 at (612) 297-4302.

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

Jane Delage  
Department of Human Services  
Rules Unit  
4th Floor Centennial Office Building  
St. Paul, MN 55155  
Telephone 612/297-4302

All comments or requests for hearing must be received by the Department by 4:30 p.m. on August 21, 1985.

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

Minnesota Rules, parts 9525.1800 to 9525.1930 govern the funding and administration of home and community-based services to persons with mental retardation under the Medical Assistance Program and establish licensing and training requirements for home and community-based service providers.

Parts included in the proposed rule parts are definitions; applicability and effect; eligibility; provision of home and community-based services; parental contribution fee; provider reimbursement; reimbursable services; provider contracts and subcontracts; county proposal and approval of county proposal; allocation of home and community-based service money; agreement between state and county; county board funding of home and community-based services, required records and reports; penalties and appeals.

Parts 9525.1800 to 9525.1930 are proposed as permanent rule parts to replace parts 9525.1800 to 9525.1930 [Emergency], as amended (commonly known as Rule 41). The substance of the proposed permanent rule parts remains essentially the same as in the emergency rule parts.

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

## PROPOSED RULES

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A copy of the rule is available upon request for your review from:

Susan Canine  
Department of Human Services  
Mental Retardation Division  
4th Floor Centennial Office Building  
St. Paul, MN 55155  
Telephone 612/297-1241

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Susan Canine upon request.

The Department estimates that the cost to all local public bodies of implementing these rules will not exceed \$100,000 in either of the first two years following the adoption of parts 9525.1800 to 9525.1930.

If no hearing is required upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Jane Delage.

July 2, 1985

Leonard W. Levine  
Commissioner of Human Services

### **Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer Than Twenty-Five Persons Request a Hearing in Response to Notice of Intent to Adopt Rules without a Public Hearing**

#### **Minnesota Rules, parts 9525.1800 to 9525.1930.**

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in the State Office Building, Room 200, 435 Park Avenue, St. Paul, Minnesota 55155 on August 28, 1985 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between August 21 and August 28, 1985 at 612/296-2147.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Howard Kaibel, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone 612/341-7608, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may, at the hearing, order the record to be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, section 14.50. The rule hearing is governed by Minnesota Statutes, sections 14.01 to 14.56 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Rules, parts 9525.1800 to 9525.1930 govern the funding and administration of home and community-based services to persons with mental retardation under the medical assistance program and establish licensing and training requirements for home and community-based service providers.

Parts included in the proposed rule are definitions; applicability and effect; eligibility; provision of home and community-based services; parental contribution fee; provider reimbursement; reimbursable services; provider contracts and subcontracts; county

proposal and approval of county proposal; allocation of home and community-based service money; agreement between state and county; county board funding of home and community-based services; required records and reports; and penalties and appeals.

Parts 9525.1800 to 9525.1930 are proposed as permanent rule parts to replace parts 9525.1800 to 9525.1930 [Emergency], as amended (commonly known as Rule 41). The substance of the proposed permanent rule parts remains essentially the same as in the emergency rule parts.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, sections 256B.092, subdivision 6, 256B.501, subdivision 2; 256B.502 and 256B.503. The Department estimates that the cost to all public bodies of implementing these rules will not exceed \$100,000 in either of the first two years following the rules' adoption.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Susan Canine, Department of Human Services, Mental Retardation Division, 4th Floor, Centennial Building, St. Paul, Minnesota 55155; telephone 612/297-1241.

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Bob Meyer, Department of Human Services, Mental Retardation Division, 4th Floor, Centennial Building, St. Paul, Minnesota 55155; telephone 612/296-2147.

**NOTICE:** Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any persons may request notification of the date on which the rules are adopted and filed with the Secretary of State. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the Secretary of State.

**NOTICE IS HEREBY GIVEN** that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01 subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) who spends more than \$250, not including travel expenses and membership dues; in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155; telephone: 612/296-5615.

July 2, 1985

Leonard W. Levine, Commissioner  
Department of Human Services

### **Rules as Proposed (all new material)**

#### **9525.1800 DEFINITIONS.**

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

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

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

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## PROPOSED RULES

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

**Subp. 5. Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designated representative.

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

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

**Subp. 8. Daily intervention.** "Daily intervention" means supervision, assistance, or training provided to a person in the person's residence by a provider, family member, or foster family member to help the client manage daily activities. To qualify as daily intervention the supervision, assistance, or training must be provided each day for more than 90 consecutive days.

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

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

**Subp. 11. Family.** "Family" means a person's biological parents, adoptive parents or stepparents, siblings, children, or spouse.

**Subp. 12. Fiscal year.** "Fiscal year" means the state's fiscal year from July 1 through the following June 30.

**Subp. 13. Geographic region.** "Geographic region" means one of the economic development regions established by executive order of the governor in accordance with Minnesota Statutes, section 462.385, in effect on July 1, 1984.

**Subp. 14. Home and community-based services.** "Home and community-based services" means the following services for persons with mental retardation, that are authorized under United States Code, title 42, section 1396 et. seq., and authorized in the waiver granted by the United States Department of Health and Human Services: case management, respite care, homemaker, in-home family support services, supported living arrangements for children, supported living arrangements for adults, day habilitation, and minor physical adaptations to the home, as defined in part 9525.1860 and other home and community-based services authorized under United States Code, title 42, section 1396 et seq., if approved for Minnesota by the United States Department of Health and Human Services.

**Subp. 15. Host county.** "Host county" means the county in which the home and community-based service is provided.

**Subp. 16. Individual habilitation plan.** "Individual habilitation plan" has the meaning given it in parts 9525.0015 to 9525.0145 [Emergency].

**Subp. 17. Individual service plan.** "Individual service plan" has the meaning given it in parts 9525.0015 to 9525.0145 [Emergency].

**Subp. 18. Intermediate care facility for the mentally retarded or (ICF/MR).** "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to serve persons with mental retardation under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded. Unless otherwise stated, the term ICF/MR includes state-operated and community-based facilities.

**Subp. 19. Placement.** "Placement" means the act of providing home and community-based services to a person who has been discharged from an ICF/MR.

**Subp. 20. Primary caregiver.** "Primary caregiver" means a person other than a member of the client's family who has primary responsibility for the assistance, supervision, or training of the client in the client's residence.

**Subp. 21. Provider.** "Provider" means a person or legal entity providing home and community-based services for reimbursement under parts 9525.1800 to 9525.1930.

**Subp. 22. Room and board costs.** "Room and board costs" means costs associated with providing food, shelter, and personal needs items for clients, including the directly identifiable costs of:

- A. normal and special diet food preparation and service;
- B. linen, bedding, laundering, and laundry supplies;
- C. housekeeping, including cleaning and lavatory supplies;
- D. maintenance and operation of the building and grounds, including fuel, electricity, water, supplies, and parts and tools to repair and maintain equipment and facilities; and
- E. allocation of salaries and other costs related to these areas.

**Subp. 23. Screening team.** "Screening team" means the team established under Minnesota Statutes, section 256B.092 to evaluate a person's need for home and community-based services.

**Subp. 24. Service site.** "Service site" means the location at which home and community-based services are provided.

**Subp. 25. Short term.** "Short term" means a cumulative total of less than 90 24-hour days in a fiscal year.

**Subp. 26. Statewide average reimbursement rate.** "Statewide average reimbursement rate" means the dollar amount arrived at by dividing the total amount of money available under the waiver for the fiscal year by 365 days and then dividing the quotient by the department's projection of the total number of clients to receive home and community-based services as stated in the waiver for that fiscal year.

**Subp. 27. Waiver.** "Waiver" means the waiver of Title XIX of the Social Security Act requirements to allow the state to pay for home and community-based services for persons with mental retardation, and all amendments to the waiver including any amendments made after the effective date of parts 9525.1800 to 9525.1930, as approved by the United States Department of Health and Human Services under United States Code, title 42, section 1396 et. seq.

#### **9525.1810 APPLICABILITY AND EFFECT.**

**Subpart 1. Applicability.** Parts 9525.1800 to 9525.1930 apply to all county boards administering medical assistance funds for home and community-based services for persons with mental retardation, to all providers that contract with a county board to provide home and community-based services for persons with mental retardation, and to all subcontractors who contract with a provider to provide home and community-based services for persons with mental retardation.

**Subp. 2. Effect.** The entire application of parts 9525.1800 to 9525.1930 shall continue in effect only as long as the waiver from the United States Department of Health and Human Services is in effect in Minnesota.

#### **9525.1820 ELIGIBILITY.**

**Subpart 1. Eligibility criteria.** A person is eligible to receive home and community-based services if the person meets all the criteria in items A to D and if home and community-based services may be provided in accordance with part 9525.1830:

A. the person is eligible to receive medical assistance under Minnesota Statutes, chapter 256B or subpart 2;

B. the person is determined to be a person with mental retardation in accordance with the definitions and procedures in parts 9525.0015 to 9525.0145 [Emergency];

C. the person is a resident of an ICF/MR or it is determined by the screening team that the person would be placed in an ICF/MR within one year if home and community-based services are not provided; and

D. the screening team has determined that the person needs daily intervention and the person's individual service plan documents the need for daily intervention and specifies the services needed daily.

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

A. the person meets the criteria in subpart 1, items B to D;

B. the person will be provided home and community-based services in accordance with part 9525.1830;

C. the person would not be eligible for medical assistance if parental income and resources were considered; and

D. the commissioner has approved in writing a county board's request to suspend for the person the deeming requirements in Code of Federal Regulations, title 42, section 436.821 in accordance with the waiver.

#### **9525.1830 PROVISION OF HOME AND COMMUNITY-BASED SERVICES.**

**Subpart 1. Conditions.** The county board shall provide or arrange to provide home and community-based services to a person if the person is eligible for home and community-based services under part 9525.1820 and all the conditions in items A to F have been met:

A. the county board has determined that it can provide home and community-based services to the person within its allocation of home and community-based services money as determined under parts 9525.1890 and 9525.1910;

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B. the screening team has recommended home and community-based services instead of ICF/MR services for the person under parts 9525.0015 to 9525.0145 [Emergency];

C. the commissioner has authorized payment for home and community-based services for the person;

D. the person or the person's legal representative has agreed to the home and community-based services determined by the screening team to be appropriate for the person;

E. the county board has authorized provision of home and community-based services to the person based on the goals and objectives specified in the person's individual service plan; and

F. the county board has a signed agreement with the state that complies with part 9525.1900.

**Subp. 2. Written procedures and criteria.** The county board shall establish written procedures and criteria for making determinations under subpart 1, item A. The procedures and criteria must be consistent with requirements in parts 9525.1800 to 9525.1930, the waiver, federal regulations governing home and community-based services, and the goals established by the commissioner in part 9525.1880, subpart 3.

### 9525.1840 PARENTAL CONTRIBUTION FEE.

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

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

### 9525.1850 PROVIDER REIMBURSEMENT.

A provider may receive medical assistance reimbursement for home and community-based services only if the provider meets the criteria in items A to J. The training, experience, and supervision required in items B to E only apply to persons who are employed by, or under contract with, the provider to provide services that can be billed under part 9525.1860, subpart 3, item A.

A. The provider has a current license or licenses for the specific home and community-based services as required under Minnesota Statutes or Minnesota Rules or, if no license is required, has received approval from the county board to provide home and community-based services.

B. The provider ensures that the provider and all employees or subcontractors meet all professional standards established in Minnesota Statutes, Minnesota Rules, and Code of Federal Regulations that apply to the services to be provided. If no training standards have been established, the provider, employee, or subcontractor must have completed, within the last two years, at least 24 hours of documented training subject to approval by the case manager. The training must be in areas related to the care, supervision, or training of persons with mental retardation including first aid, medication administration, behavior management, cardiopulmonary resuscitation, human development, and obligations under Minnesota Statutes, sections 626.556 and 626.557. The county board may grant a variance to the training requirements in this item for:

(1) a respite care provider who provides the respite care in his or her residence or in the client's residence; or

(2) a provider who ensures that the training will be completed within six months of the date the contract is signed. This item does not apply to providers of minor physical adaptations.

C. The provider ensures that the provider and all employees or subcontractors have at least one year of experience within the last five years in the care, training, or supervision of persons with mental retardation or related conditions as defined in Minnesota Statutes, section 252.27. The county board may grant a variance to the requirements in this item for:

(1) a respite care provider who provides the respite care in his or her residence or in the client's residence; or

(2) an employee of the provider if the employee will work under the direct on-site supervision of a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401, and who has been approved by the case manager. This item does not apply to providers of minor physical adaptations or homemaker services.

D. The provider ensures that all home and community-based services, except homemaker services, respite care services, and minor physical adaptations, will be provided by, or under the supervision of a qualified mental retardation professional who meets the requirements in Code of Federal Regulations, title 42, section 442.401, and has been approved by the case manager.

E. The provider ensures that the provider and all employees or subcontractors will complete the amount of ongoing training required in any Minnesota rules applicable to the home and community-based services to be provided. If no ongoing training is required by the applicable Minnesota rules, the provider, except a provider of minor physical adaptations, agrees that the provider and all employees or subcontractors will complete at least 18 hours of documented ongoing training each fiscal year. To meet the requirements of this item, the ongoing training must be in a field related to the care, training, and supervision of persons with mental

retardation, and must be approved by the case manager based on the needs identified in the individual service plans of the clients served by the provider. The county board may grant a variance to the requirements in this item for a respite care provider who provides the respite care in his or her residence or in the client's residence.

F. The provider ensures that the provider and all employees or subcontractors have never been convicted of a violation, or admitted violating Minnesota Statutes, section 626.556 or 626.557 and there is no substantial evidence that the provider, employees, or subcontractors have violated Minnesota Statutes, section 626.556 or 626.557.

G. The provider has a legally binding contract with the host county that complies with part 9525.1870.

H. The provider has been authorized in writing to provide home and community-based services for the client by the county of financial responsibility.

I. The provider agrees in writing to comply with United States Code, title 42, sections 1396 et seq. and regulations implementing those sections and with applicable provisions in parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1800 to 9525.1930.

J. The provider is not the client's guardian or a member of the client's family. This item does not preclude the county board from providing services if the client is a ward of the commissioner.

#### **9525.1860 REIMBURSABLE SERVICES.**

**Subpart 1. General limits.** The costs of providing the home and community-based services defined in subpart 2, provided in accordance with subparts 3 to 5, are reimbursable under the medical assistance program for as long as the waiver from the United States Department of Health and Human Services is in effect in Minnesota.

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

A. "Case management" means identifying the need for, seeking out, acquiring, authorizing, and coordinating services to persons with mental retardation; and monitoring the delivery of the services to, and protecting the rights of, the persons with mental retardation, by an individual designated by the county board to provide case management services under parts 9525.0015 to 9525.0145 [Emergency].

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

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

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

E. "In-home family support services" means residential-based habilitation services designed to enable the family to care for and maintain the client in the home and may include training and counseling for the client and the client's family.

F. "Leave days" means days when a client is temporarily absent from services.

G. "Minor physical adaptations to the home" means one or more of the structural changes to the client's residence set forth in subpart 3, item E. Minor physical adaptations to the home must be designed to enable the client to avoid placement in an ICF/MR by increasing the client's mobility or protecting the client or other persons from injury. Minor physical adaptations to the home are only reimbursable for clients with mobility problems, sensory deficits, or behavior problems. Minor physical adaptations are limited to those named in subpart 3, item E.

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

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## PROPOSED RULES

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

J. "Supported living arrangements for adults" means residential-based habilitation services provided on a daily basis to adults in a service site for up to six clients.

K. "Supported living arrangements for children" means residential-based habilitation services provided on a daily basis to clients under 18 years of age in a service site for up to three clients.

L. "Other home and community-based services" means any other home and community-based services authorized under United States Code, title 42, section 1396 et seq., if approved for Minnesota by the United States Department of Health and Human Services.

**Subp. 3. Billing for services.** Billings submitted by the provider except a provider of minor physical adaptations must be limited to time actually and reasonably spent:

A. In direct contact with the client to assist the client in attaining the goals and objectives specified in the client's individual service plan. Direct contact time includes time spent traveling to and from service sites.

B. In verbal or written contact with professionals or others regarding the client's progress in attaining the goals and objectives specified in the client's individual service plan.

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

**Subp. 4. Service limitations.** The provision of home and community-based services is limited to items A to H.

A. Day habilitation services must:

(1) only be provided to clients who receive a residential-based habilitation service;

(2) not include sheltered work or work activity services funded or certified by the Minnesota Division of Vocational Rehabilitation;

(3) be provided at a different service site than the client's place of residence unless medically contraindicated, as required in Minnesota Statutes, section 256B.501, subdivision 1, paragraph (d); and

(4) be provided by an organization that does not have a direct or indirect financial interest in the organization that provides the client's residential services unless the client is residing with his or her family or foster family.

B. Homemaker services may be provided only if:

(1) the person regularly responsible for these activities is temporarily absent or is unable to manage the home and care for the client; or

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

C. Leave days are reimbursable for supported living arrangements for children or supported living arrangements for adults, if the client intends to return to the service. Billings may be made for leave days only when the client is:

(1) hospitalized;

(2) on a therapeutic overnight trip, camping trip, or vacation; or

(3) home for a visit.

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

D. Reimbursement for minor physical adaptations to the home shall be limited to an average cost of \$3,000 per client for all clients in the county in fiscal year 1985. The average cost will be increased each fiscal year based on the first quarter forecast of the projected percentage change in the annual value of the all urban consumer price index, (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics new series index (1967 = 100), from the preceding fiscal year. The CPI-U is incorporated by reference and is available from the Minitex Interlibrary Loan System. The average cost limitation applies to the entire period of



time for which the waiver has been approved. Minor physical adaptations to the home must be limited to the purchase and installation of one or more of the following:

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

(13) other minor physical adaptations authorized under United States Code, title 42, section 1396 et seq., if approved for Minnesota by the United States Department of Health and Human Services.

Minor physical adaptations must be constructed in accordance with applicable state and local building codes.

E. Home and community-based services are not reimbursable if provided to a client while the client is a resident of or on leave from an ICF/MR, skilled nursing facility, intermediate care facility, or a hospital. This item shall not apply to leave days authorized in accordance with item C for a client who is hospitalized.

F. Respite care must:

- (1) be provided only for the relief of the client's family or foster family, or if the client is in a supported living arrangement in the provider's residence, for the relief of the client's primary caregiver; and
- (2) be provided in a service site serving no more than six clients at one time.

If there are no service sites that meet the requirements in subitem (2) available in the community to serve clients with multiple handicaps, the county board may grant a variance to the requirement for a period of no more than one year for each client. When a variance is granted, the county board must submit to the commissioner a written plan documenting the need for the variance and stating the actions that will be taken to develop services within one year that meet the requirements of subitem (2).

G. Room and board costs are not allowable costs for home and community-based services except respite care provided out of the client's residence. All room and board costs must be directly identified on reports submitted by the provider to the county board.

H. For the purposes of this item, the services in subitems (1) to (9) have the meanings given them in parts 9500.0750 to 9500.1080:

- (1) psychological services;
- (2) physical therapy;
- (3) occupational therapy;
- (4) speech, hearing, and language disorder services;
- (5) mental health center services;
- (6) rehabilitative and therapeutic services;
- (7) home health care services;
- (8) private duty nursing services; and
- (9) personal care attendant services.

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The services in subitems (1) to (9) must be provided by a professional licensed or certified by the state to provide the services or by a person supervised by a licensed or certified professional. If any of these services are provided to a client, the cost of the services must be included in the rate or rates billed by the provider or providers for reimbursement under parts 9525.1800 to 9525.1930. These services are not reimbursable under any other rule or rules for clients in home and community-based services.

**Subp. 5. Other applicable rules.** Home and community-based services must be provided as required under items A to G.

A. Homemaker services must be provided in compliance with parts 9565.1000 to 9565.1300.

B. Day habilitation and training services must be licensed by the department.

C. Supported living arrangements for children must be provided at a service site licensed under parts 9545.0010 to 9545.0260.

D. Supported living arrangements for adults which are provided in a service site serving more than four adults must be licensed under parts 9525.0210 to 9525.0430. Supported living arrangements provided at a service site for four or fewer adults must be approved under parts 9555.6100 to 9555.6400; 9545.0090, item A; 9545.0140; 9545.0180; and 9545.0190, subparts 3 and 5. In approving supported living arrangements provided at a service site for four or fewer adults, the county board shall apply the criteria in parts 9545.0090, item A; 9545.0140; 9545.0180; and 9545.0190, subparts 3 and 5 as though the criteria had been written to apply to services for adults.

E. Respite care provided at a service site serving more than four clients must be licensed under parts 9525.0210 to 9525.0430. Respite care provided at a service site serving four or fewer clients under 18 years of age must be licensed under parts 9545.0010 to 9545.0260. Respite care provided at a service site serving four or fewer adults must be approved under parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400. Respite care provided at a service site for four or fewer children and adults must be approved under parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400 and licensed under parts 9545.0010 to 9545.0260. This item shall not apply to a person who provides respite care for fewer than 30 days a year.

F. The county board may request a variance from compliance with parts 9545.0010 to 9545.0260 as required in item C, D, or E, for a provider who provides services to clients under 18 years of age if the county board determines that granting the variance will not endanger the health, safety, or development of the persons receiving the services. The written variance request must be submitted to the commissioner and must contain:

(1) the sections of parts 9545.0010 to 9545.0260 with which the provider cannot comply;

(2) the reasons why the provider cannot comply with the specified section or sections; and

(3) the specific measures that will be taken by the provider to ensure the health, safety, or development of the persons receiving the services.

The commissioner shall grant the variance request if the commissioner determines that the variance was submitted in accordance with this item and that granting the variance will not endanger the health, safety, or development of the persons receiving the services.

The commissioner shall review the county board's variance request and notify the county board, in writing, within 30 days if the variance request has been granted or denied. If the variance request is denied, the notice must state the reasons why the variance request was denied and inform the county board of its right to request that the commissioner reconsider the variance request.

G. The county board may grant a variance from compliance with parts 9545.0090, item A; 9545.0140; 9545.0180; 9545.0190, subparts 3 and 5; and 9555.6100 to 9555.6400 as required in items D and E, for a provider who provides services to adults if the county board determines that granting the variance will not endanger the health, safety, or development of the persons with mental retardation.

### 9525.1870 PROVIDER CONTRACTS AND SUBCONTRACTS.

**Subpart 1. Contracts.** To receive medical assistance reimbursement for home and community-based services, the provider must have a contract developed in accordance with parts 9550.0010 to 9550.0092 as proposed at *State Register*, Volume 9, Number 48, pages 2566 to 2576 (May 27, 1985), with the host county. In addition to the requirements in parts 9550.0010 to 9550.0092 as proposed at *State Register*, Volume 9, Number 48, pages 2566 to 2576 (May 27, 1985), the contract must contain the information in items A to F and subpart 2:

A. maximum and minimum number of clients to be served;

B. description of how the services will benefit the clients in attaining the goals in the clients' individual service plans;

C. description of how the benefits of the services will be measured;

D. an agreement to comply with parts 9525.1800 to 9525.1930;

E. description of ongoing training to be provided under part 9525.1850, item E; and

F. other provisions the county board determines are needed to ensure the county's ability to comply with part 9525.1900.

**Subp. 2. Required provision.** Each contract and subcontract must contain the following provision. If any contract does not contain the following provision, the provision shall be considered an implied provision of the contract.

“The provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as a third-party beneficiary, is an affected party under this contract. The provider specifically acknowledges and agrees that the Minnesota Department of Human Services has standing to and may take any appropriate administrative action or sue the provider for any appropriate relief in law or equity, including, but not limited to, rescission, damages, or specific performance, of all or any part of the contract between the county board and the provider. The provider specifically acknowledges that the county board and the Minnesota Department of Human Services are entitled to and may recover from the provider reasonable attorney's fees and costs and disbursements associated with any action taken under this paragraph that is successfully maintained. This provision shall not be construed to limit the rights of any party to the contract or any other third party beneficiary, nor shall it be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity.”

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

- A. have written permission from the host county to subcontract;
- B. ensure that the subcontract meets all the requirements of subpart 1;
- C. ensure that the subcontractor meets the requirements in part 9525.1850; and
- D. ensure that the subcontractor performs fully the terms of the subcontract.

**Subp. 4. Noncompliance.** If the provider or subcontractor fails to comply with the contract, the county board may seek any available legal remedy.

The county board shall notify the commissioner in writing within 30 days when the county board has reasonable grounds to believe that a contract required under this part has been breached in a material manner or that a provider or subcontractor has taken any action or failed to take any action that constitutes anticipatory breach of the contract. The county board may allow the provider or subcontractor a reasonable amount of time to cure the breach or anticipatory breach. The county board shall notify the commissioner in writing within ten working days if the provider or subcontractor takes any action or fails to take any action in response to the opportunity to cure. In the notice, the county board shall inform the commissioner of the action the county board intends to take.

#### **9525.1880 COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.**

**Subpart 1. Application forms and deadlines.** To be considered for reimbursement under parts 9525.1800 to 9525.1930, county boards, singly or jointly, must submit to the commissioner an annual proposal for the provision of home and community-based services to clients for which the county board or county boards are financially responsible. The commissioner shall notify the county boards of the deadlines and forms for the submission of proposals for home and community-based services.

**Subp. 2. Contents of county proposal.** The proposal must be based on the needs of individually identified persons in the county and must:

A. State measurable program goals and objectives to be accomplished by the home and community-based services.

B. Identify the number of persons to whom the county board expects to provide the home and community-based services. If county boards are applying jointly, each county board must identify the number of persons for which the county is financially responsible. The proposal must include the information in subitems (1) to (6) with separate listings in each category for children and adults:

- (1) current living arrangements;
- (2) current day programs;
- (3) level of supervision required;
- (4) the type of home and community-based services projected to be needed and the expected duration of the service or services;
- (5) the projected starting dates of the home and community-based services; and

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## PROPOSED RULES

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(6) the proposed service provider or providers and billing rate or rates, if known.

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

D. Describe how the county board proposal affects the targets developed by the department on admission of children to state hospitals and discharge of children from state hospitals as required in the *Welsch v. Levine* consent decree.

E. Describe how the proposal limits the development of new community-based ICF/MR beds and reduces the county's use of existing ICF/MR beds in state-operated ICFs/MR and community ICFs/MR, including any steps the county board has taken to encourage voluntary decertification of community-based ICF/MR beds.

F. Describe the steps the county board has taken to prepare to provide home and community-based services, including efforts to integrate home and community-based services into the county board's administrative services planning system.

**Subp. 3. Review and approval of proposal.** The commissioner shall review all proposals submitted in accordance with subparts 1 and 2. The commissioner shall only approve the county proposals that meet the requirements of parts 9525.1800 to 9525.1880 and that demonstrate compliance with the goals of the department as stated in items A to D:

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

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

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

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

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

### 9525.1890 ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.

**Subpart 1. Allocation of diversions.** To allocate home and community-based services money for diversions, the commissioner shall project the number of diversions for the county based on the average of the projected utilization of state-operated and community-based ICF/MR beds using historical utilization for the county; and the projected per capita utilization of state-operated and community-based ICF/MR beds for the county, both of which are adjusted to conform with the number of diversions projected in the waiver. The projection shall be adjusted based on the county board's actual use of allocated diversions during the previous fiscal year. If the county board uses less than the number of diversions allocated for the previous fiscal year, the commissioner may decrease the number of diversions projected by the commissioner for the county for the next fiscal year. The county board's allocation of money for diversions shall be based on the lesser of the number of diversions in the approved county proposal and the number of diversions projected for the county by the commissioner.

**Subp. 2. Allocation of placements.** The county board's allocation of money for placements shall be based on the number of placements in the approved county proposal and the extent to which the placements result in an overall reduction in the county board's historical utilization of state-operated and community-based ICF/MR beds.

**Subp. 3. Notification of allocation.** The commissioner shall notify all county boards, in writing, of the amount of home and community-based services money allocated to each county board or, if the proposal was submitted jointly, to the group of county boards.

**Subp. 4. Review of allocation; reallocation.** The commissioner shall review the projected and actual use of home and community-based services by all county boards participating in the program on a quarterly basis, and report the findings to all the county boards in the state. The commissioner may reduce the allocation to a county board if the commissioner determines, in consultation with the county board, that the initial allocation to the county board will not be used during the allocation period. The commissioner may reallocate the unused portion of the county board's initial allocation to another county board, or other county boards, in the same geographic region that plan to expand home and community-based services or provide home and community-based services for the first time. If there is not a sufficient number of projections to use the unused allocation from county boards within the geographic region, the commissioner may reallocate the remainder to another county board or other county boards in other geographic regions that plan to expand home and community-based services or provide home and community-based services for the first time.

**Subp. 5. Preference given.** The commissioner may give preference during the reallocation process and in the allocation of money for subsequent fiscal years to proposals submitted by county boards that have not previously provided home and community-

based services. In allocating money for each fiscal year, the commissioner shall give priority to the continued funding of home and community-based services for clients who received home and community-based services in the previous fiscal year and continue to be eligible for home and community-based services.

**Subp. 6. Special projects.** The commissioner may reallocate or reserve available home and community-based service money to fund special projects designed to serve very dependent persons with special needs who meet the criteria in parts 9525.1820 and 9510.1050, subpart 2, items C and D as proposed at *State Register*, Volume 10, Number 2, pages 54 to 65 (July 8, 1985). The reallocated or reserved money may be used to provide additional money to county boards that are unable to fund home and community-based services for very dependent persons with special needs within the statewide reimbursement rate as required in part 9525.1910, subpart 2.

#### **9525.1900 AGREEMENT BETWEEN STATE AND COUNTY.**

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

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

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

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

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

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

F. the county board will comply with all applicable standards in parts 9525.0015 to 9525.0145 [Emergency];

G. the county board will comply with parts 9525.1800 to 9525.1930;

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

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

**Subp. 2. Additional requirements.** If the county board provides home and community-based services in addition to case management, the agreement must specify the services to be provided by the county board.

The agreement must include a provision specifying that the county board agrees that the commissioner may reduce or discontinue reimbursement, or seek other legal remedies if the county board fails to comply with the provisions of the agreement and parts 9525.1800 to 9525.1930.

#### **9525.1910 COUNTY BOARD FUNDING OF HOME AND COMMUNITY-BASED SERVICES.**

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

**Subp. 2. Distribution of money.** The total amount of money allocated to a county board for home and community-based services in a fiscal year shall not exceed the statewide average daily reimbursement rate multiplied by the total number of days the home and community-based services will be provided to the clients.

**Subp. 3. Rate setting.** The host county shall determine the rates to be paid to providers for home and community-based services and retain documentation of the process and data used to determine the rate. The commissioner shall review rates to ensure that the criteria in subpart 4, item C are met.

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

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## PROPOSED RULES

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

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

C. The cost of each service must satisfy the following criteria:

(1) the cost is ordinary, necessary, and related to client care;

(2) the cost is for activities which are generally accepted in the field of mental retardation and are scientifically proven to promote achievement of the goals and objectives contained in the client's individual service plan;

(3) the cost is what a prudent and cost conscious business person would pay for the specific good or service in the open market in an arm's length transaction; and

(4) the cost is for goods or services actually provided.

**Subp. 5. Assessment for costs which exceed allocation.** If the total expenditures by the state under parts 9525.1800 to 9525.1930 do not meet the federal requirements under the waiver and as a result federal financial participation is denied, disallowed, or required to be returned, the commissioner shall assess a portion of the cost to each county board that incurred costs which exceeded the total allocation for that county. The portion assessed must be based on the costs that exceed or exceeded the county board's allocation.

### 9525.1920 REQUIRED RECORDS AND REPORTS.

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

**Subp. 2. County board records.** The county board shall maintain complete fiscal records and supporting documentation identifying the clients served and the services and costs provided under the county board's agreement with the department. If the county board provides home and community-based services in addition to case management, the county board's records must include the information required in part 9525.1870. The county board records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.1750 to 9505.2150.

**Subp. 3. Availability of records.** The county board's, the provider's, and the subcontractor's financial records described in subparts 1 and 2, must be available, on request, to the commissioner and the federal Department of Health and Human Services in accordance with parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1800 to 9525.1930.

**Subp. 4. Retention of records.** The county board, the providers, and the subcontractors shall retain a copy of the records required in subparts 1 and 2 for five years unless an audit in process requires a longer retention period.

### 9525.1930 PENALTIES AND APPEALS.

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

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

**Subp. 2. Exception.** Providers who contracted with the county board to provide home and community-based services before May 1, 1985, have until January 1, 1986, to comply with parts 9525.1850, items B to F; 9525.1860, subpart 3, item G, subitem (2); 9525.1860, subpart 4; and 9525.1870, subpart 1, item E.

**Subp. 3. Failure to enforce.** The county board shall be held liable for any damages or costs to the department for failure of the county board to enforce contracts entered into under parts 9525.1800 to 9525.1930 or for any action or inaction which impedes enforcement by the commissioner.

**Subp. 4. Appeals by county boards.** Before the commissioner withholds, recoups, or withdraws the county board's allocation under subpart 1, the commissioner shall give 30 days written notice to the county board and send a copy of the written notice to the affected providers or subcontractors. The written notice shall inform the county board, provider, or subcontractor of the right to a hearing under the contested case procedures of Minnesota Statutes, chapter 14. If the commissioner receives a written appeal of the

commissioner's action within 30 days of the date the written notice is sent, the commissioner shall initiate a contested case proceeding. The written appeal must state the reasons the county board, provider, or subcontractor is appealing the commissioner's action. The commissioner shall not take the proposed action before the hearing unless, in the commissioner's opinion, the action is necessary to protect the public welfare and the interests of the home and community-based services program.

**Subp. 5. Appeals by individuals.** Notice, appeals, and hearing procedures shall be conducted as follows:

A. A person who is considered for, or receiving, home and community-based services has a right to a hearing under Minnesota Statutes, section 256.045 if:

- (1) the county board fails to follow the written procedures and criteria established under part 9525.1830, subpart 2; or
- (2) the county board fails to authorize services in accordance with part 9525.1830, subpart 1, item E; or
- (3) the provisions of parts 9525.1820 and 9525.1830 are met and the person is:
  - (a) not informed of the home and community-based services that are feasible for the person; or
  - (b) denied the right to choose between the feasible home and community-based services and ICF/MR services.

B. It is an absolute defense to an appeal under item A, subitem (1), if the county board proves that it followed the established written procedures and criteria and determined that home and community-based services could not be provided to the person within the county board's allocation of home and community-based services money.

C. Notice, appeal, and hearing procedures shall be conducted in accordance with Minnesota Statutes, section 256.045.

## Department of Human Services

### Proposed Rules Relating to Administration of Community Social Services

#### Notice of Continuation of a Public Hearing

NOTICE IS HEREBY GIVEN that the public hearing on the above-entitled matter held in Room 10, State Office Building, 435 Park Avenue, St. Paul Minnesota, 55115 on June 28 is continued. The continued hearing will be held in Room 300 South, State Office Building, 435 Park Avenue, St. Paul, Minnesota, 55115, on July 30, 1985 commencing at 9:30 a.m., continuing until all interested or affected persons have an opportunity to participate. Notice of this hearing was originally published in the *State Register* on May 27, 1985 (9 S.R. 2566) and sent to all persons registered with the Department of Human Services. The continuation notice is being published in the *State Register* and is being sent to all persons originally notified of the hearing.

The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

If you have any questions about the continuation of this hearing, contact Jerry Ferguson at (612) 297-3635.

July 9, 1985

Leonard W. Levine, Commissioner  
Department of Human Services

## Department of Human Services

### Proposed Rules Relating to Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation

#### Notice of Hearing

Minnesota Rules, parts 9553.0010 to 9553.0080

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in the State Office Building, Room

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

## PROPOSED RULES

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200, 435 Park Avenue, St. Paul, Minnesota, 55155, on August 21, 1985 (and August 22 and 23, 1985, if necessary) commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon Lunde, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota, 55415; telephone 612/341-7645 either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may, at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings.

Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, section 14.50. The rule hearing is governed by Minnesota Statutes, section 14.01 to 14.56 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Rules, parts 9553.0010 to 9553.0080 apply to intermediate care facilities for persons with mental retardation which participate in the Medical Assistance Program, except state owned facilities. These rules contain the policies and procedures for determining the total payment rates for intermediate care facilities for persons with mental retardation. The rule contains sections on definition of terms; cost classification and allocation procedures; standards for determination of allowable costs; nonallowable costs; reporting by cost category; general reporting requirements; determination of the total operating cost payment rate; determination of the property related payment rate; determination of the total payment rate; rate setting procedure for newly constructed or newly established facilities or approved class A to class B conversions; and appeals procedures.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, section 256B.501, subdivisions 1 to 3. The cost to local public bodies of implementing the proposed rule changes will not exceed \$100,000 for either of the first two years following passage of the rule.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to:

Mary Ann Bredesen  
Department of Human Services  
Sixth Floor, Space Center  
444 Lafayette Road  
St. Paul, MN 55101  
Telephone: 612/296-2738

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Chuck Osell, Long-Term Care Management, Department of Human Services, Sixth Floor, Space Center, 444 Lafayette Road, St. Paul, Minnesota, 55101, telephone number 612/297-3463.

**NOTICE:** Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

**NOTICE IS HEREBY GIVEN** that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends



more than five hours in any month or more than \$250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) who spends more than \$250, not including traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, telephone 612/296-5615.

June 27, 1985

Leonard W. Levine, Commissioner  
Department of Human Services

### **Rules as Proposed (all new material)**

#### **9553.0010 SCOPE.**

Parts 9553.0010 to 9553.0080 establish procedures for determining the total payment rates for all intermediate care facilities for persons with mental retardation participating in the medical assistance program, except intermediate care facilities in state owned hospitals as defined in Minnesota Statutes, section 246.50, subdivision 5. Parts 9553.0010 to 9553.0080 are effective for rate years beginning on or after October 1, 1986.

#### **9553.0020 DEFINITIONS.**

**Subpart 1. Applicability.** For the purposes of parts 9553.0010 to 9553.0080, the following terms have the meanings given them in this part.

**Subp. 2. Addition.** "Addition" means an extension, enlargement, or expansion of the physical plant of an ICF/MR for the purpose of increasing the number of licensed beds or improving resident care.

**Subp. 3. Applicable credit.** "Applicable credit" means a receipt of funds or an expense reduction as a result of public grants, purchase discounts, allowances, rebates, refunds, adjustments for overcharges, insurance claims settlements, recovered bad debts, or any other adjustment or income which reduce the costs claimed by the facility.

**Subp. 4. Capacity days.** "Capacity days" means the total number of licensed beds in the facility multiplied by the number of days in the reporting year.

**Subp. 5. Capital assets.** "Capital assets" means a facility's land, physical plant, land improvements, depreciable equipment, leasehold improvements, and all additions to or replacements of those assets.

**Subp. 6. Capital debt.** "Capital debt" means a debt incurred by the facility for the purpose of purchasing a capital asset, to the extent that the proceeds of the debt were actually applied to purchase the capital asset. Capital debt includes debt incurred for the purpose of refinancing a capital debt.

**Subp. 7. Capital debt interest expense.** "Capital debt interest expense" means interest payable under the terms of a capital debt, amortization of a bond premium or discount, and amortization of financing charges.

**Subp. 8. Class A beds.** "Class A beds" means beds licensed for ambulatory and mobile persons who are capable of taking appropriate action for self-preservation under emergency conditions as determined by part 4665.0500 or 9525.0210 to 9525.0430.

**Subp. 9. Class B beds.** "Class B beds" means beds for ambulatory, nonambulatory, mobile, or nonmobile persons who are not mentally or physically capable of taking appropriate action for self-preservation under emergency conditions as determined by parts 4665.0500 or 9525.0210 to 9525.0430.

**Subp. 10. Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services.

**Subp. 11. Cost categories.** "Cost categories" means any one of the groupings of costs in part 9553.0040, subparts 1 to 5.

**Subp. 12. Cost report.** "Cost report" means the document and supporting materials specified by the commissioner and submitted by the provider for the facility. The cost report includes the statistical, financial, and other relevant information required in part 9553.0041 for the rate determination.

**Subp. 13. Department.** "Department" means the Minnesota Department of Human Services.

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**Subp. 14. Depreciable equipment.** "Depreciable equipment" means the standard moveable resident care equipment and support service equipment generally used in an ICF/MR. Depreciable equipment includes the equipment specified in the major moveable equipment table of the depreciation guidelines.

**Subp. 15. Depreciation guidelines.** "Depreciation guidelines" means The Estimated Useful Lives of Depreciable Hospital Assets, issued by the American Hospital Association, 840 North Lake Shore Drive, Chicago, Illinois (Chicago: 1983). The depreciation guidelines are incorporated by reference and are available for reference at the Minnesota State Law Library, 117 University Avenue, Saint Paul, Minnesota. This document is not subject to frequent change.

**Subp. 16. Desk audit.** "Desk audit" means the determination of the facility's payment rate based on the commissioner's review and analysis of required reports, supporting documentation, and work sheets submitted by the provider.

**Subp. 17. Direct cost.** "Direct cost" means a cost that can be identified within a specific cost category without the use of allocation methods.

**Subp. 18. Equity.** "Equity" means the historical capital cost of the facility's capital assets subject to the limitations in part 9553.0060, subpart 1, item C; and subpart 3, item H, decreased by the outstanding principal amount of the capital debts, and the historical capital cost of any capital assets retired from service, sold, or otherwise disposed. Increases in the principal amount of existing capital debts due to refinancing, or new capital debts due to a change of ownership or reorganization of provider entity for which the increase in interest expense is disallowed according to part 9553.0060, subpart 3, item G are not included in the outstanding principal amount of the capital debts for the purpose of calculating equity.

**Subp. 19. Facility or ICF/MR.** "Facility" or "ICF/MR" means a program licensed to serve persons with mental retardation under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded.

**Subp. 20. Field audit.** "Field audit" means the on-site examination, verification, and review of the cost report, financial records, statistical records, and related supporting documentation of the provider or provider group.

**Subp. 21. Fringe benefits.** "Fringe benefits" means workers' compensation insurance, group health insurance, disability insurance, dental insurance, group life insurance, and retirement benefits or plans.

**Subp. 22. Funded depreciation.** "Funded depreciation" means the sum deposited in a separate account as determined in accordance with part 9553.0060, subpart 1, item E and that must be applied only to reduce or liquidate capital debts or replace capital assets.

**Subp. 23. Historical capital costs.** "Historical capital costs" means:

A. for a capital asset first placed in use in the medical assistance program on or after January 1, 1984, the cost incurred to construct or purchase the capital asset by the person or entity owning the capital asset on the date it was first placed in use in the medical assistance program; and

B. for a capital asset first placed in use in the medical assistance program prior to January 1, 1984, the cost originally incurred to construct or purchase the capital asset by the person or entity owning the capital asset on December 31, 1983.

**Subp. 24. Historical operating costs.** "Historical operating costs" means the allowable operating costs incurred by the facility during the reporting year immediately preceding the rate year for which the payment rate becomes effective after the commissioner has reviewed those costs and determined them to be allowable costs under the medical assistance program and after the application of parts 9553.0010 to 9553.0080.

**Subp. 25. Indirect cost.** "Indirect cost" means a cost incurred for a common or joint purpose of benefiting more than one cost category and not readily assignable to the cost categories benefited.

**Subp. 26. Land.** "Land" means the land owned or leased by the provider or provider group and which is necessary for resident care.

**Subp. 27. Land improvement.** "Land improvement" means an improvement to the land surrounding the facility as specified in the land improvements table of the depreciation guidelines, if the land improvement is the responsibility of the provider.

**Subp. 28. Leasehold improvement.** "Leasehold improvement" means an improvement to property leased by the provider for the use of the facility that reverts to the owner of the property upon termination of the lease.

**Subp. 29. Medical assistance program.** "Medical assistance program" means the program that reimburses the cost of health care provided to eligible recipients pursuant to Minnesota Statutes, chapter 256B and United States Code, title 42, section 1396a, et seq.

**Subp. 30. Necessary service.** "Necessary service" means a function pertinent to the facility's operation that if not performed by the assigned individual would have required the provider to employ or assign another individual to perform it.

**Subp. 31. Payroll taxes.** "Payroll taxes" means the employer's share of social security withholding taxes, and state and federal unemployment compensation taxes or costs.

**Subp. 32. Physical plant.** "Physical plant" means the building or buildings in which a program licensed to provide services to persons with mental retardation under Minnesota Statutes, section 252.28 is located, and all equipment affixed to the building and not easily subject to transfer as specified in the building and fixed equipment tables of the depreciation guidelines and auxiliary buildings in the nature of sheds, garages, and storage buildings located on the same site if used for resident care. Physical plant does not include buildings or portions of buildings used by central, affiliate, or corporate offices.

**Subp. 33. Private paying resident.** "Private paying resident" means a facility resident whose care is not paid for by the medical assistance program, cost of care program, or the Community Social Services Block Grant for the date of service.

**Subp. 34. Program.** "Program" means those functions and activities of the facility that contribute to the care, supervision, developmental growth, and skill acquisition of the residents under parts 9525.0210 to 9525.0430 and Code of Federal Regulations, title 42, section 442.400, et seq.

**Subp. 35. Program director.** "Program director" means the person who supervises individual program planning and program activities related to carrying out the individual program plans.

**Subp. 36. Provider.** "Provider" means the corporation, governmental unit, partnership, person, or persons licensed to operate the facility, which controls the facility's operation, incurs the costs reported, and claims reimbursement under parts 9553.0010 to 9553.0080 for the care provided in the facility.

**Subp. 37. Provider group.** "Provider group" means a parent corporation, any subsidiary corporations, partnerships, management organizations, and groups of facilities operated under common ownership or control that incurred the costs shown on the cost report which are claimed for reimbursement under parts 9553.0010 to 9553.0080.

**Subp. 38. Rate year.** "Rate year" means the period for which the total payment rate is effective, from October 1 to September 30.

**Subp. 39. Related organization.** "Related organization" means a person that furnishes goods or services to a facility and that is a close relative of a provider or a provider group, an affiliate of a provider or provider group, a close relative of an affiliate of a provider or provider group, or an affiliate of a close relative of a provider or provider group. For the purposes of this subpart, the following terms have the meanings given them.

A. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

B. "Person" means an individual, a corporation, a partnership, an association, a trust, an unincorporated organization, or a government or political subdivision.

C. "Close relative of an affiliate of a facility" means an individual whose relationship by blood, marriage, or adoption to an individual who is an affiliate of a facility is no more remote than first cousin.

D. "Control" including the terms "controlling," "controlled by," and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management, operations, or policies of a person, whether through the ownership of voting securities, by contract or otherwise.

**Subp. 40. Repair.** "Repair" means the cost of labor and materials needed to restore an existing capital asset to sound condition after damage or malfunction or to maintain an existing capital asset in a useable condition.

**Subp. 41. Replacement.** "Replacement" means a renovation or substitution of an existing capital asset to improve its function or extend its useful life.

**Subp. 42. Reporting year.** "Reporting year" means the period from January 1 to December 31 immediately preceding the rate year, for which the provider submits its cost report, and that is the basis for the determination of the payment rate for the following rate year.

**Subp. 43. Resident day.** "Resident day" means a day on which services provided to residents are rendered and billable, or a day for which a bed is held and billed.

**Subp. 44. Respite care.** "Respite care" means short-term supervision, assistance, and care provided to persons with mental

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retardation due to the temporary absence or need for relief of the caregiver who normally provides these services. The caregiver must not be an institutional provider.

**Subp. 45. Top management personnel.** "Top management personnel" means owners, corporate officers, general, regional, and district managers, board members, administrators, the facility administrator, and other persons performing executive functions normally performed by such personnel, whether employed full time, part time, or as a consultant. The facility administrator is the person in charge of the overall day-to-day activities of the facility.

**Subp. 46. Total payment rate.** "Total payment rate" means the amount established by the commissioner to reimburse the provider for service provided to each resident. The total payment rate is calculated by adding the total operating cost payment rate, and the property-related cost payment rate.

**Subp. 47. Useful life.** "Useful life" means the length of time a capital asset is expected to provide economic service before needing replacement.

**Subp. 48. Vested.** "Vested" means the existence of a legally fixed unconditional right to a present or future benefit.

**Subp. 49. Working capital loan.** "Working capital loan" means a debt incurred to finance a facility's operating costs. A working capital loan does not include a debt incurred to acquire or refinance a capital asset.

**Subp. 50. Working capital interest expense.** "Working capital interest expense" means the interest incurred on working capital loans during the reporting year.

### 9553.0030 COST CLASSIFICATION AND ALLOCATION PROCEDURES.

**Subpart 1. Cost classification.** Costs must be classified as provided in this subpart. Total costs for each category must be compiled and recorded on the cost report.

A. The provider shall classify costs using direct identification of costs, without allocation, by routine classification of transactions when costs are recorded in the books and records of the facility. The classification of costs must be made according to the cost categories defined in part 9553.0040.

B. In addition to costs which must be included in the administrative cost category, indirect costs such as generic supplies that cannot be specifically classified to one or more cost categories must be classified to the administrative cost category.

C. When a person other than top management personnel has multiple duties, the person's salary cost must be allocated to the cost categories on the basis of time distribution records that show actual time spent, or an accurate estimate of time spent on various activities. For a facility or provider group of 48 or fewer licensed beds, part of the salary or salaries of top management personnel may be allocated to other cost categories to the extent justified in time distribution records which show the actual time spent, or an accurate estimate of time spent on various activities. A facility or provider group that chooses to estimate time spent must use a statistically valid method. Persons who serve in a dual capacity, including those who have only nominal top management responsibilities, shall directly identify their salaries to the appropriate cost categories. Except as provided in this item, the salary of any person having more than nominal top management responsibilities must not be allocated.

**Subp. 2. Allocation of personal expenses for owners whose primary residence is in the facility.** Allocation procedures in this subpart must be applied to personal expenses of owners whose primary residence is in the facility to the extent that these costs were included in the facility's costs.

A. Dietary services cost allocation must be based on the number of meals served.

B. Housekeeping, plant operations, and maintenance cost allocation must be based on the ratio of square feet of floor space devoted to personal use divided by the total square feet of floor space of the facility.

C. Depreciation, interest, real estate and personal property taxes, and property and liability insurance costs must be allocated based on the ratio of square feet of floor space devoted to personal use divided by the total square feet of floor space of the facility.

D. Laundry and linen costs, and administrative costs for items such as telephones and vehicles, must be allocated based on a reasonable estimate of actual use.

**Subp. 3. Cost allocations for other services.** Costs associated with services other than ICF/MR services such as apartments, semi-independent living services, and any other revenue-generating operations, except respite care, must be allocated using the principles in subpart 1 and the procedures in subpart 2.

**Subp. 4. Central, affiliated, or corporate office costs.** Cost allocation for central, affiliated, or corporate offices shall be governed by items A to E.

A. Central, affiliated, or corporate office salary expense representing services of consultants required by law or regulation in

areas including dietary, pharmacy, program, or other resident care related activities may be allocated to the appropriate cost category, but only to the extent that those salary expenses are directly identified by the facility.

B. Central, affiliated, or corporate office costs representing services of consultants not required by law in the areas of program, quality assurance, medical records, dietary, other care related services, and plant operations may be allocated to the appropriate operating cost category of a facility according to subitems (1) to (5).

(1) Only the salary, fringe benefits, and payroll taxes associated with the individual performing the service may be allocated. No other costs must be allocated.

(2) The allocation must be based on direct identification and to the extent justified in time distribution records which show the actual time spent by the consultant performing services in the facility.

(3) The cost in subitem (1) for each consultant must be allocated to only one operating cost category in the facility. If more than one facility is served by a consultant, all facilities shall allocate the consultant's cost to the same operating category.

(4) Top management personnel shall not be considered consultants for purposes of this item.

(5) The consultant's entire job responsibility is to provide the services identified in this item.

C. Except as provided in items A and B, central, affiliated, or corporate office costs must be allocated to the administrative cost category of each facility within the group served by the central, affiliated, or corporate office according to subitems (1) to (5).

(1) All costs that can be directly identified with a specific facility must be allocated to that facility.

(2) All costs that can be directly identified with a specific operation unrelated to the facility's operation must be allocated to that unrelated operation.

(3) After the costs that can be directly identified according to subitems (1) and (2) have been allocated, the remaining central, affiliated, or corporate office costs must be allocated between facility operations and unrelated operations based on the ratio of expenses.

(4) Next, operations which have facilities both in Minnesota and outside of Minnesota must allocate the central, affiliated, or corporate office costs to Minnesota based on the ratio of total resident days in Minnesota facilities to the total resident days in all facilities.

(5) Finally, the facility-related central, affiliated, or corporate office costs must be allocated to each facility based on resident days.

D. Central, affiliated, or corporate office property-related costs of capital assets used directly by a facility in the provision of ICF/MR services must be allocated to the facility which uses the capital asset. Central, affiliated, or corporate office property-related costs of capital assets that are not used directly by a facility in the provision of ICF/MR services must be allocated to the administrative cost category of each facility using the methods described in item C.

E. The useful life of a capital asset maintained by a central, affiliated, or corporate office must be determined as in part 9553.0060, subpart 1, item B except that the useful life of depreciable equipment must be as defined in the depreciation guidelines.

**Subp. 5. Allocation of costs to related or nonrelated organizations.** A facility's costs associated with services or goods provided by the facility to a related or nonrelated organization must be allocated on the basis of items A to C.

A. Costs of services must be allocated based on the documentation of time spent performing the service by each individual providing services to the related organization or nonrelated organization. All directly identifiable expenses including salary, fringe benefits, and payroll taxes, travel, and supplies of an individual providing services for related organizations or nonrelated organizations must be allocated based on the ratio of actual time spent performing the services for each related or nonrelated organization.

B. The cost of goods sold to or used by a related organization or nonrelated organization must be directly allocated to the organization. The cost of goods sold to or used by more than one organization must be allocated proportionally to each related organization or nonrelated organization based on a reasonable estimate of actual use.

C. The cost of goods or services allocated to a related organization or nonrelated organization must not be an allowable cost for the facility.

**Subp. 6. Payroll tax and fringe benefit cost allocation.** A facility's payroll taxes and fringe benefits reported in the payroll taxes and fringe benefit cost category must be allocated to the program operating cost category, the maintenance operating cost category,

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and the administrative operating cost category based on the ratio of allowable salary costs in each of those cost categories to total allowable salary costs.

### 9553.0035 DETERMINATION OF ALLOWABLE COSTS.

**Subpart 1. Allowable costs.** Only costs determined to be allowable under parts 9553.0010 to 9553.0080 may be used to compute the total payment rate for facilities participating in the medical assistance program.

**Subp. 2. Licensure and certification costs.** The costs of meeting the applicable licensure and certification standards listed in items A to E are allowable costs for the purpose of setting the facility's total payment rate unless otherwise provided in parts 9553.0010 to 9553.0080. The standards are:

- A. federal regulations for ICF/MR services provided by Code of Federal Regulations, title 42, sections 442.400 et seq.;
- B. requirements established by the commissioner for meeting program standards under parts 9525.0210 to 9525.0430 and standards for aversive and deprivation procedures established according to Minnesota Statutes, section 245.825;
- C. requirements established by the Department of Health for meeting health standards as set out by state rules and federal regulations;
- D. requirements to comply with changes in federal or state laws and regulations; and
- E. other requirements for licensing under federal or state law, state rules, federal regulations, or local standards that must be met to provide ICF/MR services.

**Subp. 3. Service costs.** The costs of services including program, maintenance, administrative, payroll taxes and fringe benefits, and property-related costs as defined in part 9553.0040, are allowable costs for the purpose of setting the facility's total payment rate unless otherwise provided in parts 9553.0010 to 9553.0080.

**Subp. 4. Applicable credits.** Applicable credits must be used to offset or reduce the expenses of the facility to the extent that the cost to which the credits apply was claimed as a facility cost. This cost principle does not apply to items A and B:

- A. payments made by the commissioner to the provider for approved services for very dependent persons with special needs pursuant to Minnesota Statutes, section 256B.501, subdivision 8 and parts 9510.1020 to 9510.1140 [Emergency]; and
- B. gifts and donations from nongovernmental sources.

**Subp. 5. Adequate documentation.** A facility shall keep adequate documentation.

- A. In order to be considered adequate, documentation must:
  - (1) be maintained in orderly, well-organized files;
  - (2) not include documentation of more than one facility in one set of files unless transactions may be traced by the department to the facility's annual cost report;
  - (3) include a paid invoice or copy of a paid invoice with date of purchase, vendor name and address, purchaser name and delivery address, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or facilities. If any of the information listed on the invoice is not available, the providers shall document their good faith attempt to obtain the information;
  - (4) include contracts, agreements, amortization schedules, mortgages, other debt instruments, and all other documents necessary to explain the facility's costs or revenues; and
  - (5) be retained by the facility to support the five most recent annual cost reports. The commissioner may extend the period of retention if the field audit was postponed because of inadequate recordkeeping or accounting practice as in part 9553.0041, subpart 12, or if the records are necessary to resolve a pending appeal.
- B. Providers must document all consultant, professional, or purchased service contracts. They must maintain copies of all contracts and invoices relating to consultant, professional, or purchased services. These documents must include the name and address of the vendor or contractor, the name of the person who actually performed the services, the dates of service, a description of the services provided, the unit cost, and the total cost of the service.
- C. Compensation for services performed by individuals must be documented on payroll records. Payrolls must be supported by time and attendance or equivalent records for individual employees. If the services are rendered on less than a full-time basis, the reasonable compensation must be proportional to that paid for services rendered on a full-time basis. Complete and orderly cost allocation records must be maintained for cost allocations made among cost categories or facilities as specified in part 9553.0030.
- D. Documentation of mileage must be maintained in a motor vehicle log. Except for motor vehicles exclusively used for facility business, the facility or related organization must maintain a motor vehicle log for each vehicle used by the facility that shows personal and facility mileage for the reporting year. Mileage paid for the use of a private vehicle must be documented.

**Subp. 6. Compensation for services performed by individuals.** Compensation for services performed by individuals includes all the remuneration paid currently, accrued or deferred, for services rendered by the provider or employees of the facility. Only compensation costs for the reporting period are allowable.

A. Compensation includes:

- (1) salaries, wages, bonuses, vested vacation, vested sick leave, and employee benefits paid for managerial, administrative, professional, and other services;
- (2) amounts paid by the provider for the personal benefit of the provider or employees;
- (3) deferred compensation and individual retirement accounts (IRA's);
- (4) the costs of capital assets, supplies, services, or any other in-kind benefits the provider or employees receive for their personal use from the facility or related organization, except the cost of capital assets, supplies, services, or other in-kind benefits incurred as a necessary cost for an employee who is required to supervise resident activities or to reside in the facility as a condition of employment; and
- (5) payments to organizations of nonpaid workers that have arrangements with the facility for the performance of services by the nonpaid workers.

B. The facility must have a written policy for payment of compensation for services performed by individuals. The policy must:

- (1) Relate the individual's compensation to the performance of specified duties and to the number of hours worked by the individual.
- (2) Result in compensation payable under the policy which is consistent with the compensation paid to persons performing similar duties in the ICF/MR industry. Employees covered by collective bargaining agreements are not required to be covered by the policy if the collective bargaining agreement otherwise meets the essentials of the policy required by this item.
- (3) Specify the nature and cost to the provider or provider group of any in-kind benefits included in the compensation.

C. Only services which are necessary services shall be compensated.

D. Except for accrued vested vacation and accrued sick leave, compensation must be actually paid, whether by cash or negotiable instrument, within 121 days after the close of the reporting year. If payment is not made within 121 days, the unpaid compensation must be disallowed in that reporting year.

E. If services are rendered on less than a full-time basis, the reasonable compensation must be proportional to that paid for services on a full-time basis.

**Subp. 7. Limitations on related organization costs.** Related organization costs are subject to items A to D.

A. Costs applicable to services, capital assets, or supplies directly or indirectly furnished to the provider by any related organization may be included in the allowable cost of the facility at the purchase price paid by the related organization for capital assets or supplies and at the cost incurred by the related organization for the provision of services to the facility if these prices or costs do not exceed the prices of comparable services, capital assets, or supplies that could be purchased elsewhere. For this purpose, the related organization's costs must not include an amount for mark up or profit.

Except for the rental or leasing of facilities, if the related organization in the normal course of business sells services, capital assets, or supplies to nonrelated organizations, the cost to the provider shall be no more than the price charged to the nonrelated organization provided that sales to nonrelated organizations constitute at least 50 percent of total annual sales of comparable services, or capital assets, or supplies.

B. Lease or rental costs paid to or by a related organization shall be allowed according to part 9553.0060, subpart 7.

C. The cost of ownership of a capital asset owned by a related organization and used by the facility may be included in the allowable cost of the facility. When the capital asset is sold or otherwise disposed of by the related organization and the depreciation on the asset has been claimed as a facility cost, any gain realized from the sale by the related organization must be transferred to the facility as an offset in the facility's property-related cost category.

D. A provider that sells, leases, or provides goods or services to a related organization or nonrelated organization shall

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allocate the cost of the goods or services to the related organization or nonrelated organization and identify the allocations in the facility's cost report. Costs shall be allocated as provided in part 9553.0030, subpart 5.

**Subp. 8. Capitalization.** For rate years after September 30, 1986, the cost of purchasing or repairing capital assets shall be capitalized under items A to D, subject to part 9553.0060, subpart 1.

A. The cost of purchasing a capital asset listed in the depreciation guidelines must be capitalized. The cost of purchasing any other capital asset not included in the depreciation guidelines must be capitalized if the asset has a useful life of more than two years and costs more than \$500.

B. The facility may consider as an expense a repair that costs \$500 or less. Repairs that are considered as an expense must be classified in the plant operation and maintenance cost category. If the cost of a repair to a capital asset is more than \$500 and the estimated useful life of the capital asset is extended beyond its original estimated useful life by at least two years, or if the productivity of the capital asset is increased significantly over its original productivity, then the cost of the repair must be capitalized.

C. Construction period interest expense, feasibility studies, and other costs related to the construction period must be capitalized and depreciated in accordance with part 9553.0060, subpart 1.

D. Items, such as land improvements whose maintenance or construction are not the responsibility of the provider, land, and goodwill, are not considered depreciable capital assets.

**Subp. 9. Working capital interest expense.** Working capital interest expense is allowed subject to the requirements of items A to C.

A. Working capital interest expense on working capital debt incurred prior to January 1, 1984, is allowed under the rules and regulations in effect on December 31, 1983.

B. Reimbursement for working capital interest expense for existing facilities is limited under subitems (1) to (3).

(1) For rate years beginning during calendar year 1984, the total amount of working capital interest expense allowed for purposes of determining the payment rate must not exceed the total amount of working capital interest expense incurred by the facility during the reporting year immediately preceding the rate year.

(2) For rate years beginning during calendar year 1985, the total amount of working capital interest expense allowed for purposes of determining the total payment rate must not exceed 80 percent of the allowable working capital interest expense as determined for the previous reporting year.

C. Working capital interest expense for facilities constructed or established after January 1, 1984, must be limited under subitems (1) and (2).

(1) For the interim and settle-up payment rates the total amount of working capital interest expense allowed must not exceed one percent of the facility's allowable historical operating costs during the interim reporting period.

(2) For the rate year which follows the settle-up, the total amount of working capital interest expense allowed must not exceed 80 percent of the allowable working capital interest expense as determined in the settle-up cost report.

**Subp. 10. Retirement contributions.** Retirement contributions for each employee must be limited to the cost of either a United States Internal Revenue Service approved pension or profit sharing plan but not both for the same employee.

**Subp. 11. Therapeutic overnight trips, camping, and vacations for residents.** The provider may use facility staff, supplies, equipment, and vehicles ordinarily provided as part of the facility program for therapeutic overnight trips, camping, and vacations for residents. In addition, up to \$300 per year per resident may be allowed for fees, tickets, travel, lodging, and meals while residents are away from the facility. Other costs may be paid from other funding sources such as voluntary contributions from residents, relatives, and fund raisers.

**Subp. 12. Preopening costs.** Preopening costs of newly established facilities shall be allowable as in items A to C.

A. One time preopening operating costs of newly established facilities which are incurred within 30 days prior to admission of residents must be included in the facility's interim and settle-up cost reports.

B. One time preopening costs of newly established facilities which are incurred more than 30 days prior to admission of residents must be capitalized as deferred charges and amortized over a period of not less than 120 consecutive months beginning with the month in which the first resident is admitted for care.

C. Preopening costs do not include property-related costs.

**Subp. 13. Respite care.** The provider must report the costs associated with providing respite care as an allowable cost in the cost report and count respite care days as resident days.

**Subp. 14. Top management compensation.** For establishment of the allowable historical operating cost, annual compensation



for top management personnel who perform necessary services shall be limited according to items A to G. Documentation of all necessary service performed must be maintained according to subparts 5 and 6.

A. The sum of compensation for all top management personnel for a facility or related organization that owns or operates:

(1) a single facility, shall not exceed the lesser of \$847 times the number of licensed beds or \$40,656;

(2) more than one facility with a total bed complement of 48 or fewer beds, shall not exceed the lesser of \$847 times the total number of licensed beds or \$40,656; and

(3) more than one facility with a total bed complement of 48 or more beds, shall not exceed \$40,656 plus an additional \$348 for each licensed bed over 48. The top management compensation for a single facility within the group shall not exceed the lesser of \$847 times the number of licensed beds or \$40,656.

B. In no case shall the total compensation reimbursed according to parts 9553.0010 to 9553.0080 to an individual, any portion of whose compensation is reimbursed as top management compensation, exceed \$53,820. A person who is included in top management personnel who performs necessary services for the facility or provider group on less than a full-time basis, may receive as allowable compensation no more than a prorated portion of \$53,820 based on time worked.

C. If a person compensated for top management functions in a facility or organization is compensated for providing consultant services to that facility or organization, the compensation for consultant services however designated shall be subject to the top management compensation limitation.

D. Top management compensation shall not include, within the limits of items A, B, and C, the benefits of group health or dental insurance, group life insurance, pensions or profit sharing plans, and governmentally-required retirement plans.

E. If the fringe benefits paid to top management personnel are not provided to all or substantially all of the facility's employees at the same benefit level, that portion of the fringe benefits paid to top management personnel which is not provided to all or substantially all of the facility's employees, shall be disallowed.

F. An individual compensated for top management services on a less than full-time basis for a facility or provider group may be compensated for performing other necessary services which the individual is qualified to perform. Compensation for another necessary service must be at the pay rate for that service except that the total compensation paid to an individual cannot exceed the limit in item B.

G. For each full percentage difference between the previous two Januarys prior to the beginning of the rate year, the all urban consumer price index (CPI-U) for Minneapolis-St. Paul, as published by the Bureau of Labor Statistics, new series index (1967 = 100), the top management compensation per bed limitation in item A and the limitation in item B shall be adjusted by one percent. The consumer price index is incorporated by reference. It is available through the Minitex Interlibrary Loan System. It is subject to frequent change. The adjustment required by this formula shall be effective for the reporting year beginning on January 1, 1986, and each January 1 after.

**Subp. 15. General cost principles.** The commissioner shall use the cost principles in this subpart to determine allowable costs:

A. the cost is ordinary, necessary, and related to resident care;

B. the cost is what a prudent and cost conscious business person would pay for the specific good or service in the open market in an arm's length transaction;

C. the cost is for goods or services actually provided to the facility and the cost is actually paid for by the facility within 180 days after the close of the reporting year except as provided in subpart 6, item D;

D. the cost effects of transactions that have the effect of circumventing parts 9553.0010 to 9553.0080 are not allowable under the principle that the substance of the transaction must prevail over its form; and

E. costs that are incurred due to management inefficiency, unnecessary care or facilities, agreements not to compete, or activities not commonly accepted in the ICF/MR industry, are not allowable.

**9553.0036 NONALLOWABLE COSTS.**

The costs listed in this part are not allowable for purposes of establishing total payment rates. If any of the costs in this part are included in any account of the provider or provider group, they must be identified on the facility's cost report.

A. Contributions, including charitable contributions, and contributions to political action committees or campaigns.

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B. Salaries and expenses of a lobbyist.

C. Assessments made by or the portion of dues charged by associations or professional organizations for lobbying, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions of agencies of Minnesota. When the breakdown of dues charged to a facility by an association or professional organization is requested by the commissioner and is not provided, the entire cost shall be disallowed.

D. Advertising designed to encourage potential residents to select a particular facility. This item does not apply to a total expenditure of \$2,000 or less for all notices placed in the telephone yellow pages for the purpose of stating the facility's name, location, telephone number, and general information about services in the facility.

E. Assessments levied by the commissioner or the commissioner of the Minnesota Department of Health for uncorrected violations.

F. Purchases or activities not related to resident care such as flowers or gifts for employees or providers, employee parties, and business meals except as in part 9553.0040, subpart 3, item O.

G. Penalties, including interest charged on the penalty, interest charges which result from an overpayment, and bank overdraft or late payment charges.

H. Costs related to the purchase and care of pets which exceed the lesser of \$20 per year per licensed bed, or \$200 per year per facility.

I. Costs of sponsoring nonresident activities such as athletic teams and beauty contests.

J. Premiums on a life insurance policy for an owner or board member, of a facility, or for an employee of a related organization, except that the premiums shall be allowed if:

(1) the coverage is included in the policy provided for all employees;

(2) the coverage and premium is comparable to that provided for all employees; and

(3) the insured person is an employee of the provider or related organization; or

(4) such a policy is required as a condition of mortgage or loan for the facility and the mortgagee or lending institution is listed as the beneficiary.

K. Personal expenses of owners and employees, such as vacations, boats, airplanes, personal travel or vehicles, and entertainment.

L. Employee's or owner's membership or other fees for social, fraternal, sports, health, or similar organizations.

M. Training programs for anyone except residents, facility employees, volunteers in the facility, or a resident's family or legal guardians.

N. Training programs to meet the minimum educational requirements of a position, education that leads to a degree, or education that qualifies the employee for a new trade or profession.

O. Bad debts and related bad debt collection fees.

P. Costs of fund raising activities.

Q. Costs of personal need items, such as personal clothing, normally paid for by residents.

R. Costs incurred in providing other than ICF/MR services such as the costs of apartments, day activity center or work activity center costs, regular travel costs to attend day activity or work activity centers, and semi-independent living skills services (SILS).

S. Operating costs for goods and services to the extent that the goods and services are financed by gifts or grants from public funds. A transfer of funds from a local government unit to its governmentally owned facility is not a gift or grant under this item.

T. Telephones, televisions, and radios provided in a resident's room.

U. Costs of agreements not to compete.

V. Costs of services provided to a resident by a licensed medical, therapeutic, or rehabilitation practitioner or any other vendor of medical care which are billed separately on a fee for service basis, including:

(1) purchase of service fees paid to the vendor or his or her agent who is not an employee of the facility or the compensation of the practitioner who is an employee of the facility;

(2) allocated compensation and related costs of any facility personnel assisting in providing these services; and

(3) allocated cost of any operating or property-related cost for providing these services such as housekeeping, laundry,

maintenance, medical records, payroll taxes, space, utilities, equipment, supplies, bookkeeping, secretarial, insurance, and supervisory and administrative staff costs.

If any of the expenses in subitems (1) to (3) are incurred by the provider, these expenses must be reported under nonreimbursable expenses together with any of the income received or anticipated by the facility, including any charges by the provider to the vendor.

W. Allowances for uniforms unless required by governmental rules or regulations.

X. Costs of therapeutic overnight trips, camping, or vacations for residents except as in part 9553.0035, subpart 11.

Y. Legal and related expenses for unsuccessful challenges to decisions of governmental agencies.

Z. Fringe benefits or payroll taxes associated with disallowed salary costs.

AA. Costs incurred in providing approved services for very dependent persons with special needs under parts 9510.1020 to 9510.1140, as proposed at *State Register*, Volume 10, Number 2, pages 54 to 65 (July 8, 1985).

BB. Payments made in lieu of real estate taxes, unless such payments are made according to a legally enforceable, noncancelable, written contract entered into prior to the date upon which parts 9553.0010 to 9553.0080 become effective.

CC. Costs incurred for activities directly related to influencing employees with respect to unionization.

DD. Costs associated with changes in ownership or reorganization of provider entities, including legal fees, accounting fees, administrative costs, travel costs, and the costs of feasibility studies attributed to the negotiation or settlement of a change in ownership or reorganization.

EE. Accruals of vacation and sick leave for employees who are not fully vested.

FF. Costs for pension or profit sharing plans which do not meet the requirements of part 9553.0035, subpart 10.

GG. Costs for which adequate documentation is not maintained or provided as required by parts 9553.0010 to 9553.0080.

#### **9553.0040 REPORTING BY COST CATEGORY.**

**Subpart 1. Program operating costs.** The direct costs of program functions must be reported in the program operating cost category. These costs include:

A. salaries of program staff, including the program director, unit coordinators, and nursing staff;

B. supplies;

C. consultant services;

D. program staff training including the cost of lodging and meals, to meet the requirements of laws, rules, or regulations for keeping an employee's salary, status, or position, or to maintain or update skills needed in performing the employee's present duties;

E. therapeutic overnight trips, camping, or vacations for residents within the limitations in part 9553.0035, subpart 11;

F. membership or other fees for resident participation and staff supervision in social, sports, health, or similar organizations;

G. the operating costs of a facility owned vehicle except staff compensation costs, to the extent that the vehicle is used to transport residents for program purposes;

H. telephone, television, and radio services provided in areas designated for use by the general resident population, such as lounges and recreation rooms;

I. payroll taxes and fringe benefits allocated in accordance with part 9553.0030, subpart 6; and

J. accrued vacation and sick leave.

**Subp. 2. Maintenance operating costs.** The costs listed in this subpart are included in the maintenance operating cost category.

A. Direct costs of dietary services including:

(1) salaries of dietary staff;

(2) food;

(3) supplies;

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- (4) consultant services;
- (5) purchased services; and
- (6) accrued vacation and sick leave.

B. Direct costs of laundry and linen services include:

- (1) salaries of laundry staff;
- (2) supplies;
- (3) linen and bedding;
- (4) purchased services; and
- (5) accrued vacation and sick leave.

C. Direct costs of housekeeping services include:

- (1) salaries of housekeeping staff;
- (2) supplies;
- (3) purchased services; and
- (4) accrued vacation and sick leave.

D. Direct costs of plant operations and maintenance services include:

- (1) salaries of plant operations and maintenance staff;
- (2) supplies;
- (3) utilities and fuel;
- (4) nondepreciable equipment and repairs not subject to capitalization under part 9553.0035;
- (5) purchased services;
- (6) licensing and permit fees, except as in subpart 5, item F; and
- (7) accrued vacation and sick leave.

E. Payroll taxes and fringe benefits allocated in accordance with part 9553.0030, subpart 6.

**Subp. 3. Administrative operating costs.** The costs listed in this subpart are included in the administrative operating cost category:

- A. business office functions;
- B. travel expenses except as provided in subpart 1, items E and G;
- C. motor vehicle operating costs, except as provided in subpart 1, items E and G;
- D. telephone and telegraph charges, except as provided in subpart 1, item H;
- E. office supplies;
- F. insurance;

G. salaries, wages, or fees of top management personnel, accounting and clerical personnel, data processing personnel, receptionists, and other management or administrative personnel;

H. professional fees for services such as legal, accounting, and data processing services;

I. business meetings and seminars;

J. postage;

K. training, including the cost of lodging and meals, for management personnel and other personnel not related to direct resident care if the training either meets the requirements of laws or regulations for keeping an employee's salary, status, or position, or maintains or updates skills needed to perform the employee's present duties;

L. membership fees for associations and professional organizations which are directly related to the operation of the facility;

M. subscriptions to periodicals which are directly related to the operation of the facility;

N. advertising and personnel recruitment costs including help wanted advertising;

O. the costs of meals incurred as a result of required overnight business related travel;

- P. the portion of preopening costs amortized in accordance with part 9553.0035, subpart 12, item B;
- Q. security services or security personnel;
- R. management fees of a nonrelated organization;
- S. working capital interest expense;
- T. indirect costs classified in part 9553.0030, subpart 1, item B;
- U. central, affiliated, or corporate office costs excluding the property-related costs of capital assets used exclusively by individual facilities in the provider group as in part 9553.0030, subpart 4, item D. Central, affiliated, or corporate office costs shall be allocated in accordance with part 9553.0030, subpart 4;
- V. payroll taxes and fringe benefits allocated in accordance with 9553.0030, subpart 6; and
- W. accrued vacation and sick leave.

**Subp. 4. Payroll taxes and fringe benefits.** Only the costs listed in this subpart are to be included in the payroll taxes and fringe benefits cost category. The commissioner shall allocate these costs to other cost categories in accordance with part 9553.0030, subpart 6.

- A. the employer's share of the social security withholding tax;
- B. state and federal unemployment compensation taxes or costs;
- C. group life insurance and disability insurance;
- D. group health and dental insurance;
- E. workers' compensation insurance;
- F. either a pension plan or profit sharing plan as in part 9553.0035, subpart 10; and
- G. governmentally required retirement contributions.

**Subp. 5. Property-related costs.** The facility costs listed in this subpart are included in the property-related cost category:

- A. allowance for depreciation of capital assets, except land;
- B. capital debt interest expenses;
- C. special assessments paid and accrued real estate taxes;
- D. rental and lease payments;
- E. payments permitted under part 9553.0036, item BB; and
- F. license fees required by the Minnesota Department of Human Services and the Minnesota Department of Health.

#### **9553.0041 GENERAL REPORTING REQUIREMENTS.**

**Subpart 1. Required cost reports.** No later than March 31 of each year, the provider shall submit an annual cost report on forms supplied by the commissioner in order to receive medical assistance payments. The reports must cover the reporting year ending December 31. If a certified audit has been prepared, it must be submitted with the cost report. In addition, a provider or provider group which has 48 or more licensed beds shall submit an annual certified audit of its financial records obtained from an independent certified public accountant or licensed public accountant. The examination must be conducted in accordance with generally accepted auditing standards as adopted by the American Institute of Certified Public Accountants and generally accepted accounting principles. A government owned facility may comply with these auditing requirements by submitting the audit report prepared by the state auditor.

**Subp. 2. Required information.** A complete annual cost report must contain the following items:

- A. General facility information and statistical data as requested on the cost report form.
- B. Reports of historical operating costs and property-related costs with supporting calculations and worksheets as requested on the cost report form.
- C. The provider's balance sheet and income statement for each facility prepared in accordance with generally accepted

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accounting principles unless audited financial statements are required to be submitted according to subpart 1. If audited financial statements are required, the facility must submit a copy of its audited financial statements for the reporting year. The audited financial statements must include a balance sheet, income statement, statement of retained earnings, statement of changes in financial position, appropriate notes to the financial statements, any applicable supplemental information, and the certified or licensed public accountant's opinion.

D. A list of the provider's capital debts and working capital loans outstanding for each facility during the reporting year, the name of the lender, the term of the debt, the interest rate of the debt, interest and principal payments for the current year, and the original amount of each loan.

E. A schedule of the provider's funded depreciation account for each facility.

F. A statement of ownership for the facility, including the name, address, and proportion of ownership of each owner.

If a privately-held or closely-held corporation or partnership has an ownership interest in the facility, the facility must report the name, address, and proportion of ownership of all owners of the corporation or partnership who have an ownership interest of five percent or more, except that any owner whose compensation or portion of compensation is claimed for reimbursement in the facility's cost report must be identified regardless of the proportion of ownership interest.

If a publicly-held corporation has an ownership interest of 15 percent or more in the facility, the facility must report the name, address, and proportion of ownership of all owners of the publicly-held corporation who have an ownership interest of ten percent or more.

G. A list of all related organizations which included costs in the cost report in excess of \$1,000 annually, and a list of all facilities in the provider group.

H. Copies of purchase agreements and other documents related to purchase of the physical plant and land, or a signed statement that no changes have been made in the documents which are on file with the department.

I. Copies of leases and other documents related to the lease of the physical plant and land, or a signed statement indicating that no changes have been made in the documents on file with the commissioner. Lease documents must include information on the historical capital cost of the physical plant and land, and the information listed in item D as paid by the lessor.

J. Complete lapsing depreciation schedules calculated in accordance with part 9553.0060.

K. Charts showing staff assignments classified according to the cost categories in part 9553.0040.

L. Documentation of costs included in the payment rate for approved services for very dependent persons with special needs under parts 9510.1020 to 9510.1140, as proposed at *State Register*, Volume 10, Number 2, pages 54 to 65 (July 8, 1985). These costs must be reported on an individual resident basis unless the special needs payment rate was approved for more than one resident.

M. An explanation of all adjustments made by the provider to the cost report and the applicable rule citations.

N. A breakdown of all costs included in the related organization's management fees or central, affiliated, or corporate office costs charged to the provider and the related organization's costs allocable to the facility in accordance with part 9553.0030. The breakdown must contain all costs of items as listed in part 9553.0040, subpart 3 except that related organizations that have a federally approved cost allocation plan which has been documented by the provider, may break down the management fee or central office costs according to the approved plan. The supporting schedules must include the related organization's or the central, affiliated, or corporate office income statement; the cost allocated to each facility, related organization, or nonrelated organization; and an explanation of the method of allocation used.

**Subp. 3. Supplemental reports.** In order to substantiate the payment rate, the commissioner may require the provider to submit items A to E:

A. Except as provided in subpart 1, separate, certified audited financial statements, if they have been prepared, for each related organization in the provider group which include costs in the cost report in excess of \$1,000 annually. If a certified audited financial statement is not available for an entity in the provider group, then unaudited financial statements must be submitted for that entity. Financial statements must include a balance sheet, income statement, statement of retained earnings, statement of change in financial position, appropriate notes to the financial statements, and any applicable supplemental information.

B. Copies of purchase agreements, consultant contracts, and other documents related to the purchase or acquisition of equipment, goods, and services.

C. Copies of leases and other documents related to the lease of depreciable equipment, furnishings, and goods. Lease documents include information on the historical capital cost of the equipment, furnishings, and goods, and the information listed in subpart 2, item D as paid by the lessor.

D. Access to federal and state income tax returns for an individual, provider, or provider group having an ownership interest in the facility as specified in subpart 2, item F.

E. Other relevant information required to support a payment rate.

**Subp. 4. Method of accounting.** The accrual method of accounting in accordance with generally accepted accounting principles consistently applied is the only method acceptable for purposes of satisfying reporting requirements. If a government owned facility demonstrates that the use of the accrual method of accounting is not applicable to the facility, and that a cash or modified accrual method of accounting more accurately reports the facility's financial operations, the commissioner shall permit the provider to use a cash or modified accrual method of accounting.

**Subp. 5. Records.** The provider must maintain statistical and accounting records in sufficient detail to support information contained in the facility's required reports and financial statements for at least five years including the year following submission of a cost report.

**Subp. 6. Conflicts.** If conflicts occur between parts 9553.0010 to 9553.0080 and generally accepted accounting principles, then parts 9553.0010 to 9553.0080 shall prevail.

**Subp. 7. Certification of reports.** Required reports must be accompanied by a signed statement attesting to the accuracy of the information submitted on the required reports. The statement must be signed either by the provider or, for a partnership, one of the partners, or, for a corporation, the officer authorized to legally bind the firm. If reports have been prepared by a person other than the above individual, a separate statement signed by the preparer must also be included.

**Subp. 8. Deadlines, extensions, and rejections.** Items A to C govern deadlines, extensions, and rejection of reports.

A. The facility must submit the required annual cost reports to the commissioner by March 31. The annual cost report must cover the reporting year ending on December 31 of each year. A facility that terminates participation in the medical assistance program during a reporting year must submit the required annual cost report covering the period from January 1 of that reporting year to the date of termination. The annual cost report must be submitted within three months after termination.

B. The commissioner may reject any annual cost report filed by a facility that is incomplete or inaccurate or may require additional information necessary to support the payment rate request. The corrected report or the additional information requested must be returned to the commissioner within 20 days of the request or the report must be rejected. The commissioner may extend this time if the facility submits a showing of good cause in writing and if the commissioner determines that the delay in receipt of the information will not prevent the commissioner from establishing rates in a timely manner. Failure to file the required cost report and other required information or to correct the form of an incomplete or inaccurate report shall result in the rejection of the cost report and in a reduction of the payment rate as specified in subpart 10. Failure to provide the additional information shall also result in a reduction in the payment rate as specified in subpart 10 unless the total payment rate can be calculated by the disallowance of the cost for which the additional information was requested, in which case no rate reduction as specified in subpart 10 shall occur.

C. The commissioner shall grant a one month extension of the reporting deadline, if a facility submits a written request by February 1. The commissioner must notify the facility of the decision to grant or deny an extension within 15 days of receiving the request.

**Subp. 9. Effective date of total payment rate.** The commissioner shall provide notice to each facility of its total payment rate by September 1 of each year. The total payment rate is effective from October 1 of that year to September 30 of the following year.

**Subp. 10. Noncompliance.** A facility's failure to comply with reporting requirements subjects the facility to items A to C.

A. If a facility fails to provide reports, documentation, and worksheets required in this part, the commissioner shall reduce the facility's total payment rate to 80 percent of the total payment rate as provided in item B.

B. The reduced total payment rate is effective:

(1) 21 days after a written request for additional information under subpart 8, item B is sent by the commissioner, except when an extension has been granted pursuant to that subpart;

(2) for failure to provide the information required in subpart 1, 2, or 7, on March 31 if no extension has been granted; on April 1 if the extension was granted; or 21 days after a written request for the correction or completion of inaccurate reports or financial statements or at the expiration of such further time period as the commissioner may allow under subpart 8, item B.

C. Reinstatement of the total payment rate upon remedy of the failure or inadequacy is not retroactive.

**Subp. 11. Audits.** Facility audits are subject to items A to C.

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A. The department shall subject reports and supporting documentation to desk and field audits to determine compliance with parts 9553.0010 to 9553.0080. Retroactive adjustments may be made as a result of desk or field audit findings. If the audits reveal inadequacies in facility record keeping or accounting practices, the commissioner may require the facility to engage competent professional assistance to correct those inadequacies within 90 days of the written notification by the commissioner so that the field audit may proceed.

B. Field audits may cover the four most recent annual cost reports for which desk audits have been completed and payment rates have been established. The field audit must be an independent review of the facility's cost report. All transactions, invoices, or other documents that support or relate to the costs claimed on the annual cost reports are subject to review by the field auditor.

C. A field audit shall be completed within 90 days after commencement for a provider with a single facility or within 180 days for a provider group.

**Subp. 12. Suspension of audit.** The commissioner may suspend a field audit for good cause or if the provider's books and records are unavailable or unauditible. The commissioner shall notify the provider in writing when a field audit is suspended. If the field audit is suspended, the commissioner shall indicate in writing the date the field audit will again commence. If the field audit is suspended because the provider's books and records are unavailable or unauditible, the commissioner shall follow the procedures in subpart 11, item A. The deadline for completion of the field audit must be extended by the length of the suspension.

**Subp. 13. Adjustments.** Adjustments to a payment rate may be made as a result of desk or field audit findings or subject to part 9553.0050, subpart 3. Desk or field audit adjustments are made according to items A to G.

A. Field audit adjustments must be made only if the adjustment would result in at least a five cent per resident day or \$2,000 cost change, whichever is less.

B. Retroactive adjustments to the facility's total payment rate must be made as a result of desk and field audit findings, except that field audit adjustments shall be limited by the restrictions in item A.

C. If the adjustment results in a payment from the provider, payment must be made by the provider within 120 days after the date of the written notice. If the payment rate adjustment results in a payment to the provider, the medical assistance program payment to the provider must be made within 120 days after the date of the written notice. Interest charges must be assessed on balances outstanding after 120 days of written notification to the provider.

D. If an appeal has been filed under part 9553.0080, any payments owed by the provider or by the commissioner must be made within 120 days of the written notification to the provider of the commissioner's ruling on the appeal. Interest charges must be assessed on balances outstanding after 120 days of written notification of the commissioner's ruling on the appeal.

E. The annual interest rate charged in items C and D must be the rate charged by the commissioner of the Minnesota Department of Revenue for late payment of taxes, which is in effect on the 121st day after the written notification.

F. Any changes, adjustments, or amendments which result in a reimbursement to the facility shall be subject to the limitations in part 9553.0070, subpart 2.

G. Adjustments to the payment rate are limited to the four complete reporting years preceding the date on which an audit commences. Changes in the total payment rate which result from desk or field audit adjustments to cost reports for reporting years beyond the four most recent annual cost reports, must be made to the four most recent annual cost reports, the current cost report, and future cost reports to the extent that those adjustments affect the total payment rate established by those reporting years.

**Subp. 14. Amended reports.** Amendments to previously filed annual cost reports are governed by items A to E.

A. Facilities may file amendments to previously filed cost reports when errors or omissions in the annual cost report are discovered which would result in at least a five cent per resident day or \$2,000 adjustment, whichever is less for each reporting year.

B. The commissioner shall make retroactive adjustments to the total payment rate of an individual facility if the amendment is filed within 14 months of the original cost report to be amended. An error or omission for purposes of this item does not include a facility's determination that a prior choice between alternative methods of reporting costs permitted under the rules was not advantageous and should be changed. Errors or omissions which do not meet the threshold amount required for amended cost reports, or errors or omissions discovered after the 14-month time limitation specified herein, may be claimed at the time of the field audit.

C. Providers must not amend a previously filed cost report for the purpose of removing costs of services for which the facility seeks separate billing.

D. The amended cost report must consist of the corrected cost report pages resulting in the amendment and supporting documentation. The corrections or changes must be calculated according to parts 9553.0010 to 9553.0080.

E. Providers can file no more than two amendments to previously filed cost reports in which they have found errors or omissions.



**Subp. 15. False reports.** If a provider knowingly supplies inaccurate or false information in a required report that results in an overpayment, the commissioner shall do one or more of the following:

- A. immediately adjust the facility's payment rate to recover the entire overpayment;
- B. terminate the commissioner's agreement with the provider; and/or
- C. prosecute under applicable state or federal laws.

**9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.**

**Subpart 1. Establishment of allowable historical operating cost per diem.** The commissioner shall annually review and adjust the operating costs incurred by the facility during the reporting year preceding the rate year to determine the facility's allowable historical operating costs. The review and adjustment must comply with parts 9553.0010 to 9553.0080. Each facility's allowable historical operating cost per diem shall be established according to items A to F.

A. The total allowable historical operating cost per diem shall be limited according to subitems (1) to (3).

(1) For the rate years beginning on or after October 1, 1986, the administrative allowable historical operating cost shall not exceed the percentage of the allowable historical operating costs in all operating cost categories other than the administrative cost category given in units (a) and (b). The commissioner may recompute the limits in units (a) and (b) once within a five-year period.

- (a) 16 percent for facilities with more than 20 licensed beds in total; and
- (b) 20 percent for facilities with 20 or fewer licensed beds in total.

(2) Except as provided in subitem (3), for the rate years beginning on or after October 1, 1986, the allowable historical operating costs in each of the program, maintenance, and administrative operating cost categories must not exceed the respective operating cost payment rate for each of those cost categories in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year.

For the rate year beginning October 1, 1986, and October 1, 1987, the facility's total operating cost payment rate in effect during the reporting year must be separated into program, maintenance, and administrative operating cost payment rates according to units (a) to (c).

(a) The allowable historical operating costs for each of the program, maintenance, and administrative operating cost categories including the portion of payroll taxes and fringe benefits in unit (b) incurred during the reporting year must be divided by the total allowable historical operating costs incurred during the reporting year.

(b) The allowable historical operating costs for payroll taxes and fringe benefits shall be allocated to the program, maintenance, and administrative operating cost categories in accordance with part 9553.0030, subpart 6.

(c) The program, maintenance, and administrative operating cost payment rates shall be determined by multiplying each total operating cost payment rate in effect during the reporting year by the program, maintenance, and administrative ratios determined in unit (a).

(3) The facility may exceed the allowable historical program operating cost limit established in subitem (2) to the extent that the allowable historical operating costs for the maintenance cost category or administrative cost category are below the limits established in subitem (2).

(4) The limits in subitems (2) and (3) shall not apply to a facility with an interim payment rate established according to part 9553.0075.

B. The program allowable historical operating cost per diem shall be computed by dividing the program allowable historical operating costs in that cost category incurred during the reporting year as limited according to item A, by the greater of resident days or 85 percent of capacity days.

C. The maintenance allowable historical operating cost per diem shall be computed by dividing the maintenance allowable historical operating costs in that cost category incurred during the reporting year as limited according to item A, by the greater of resident days or 85 percent of capacity days.

D. The administrative allowable historical operating cost per diem shall be computed by dividing the administrative

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allowable historical operating cost in that cost category incurred during the reporting year as limited according to item A, by the greater of resident days or 85 percent of capacity days.

E. The total allowable historical operating cost per diem shall be the sum of items B to D.

F. If a facility's total allowable historical operating cost per diem or allowable historical operating cost per diems in any of the operating cost categories is greater than the respective operating cost payment rate established for the corresponding rate year, there must be no retroactive cost settlement, unless the difference is due to:

- (1) a field audit adjustment as in part 9553.0041, subpart 13; or
- (2) a settle-up payment rate computed as in part 9553.0075.

**Subp. 2. Establishment of total operating cost payment rate.** The total operating cost payment rate shall be established according to items A to F.

A. The allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be adjusted by the annualized percentage change in the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent Januarys prior to the beginning of the rate year. The year 1967 is the standard reference base period.

B. The program operating cost payment rate shall be the adjusted program operating cost per diem computed in item A except as provided in subpart 3.

C. The maintenance operating cost payment rate shall be the adjusted maintenance operating cost per diem computed in item A.

D. The administrative operating cost payment rate shall be the adjusted administrative operating cost per diem computed in item A.

E. If the total allowable historical operating cost incurred during the reporting year is less than the sum of the limits computed in subpart 1, item A, subitem (2), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of \$2 per resident per day. A facility whose program allowable historical operating cost incurred during the reporting year is below the program historical operating cost limit established in subpart 1, item A, subitem (2) is not eligible to receive the efficiency incentive. The efficiency incentive must not be adjusted as a result of a field audit.

F. The total operating cost payment rate shall be the sum of items B to E.

**Subp. 3. One-time adjustment to program operating cost payment rate.** The one-time adjustment shall be determined according to items A to G.

A. The commissioner shall allow a one-time adjustment to a facility's program operating cost payment rate when the commissioner has issued an order to the facility under parts 9525.0210 to 9525.0430 requiring the facility to correct a deficiency in the number or type of program staff necessary to implement individual resident habilitation plans provided that:

(1) the facility's program staff complement on the date of the commissioner's finding of the deficiency is equal to or exceeds the program staff complements included in the facility's total payment rates during the rate year covering the date of the finding and during the immediately prior rate year;

(2) the deficiency cannot be corrected by reallocating facility staff and costs including amounts reimbursed for a change in ownership or reorganization of provider entities between related organizations, and any efficiency incentive or other allowance;

(3) the deficiency cannot be corrected through a special needs rate exception as provided in parts 9510.1020 to 9510.1140, as proposed at *State Register*, Volume 10, Number 2, pages 54 to 65 (July 8, 1985); and

(4) the provisions in items B to G are met.

B. The facility must submit to the commissioner a written request for the one-time adjustment to the program operating cost payment rate. The request must include:

(1) documentation which indicates that the deficiency could not be corrected through a special needs rate as provided in parts 9510.1020 to 9510.1140 [Emergency];

(2) a copy of the order issued by the commissioner which cites a deficiency in program staff and a copy of the commissioner's determination of the number and type of program staff required to correct the deficiency;

(3) a list of all staff positions during the rate year covering the date of the deficiency order and the immediately prior rate year, annual salaries and hours, related fringe benefits and payroll taxes;

(4) a description of the facility's plan to correct the deficiency including the projected cost of the salary and related fringe benefits and payroll taxes for required additional program staff; and

(5) an explanation of the reasons the facility was unable to meet staff ratios necessary to implement individual resident habilitation plans under payment rates established by current or prior reimbursement rules.

C. The commissioner shall evaluate the documents submitted in item B using the criteria in item A. If the request meets the criteria in item A, the commissioner shall compute the one-time adjustment to the program operating cost payment rate in accordance with subitems (1) to (4).

(1) Only the reasonable cost of the salary and related fringe benefits and payroll taxes for required additional program staff shall be allowed.

(2) The amount determined in subitem (1) shall be divided by the greater of resident days or 85 percent of capacity days.

(3) Any efficiency incentive or portion of the capital debt reduction allowance not used for capital debt reduction, included in the facility's total payment rate in effect on the date of the written request in item B shall be subtracted from the amount computed in subitem (2).

(4) Any further reduction which would be possible by reallocating the facility's staff and costs shall be subtracted from the amount computed in subitem (2).

D. If the amount in item C, is greater than zero, the commissioner shall allow a one-time adjustment to the facility's total payment rate equal to that amount. The one-time adjustment shall be effective on the first day of the month following the commissioner's determination.

E. The one-time adjustment to the facility's total payment rate shall remain in effect for a 12-month period. At the end of the 12-month period, the commissioner shall conduct a fiscal and program review. Based on the results of the fiscal and program review, the commissioner shall implement either subitem (1), (2), or (3).

(1) If the facility fails to implement the plan specified in item B, subitem (4), the commissioner shall recover the total amount paid under this subpart in accordance with part 9553.0041, subpart 13 and shall disallow any costs incurred by the facility in establishing future payment rates.

(2) If the facility implements the plan specified in item B, subitem (4) and the actual costs incurred during the 12-month period are below the payments made under this subpart, the commissioner shall reduce the adjustment to the facility's total payment rate accordingly and recover any overpayments in accordance with part 9553.0041, subpart 13. The reduced adjustment to the facility's total payment rate shall continue to be paid to the facility until the September 30 following the end of the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes.

(3) If the actual costs of implementing the plan specified in item B, subitem (4) incurred during the 12-month period exceed the payments made under this subpart, there shall be no retroactive cost settle up. The one-time adjustment to the facility's total payment rate shall continue to be paid to the facility at the same level until the September 30 following the end of the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes.

F. The facility must record the costs associated with this subpart separately from other facility costs until the commissioner's fiscal and program review establishes that the facility has implemented the plan specified in item B, subitem (4). To prevent duplicate payment, the program costs associated with this subpart are nonallowable until after the commissioner has reviewed and approved these costs in accordance with item D. If the commissioner approves these costs, the costs incurred during the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes shall be allowable.

G. The commissioner shall authorize payments under this subpart only once for each facility.

#### **9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.**

**Subpart 1. Depreciation.** Allowable depreciation expense must be determined according to items A to E.

A. Subject to the limitations in item C, the basis for calculating depreciation is governed by subitems (1) to (7).

(1) The historical capital cost of the capital assets as limited by item C is the basis for calculating depreciation.

(2) For donations between a provider and a related organization, the net book value of the capital asset to the donor must be the basis for calculating depreciation for the donee. A donated capital asset is one acquired by the facility without making any payment in the form of cash, property, or services.

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(3) Depreciation is not allowed on a capital asset or portion of a capital asset purchased through federal, state, or local appropriations or grants unless the appropriation or grant is required to be repaid through the revenues of the facility.

(4) The historical capital cost of the capital assets in item A must be increased for the cost of additions or replacements to assets capitalized according to part 9553.0035, subpart 8, subject to the limitations in subitem (6) and item C, and must be depreciated according to this subpart. The increased depreciation expense must be recognized in the calculation of the payment rate for the rate year following the reporting year in which the cost was incurred without regard to when during that reporting year the capital asset was purchased. The facility may claim depreciation expense for the depreciable capital assets for only the portion of the reporting period after the construction was completed or the capital asset was purchased.

(5) The initial accumulated depreciation on used capital assets for providers entering the medical assistance program after December 31, 1983, must be calculated using the useful life schedule in item B starting from the later of the date of completion of construction, or the time of purchase by the current owner. The initial accumulated depreciation on the capital assets must not exceed 50 percent of the historical capital cost of the capital assets in any case.

(6) The historical capital cost of the capital assets and the accumulated depreciation of those capital assets must not be adjusted for either a full or partial change of ownership, reorganization of provider entities, or for any costs associated with replacing existing capital assets as a result of a casualty loss.

(7) In no instance shall the total accumulated depreciation allowance paid for a capital asset exceed the historical cost of that capital asset.

B. The straight line method of depreciation must be used to compute the facility's depreciation for each capital asset. The useful life of a capital asset must be determined in accordance with subitems (1) to (3), except as provided in part 9553.0030, subpart 4, item E.

(1) The useful life of a new capital asset must be calculated as follows:

- (a) physical plant and other buildings must be depreciated over 35 years;
- (b) physical plant improvements and additions must be depreciated over the greater of the remaining useful life in unit (a) or 15 years;
- (c) land improvements must be depreciated over 20 years;
- (d) depreciable equipment except vehicles must be depreciated over five years; and
- (e) vehicles must be depreciated over four years.

(2) The useful life of a used capital asset must be assigned by the provider, based on the physical condition of the used capital asset. The useful life assigned to the used capital asset must be the greater of the remaining useful life of the capital asset shown in subitem (1) for this type of capital asset, or one-half of the useful life shown in subitem (1) for that type of capital asset.

(3) The useful life of a leasehold improvement must be determined in accordance with subitem (1) or (2) for that type of capital asset.

C. The facility's historical capital costs shall be limited by subitems (1) to (4).

(1) The facility's total historical capital costs of capital assets, as determined in item A must not exceed the maximum limits established annually per bed for licensed Class A beds and for licensed Class B beds, as follows:

Calendar Year Limits	Class A	Class B
Prior to 1974	\$11,000	
1974	13,000	
1975	14,820	
1976	15,413	
1977	16,406	
1978	18,109	
1979	20,010	
1980	25,194	\$29,452
1981	28,016	32,751
1982	29,165	34,094
1983	29,952	35,015
1984	30,012	35,085
1985	31,723	37,085

(2) The limitations in subitem (1) shall be adjusted on January 1 each year by the percentage increase in the construction index published by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business Statistics for the previous two Octobers. The construction index is incorporated by reference. It is available through the Minitex Interlibrary Loan System. Facilities entering the medical assistance program shall be subject to the limitation in effect at the time the facility entered the program.

(3) The depreciation on additions, replacements, or newly acquired depreciable equipment shall be allowed without regard to the limits in this item, if the acquisitions were required subsequent to the facility's certification in order to maintain compliance with the Life Safety Code, as referenced in Code of Federal Regulations, title 42, sections 442.507 to 442.509, as amended through December 31, 1982 or as subsequently amended, or with fire safety orders of the local agency.

(4) After the facility's first three full reporting years and every three full reporting years thereafter, the facility's investment per bed limitation established according to subitems (1) to (3) shall be increased by the average of the annual percentage increases in the investment per bed limitation for the current reporting year and the previous three full reporting years. For purposes of this subitem, a full reporting year must contain at least 12 months. The adjustment to the facility's investment per bed limitation shall not apply to any original construction and investment costs. Depreciation on the original construction and investment in historical capital costs of capital assets shall continue to be limited by the per bed limitation in effect when the facility entered the medical assistance program.

D. Gains and losses on the disposal of capital assets must be included in the computation of allowable costs. A gain on the sale or abandonment of a facility's capital assets must be offset against the property related cost category to the extent that the gain resulted from depreciation expense claimed for reimbursement under parts 9553.0010 to 9553.0080, 12 MCAR SS 2.05301-2.05315 [Temporary], or parts 9510.0500 to 9510.0890. Gains or losses on trade-ins shall be reflected in the historical capital cost of the acquired capital asset. Claims for losses are limited to a total of ten cents per resident day per reporting year. Any excess loss not claimed during the reporting year may be carried forward to future years.

E. Except as provided in subpart 7, facilities must fund depreciation according to subitems (1) to (8).

(1) The annual deposit to the funded depreciation account must be determined according to the following formula: (allowable depreciation—required annual principal payment on the capital debt) multiplied by (1—the percentage of equity determined in subpart 5). The required annual deposit to the funded depreciation account must be deposited to the account no later than the end of the reporting year.

(2) Funded depreciation must be invested in liquid marketable investments such as savings or money market accounts, certificates of deposit, and United States Treasury bills.

(3) Funded depreciation and interest income earned on funded depreciation must be used for capital debt reduction or for the purchase or replacement of capital assets or payment of capitalized repairs for the facility.

(4) An amount not to exceed 50 percent of the cumulative total amount of allowable depreciation required to be deposited in the funded depreciation account and the interest income earned on funded depreciation may be withdrawn for the purchase or replacement of capital assets or payment of capitalized repairs for the facility. If the amount in the funded depreciation account after a withdrawal is equal to or greater than the balance of capital debt remaining at the end of the prior reporting year, that excess amount may also be withdrawn for the purchase or replacement of capital assets or payment of capitalized repairs for the facility.

(5) A separate funded depreciation account must be maintained for each facility.

(6) Income earned on funds withdrawn for purposes other than those allowed in subitem (3) or in excess of the percent allowed in subitem (4) must be offset against the facility's property related costs. These withdrawals must be assumed to be on a first in, first out basis.

(7) Providers who do not deposit the required amount of depreciation in the funded depreciation account by the end of the reporting year will have their allowable capital debt interest expense for the facility reduced. The reduction must be calculated by assuming that the portion of funded depreciation not deposited in the funded depreciation account during the reporting year was applied to reduce capital debts in accordance with subpart 5, item C.

(8) Funds deposited to meet the required Depreciation Reserve of the Minnesota Housing Finance Agency fulfill the requirements of this item. Amounts deposited in a Development Cost Escrow Account required by the Minnesota Housing Finance

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Agency or other similar accounts are not considered funded depreciation. Facilities financed by the Minnesota Housing Finance Agency must submit a copy of a statement breaking out the interest income according to the type of deposit.

**Subp. 2. Limitations on interest rates.** The commissioner shall limit interest rates according to items A to C.

A. Except as provided in item B, the effective interest rate of each allowable capital debt, including points, financing charges, and amortization of bond premiums or discounts, entered into after December 31, 1985, is limited to the lesser of subitems (1), (2), and (4) for all capital debt except motor vehicles. The limitations on motor vehicle capital debt is the lesser of subitems (1), (3), and (4). The limits are:

(1) the effective interest rate on the capital debt;

(2) a rate 1.5 percentage points above the posted yield for standard conventional fixed rate mortgages of the Federal Home Loan Mortgage Corporation as published in the Wall Street Journal and in effect on the first day of the month in which the capital debt is incurred;

(3) a rate three percentage points above the prime rate as published in the Minneapolis Star and Tribune and in effect on the first day of the month in which the capital debt is incurred; or

(4) 16 percent.

B. Variable or adjustable interest rates for allowable capital debts are allowed subject to the limits in item A. For each allowable capital debt with a variable or adjustable interest rate, the effective interest rate must be computed by dividing the interest expense including points, financing charges, and amortization of bond premiums or discounts for the reporting year by the average allowable capital debt. The average allowable capital debt shall be computed as in subpart 3, item G, subitem (4).

C. The effective interest rate for capital debts incurred before January 1, 1984, is allowed in accordance with the laws and rules in effect at the time the capital debt was entered into provided the effective interest rate is not in excess of what the borrower would have had to pay in an arms-length transaction in the market in which the capital debt was incurred. For rate years beginning after September 30, 1987, the effective interest rate for debts incurred before January 1, 1984, is subject to the limit in item A, subitem (4), unless the refinancing of the capital debt is prohibited by the original terms of the agreement with the lender.

**Subp. 3. Allowable interest expense.** Allowable capital debt interest expense shall be determined in accordance with items A to J.

A. Except as in subpart 1, item E, subitem (7), interest income earned on the required funded depreciation shall not be deducted from capital debt interest expense and working capital interest expense. Interest income earned on amounts deposited in a Development Cost Escrow Account required by the Minnesota Housing Finance Agency or other similar accounts and which is available during the reporting year to the provider or provider group shall be deducted from capital debt interest expense. Any other interest income shall not be deducted from capital debt interest income. Except for interest income earned on the required funded depreciation, interest income available during the reporting year to the provider or provider group shall be deducted from the working capital interest expense.

B. All interest expense for capital debts entered into prior to January 1, 1984, shall be allowed in accordance with the laws and rules in effect at the time the capital debt was entered into provided the effective interest expense is not in excess of what the borrower would have had to pay in an arms-length transaction, except that for rate years beginning after September 30, 1987, the effective interest rate for debts incurred before January 1, 1984, is allowed subject to subpart 2, item A, subitem (4).

C. A facility which has a restricted fund must use its restricted funds to purchase or replace capital assets to the extent of the cost of those capital assets before it borrows funds for the purchase or replacement of those capital assets. For purposes of this subpart, a restricted fund is a fund whose use is restricted by the donor, the nonprofit facility's board, or any other nonrelated organization, to the purchase or replacement of capital assets.

D. Construction period interest expense must be capitalized as a part of the cost of the physical plant. The period of construction extends to the earlier of either the first day a medical assistance recipient resides in the facility, or the date the facility is certified to receive medical assistance recipients, except that the period of construction cannot extend beyond the date on which the project is complete. A project is complete when a certificate of occupancy is issued or, if a certificate of occupancy is not required, when the project is available for use.

E. Interest expense for capital debts entered into after December 31, 1983, shall be allowed for the portion of the capital debt which together with all other outstanding capital debts does not exceed 100 percent of the historical capital cost of the facility's capital assets subject to the limitations in item H and subpart 1, item C.

F. Interest expense for capital debts on capital assets acquired, leased, constructed, or established after December 31, 1983, shall be allowable only for the portion of the capital debt which does not exceed 80 percent of the historical capital cost of the capital asset subject to the limitations in item H and subpart 1, item C.

G. Changes in interest expense, except increases in interest expense due to refinancing of existing capital debts, or changes in ownership, shall be allowed in the calculation of the total payment rate for the rate year following the reporting year in which the cost was incurred. Changes in interest expense due to refinancing of existing capital debts, changes in ownership, or reorganization of provider entities, shall be subject to subitems (1) to (4).

(1) Increases in interest expense due to changes in ownership, reorganization of provider entity, or the refinancing of a capital debt, except for refinancing of a capital debt allowed under subitems (2) to (4), are not allowable costs.

(2) Increases in interest expense due to refinancing of a construction capital debt for a newly constructed facility are an allowable cost for the amount of the refinanced construction capital debt which does not exceed the limitation in item F. The interest rate on the refinanced construction capital debt shall be limited under subpart 2.

(3) Increases in interest expense which result from refinancing of a capital debt with a balloon payment shall be allowed according to units (a) to (c).

(a) The interest rate on the refinanced debt shall be limited under subpart 2, item A.

(b) The refinanced capital debt shall not exceed the balloon payment.

(c) The term of the refinanced capital debt shall not exceed the term of the original debt computed as though the balloon payment did not exist. If the term of the original debt does not extend beyond the date of the final balloon payment, the term of refinanced capital debt shall not exceed 30 years including the term of the original capital debt.

(4) Increases in interest expense for a variable or adjustable rate capital debt are allowable if the effective interest rate does not exceed the limits in subpart 2, item A, subitem (4). For each variable or adjustable rate capital debt, the effective interest rate shall be computed by dividing the interest expense including points, finance charges, and amortization of bond premiums and discounts, for the reporting year by the average allowable debt. The average allowable debt for each variable or adjustable rate capital debt shall be computed by dividing the sum of the allowable debt at the beginning and end of the reporting year by two. Any variable or adjustable rate capital debt which has a zero balance at the beginning or end of the reporting year shall use a monthly average over the reporting year.

H. For purposes of parts 9553.0010 to 9553.0080, the cost of land purchased prior to January 1, 1984, shall be limited according to laws and rules effective on December 31, 1983. The cost of land purchased on or after January 1, 1984, shall be limited to \$3,000 per licensed bed.

I. Interest expense incurred as a result of a capital debt or working capital loan between related organizations shall not be an allowable cost, except as in item B.

J. Except as provided in item D, capital debt related financing charges including points, origination fees, and legal fees shall be amortized over the term of the capital debt.

**Subp. 4. Computation of property related payment rate.** The commissioner shall determine the property related payment rate according to items A to C.

A. The number of capacity days is determined by multiplying the number of licensed beds in the facility by the number of days in the facility's reporting year.

B. The commissioner shall compute the allowable property related costs by reviewing and adjusting the facility's property related costs incurred during the reporting year by applying parts 9553.0010 to 9553.0080. The facility's property related per diem shall be determined by dividing its allowable property related costs by 96 percent of the capacity days. For facilities with 15 or fewer licensed beds, the commissioner shall use the lesser of 96 percent of licensed capacity days or resident days, except that in no case shall resident days be less than 85 percent of licensed capacity days.

C. The facility's property related payment rate shall be determined by adding the amount in item B, and the capital debt reduction allowance in subpart 5, or the allowance in subpart 7, item F.

**Subp. 5. Capital debt reduction allowance.** A provider whose facility is not leased or a facility which is leased from a related organization shall receive a capital debt reduction allowance. The amount of the capital debt reduction allowance and the reduction of capital debt required must be determined according to items A to G:

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A. The total amount of the capital debt reduction allowance and the portion of that amount which must be applied to reduce the provider's capital debt shall be determined according to the following table:

PERCENTAGE OF EQUITY IN CAPITAL ASSETS USED BY THE FACILITY	TOTAL CAPITAL DEBT REDUCTION ALLOWANCE PER RESIDENT DAY (IN DOLLARS)	AMOUNT WHICH MUST BE APPLIED TO REDUCE CAPITAL DEBT (IN DOLLARS)
Less than 20.01	.50	.50
20.01 to 40.00	.50	.40
40.01 to 60.00	.65	.30
60.01 to 80.00	.80	.20
80.01 to 100.00	1.00	0

B. Except as provided in subpart 7, item F, the provider's percentage of equity in the facility shall be determined by dividing equity by total allowable historical capital cost of capital assets.

C. If prepayment of a capital debt is prohibited by the funding source and the provider does not have any other capital debts, the provider shall not receive the portion of the capital debt reduction allowance which must be applied to reduce capital debt.

D. Each reporting year, the provider shall reduce the capital debt at the end of the reporting year by an amount equal to the portion of the capital debt reduction allowances paid during the reporting year which must be applied to reduce capital debt multiplied by the prorated resident days corresponding to each capital debt reduction allowance paid during the reporting year.

E. The amount of reduction of capital debt computed in item A, must be in addition to the normal required principal payments on the capital debt to be reduced.

F. The amount of reduction of capital debt computed in item D must be applied first to reduce the principal on the allowable portion of any capital debt on which the provider is only required to pay interest expense. The remaining portion of the amount shall be applied to reduce other allowable capital debt starting with the capital debt which had the highest amount of interest expense during the reporting year.

G. For purposes of determining the provider's property related payment rate for the facility, only capital debt interest expense resulting from allowable capital debt reduced in accordance with items D to F shall be allowed.

**Subp. 6. Energy conservation incentive.** The commissioner shall approve requests for exceptions to subpart 3, item F, and part 9553.0035, subpart 8, for initiatives designed to reduce the energy usage of the facility. The requests must be accompanied by an energy audit prepared by a professional engineer or architect registered in Minnesota, or by an auditor certified under part 4150.0200 to do energy audits. The cost of the energy audit is an allowable operating cost and must be classified in the plant operations and maintenance cost category. Energy conservation measures identified in the energy audit that:

A. have a payback period equal to or less than 36 months and a total cost not exceeding \$1 per resident day shall be exempt from subpart 3, item F and part 9553.0035, subpart 8; or

B. have a payback period greater than 36 months or have a total cost in excess of \$1 per resident day shall be exempt from subpart 3, item F.

**Subp. 7. Reimbursement of lease or rental expense.** The provider or provider group's lease or rental costs shall be determined according to items A to H.

A. Lease or rental costs of depreciable equipment shall be allowed if:

(1) the lease or rental agreement is arms-length; and

(2) the lease or rental cost is equal to or less than the cost of purchasing that piece of depreciable equipment. For purposes of this subitem, the cost of purchasing the piece of depreciable equipment must be determined according to subparts 1 to 4 and item E; or

(3) the arms-length lease or rental agreement for the piece of depreciable equipment covers a period of 60 days or less annually.

B. Leases or rental agreements shall be considered arms-length transactions unless the lease or rental agreement:

(1) results from sale and leaseback arrangements;

(2) results from a lease with option to buy at less than anticipated value;

(3) is paid to a related organization; or

(4) for other reasons is required to be capitalized in accordance with generally accepted accounting principles.



C. The costs of a lease or rental agreement for a facility's physical plant shall be subject to the following limitations:

- (1) Lease or rental costs which are not arms-length leases as defined in item B shall be disallowed.
- (2) Arms-length leases or rental costs incurred under agreements entered into after December 31, 1983, shall be disallowed.
- (3) Arms-length leases or rental costs incurred under agreements entered into on or before December 31, 1983, are allowable under rules and regulations in effect on December 31, 1983, subject to the limitations in item E.
- (4) Renewals, renegotiations, or extensions of leases or rental agreements in subitem (3) are allowable to the extent that the new lease or rental cost does not exceed the previous lease or rental cost and subject to the limitations in item E.

D. For lease or rental costs disallowed under item C, subitem (1) or (2), the provider shall receive in lieu of the lease or rental costs for the facility's physical plant the applicable depreciation, interest, and other reasonable property related costs incurred by the lessor, such as real estate taxes. Depreciation and interest shall be established in accordance with subparts 1 to 5, and shall be based on the lessor's historical capital cost of the capital assets and historical capital debt.

E. The present value of the lease or rental payments allowed in item A, subitem (2) and item C, subitems (3) and (4) together with the historical capital cost of all other capital assets used by the facility shall not exceed the limitations in subpart 1, item C; and subpart 3, item H. The present value of the lease or rental payments must be calculated exclusive of real estate taxes and other costs assumed by the lessor. The interest rate used in calculating the present value of the lease or rental payments shall be the lessor's assisted rate subject to the limits in subpart 2.

F. Providers with physical plant lease or rental costs disallowed under item C, subitem (1) if such a disallowance was the result of a less than arms-length agreement under item B, subitem (3) may receive the capital debt reduction allowance as in subpart 5 except that for purposes of computing the percentage of equity in subpart 5, the lessor and the lessee's historical capital costs of capital assets in the facility and the related historical capital debt must be used.

G. Facilities which lease capital assets from related organizations must fund depreciation in accordance with subpart 1, item E.

H. Parts 9553.0010 to 9553.0080 shall be used to determine the allowable property related cost for facilities which have lease or rental agreements and subsequently purchase the same capital asset. In no case shall the allowed property related costs on the purchased capital asset exceed the annual cost allowed for the lease or rental agreement prior to the sale under parts 9553.0010 to 9553.0080.

#### **9553.0070 DETERMINATION OF TOTAL PAYMENT RATE.**

**Subpart 1. Total payment rate.** The total payment rate must be the sum of the total operating cost payment rate and the property related payment rate.

**Subp. 2. Limitations to total payment rate.** The total payment rate must not exceed the rate paid by private paying residents for similar services for the same period. This limit does not apply to payments made by the commissioner for approved services for very dependent persons with special needs under parts 9510.1020 to 9510.1140, as proposed at *State Register*, Volume 10, Number 2, pages 54 to 65 (July 8, 1985).

**Subp. 3. Respite care payment rate.** Rates charged for respite care must be identified separately. The respite care payment rate may be different than the total payment rate established by the commissioner if the services provided to the respite care resident are not similar to services provided to other facility residents for the same period.

**Subp. 4. Adjustment to total payment rate for phase-in of common reporting year.** A facility whose total payment rate established for the rate year beginning during calendar year 1985, will be in effect for a period greater than 12 months due to the phase-in of a common reporting year, shall receive for the months over 12 months, its total payment rate increased by the prorated annual percentage change in the all urban consumer price index (CPI-U) for Minneapolis/St. Paul as published by the Bureau of Labor Statistics between January 1984 and January 1985, new series index (1967 = 100). That adjusted total payment rate shall be in effect until September 30, 1986. This adjusted total payment rate must not be in effect for more than nine months.

#### **9553.0075 RATE SETTING PROCEDURES FOR NEWLY CONSTRUCTED OR NEWLY ESTABLISHED FACILITIES OR APPROVED CLASS A TO CLASS B CONVERSIONS.**

**Subpart 1. Interim payment rate.** A provider may request an interim payment rate for a newly constructed or newly established

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facility or for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds provided that the conversion is approved by the commissioner. To receive an interim payment rate, the provider must submit a projected cost report in compliance with parts 9553.0010 to 9553.0080 to the extent applicable, for the year in which the provider plans to begin operation or plans to convert beds. Parts 9553.0050, subparts 1, item A, subitems (2) and (3); 2, item E; and 3 and 9553.0060, subpart 6 shall not apply to interim payment rates. The interim property related payment rate must be determined using projected resident days but not less than 80 percent of licensed capacity days. The effective date of the interim payment rate for a newly constructed or newly established facility must be the later of the first day a medical assistance recipient resides in the newly constructed or established bed or the date of medical assistance program certification. The effective date of the interim payment rate for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds must be the later of the date on which all the converted beds are occupied by residents requiring a Class B bed as determined by the commissioner or the date on which the beds are licensed as Class B beds by the Minnesota Department of Health. Prior to the effective date of the interim payment rate, the provider may submit a request to update the interim rate. After the effective date of the interim payment rate, no adjustments shall be made in the interim payment rate until settle-up.

**Subp. 2. Interim payment rate settle-up.** The interim payment rate must not be in effect more than 17 months. When the interim payment rate begins between August 1 and December 31, the facility shall file settle-up cost reports for the period from the beginning of the interim payment rate through December 31 of the following year. When the interim payment rate begins between January 1 and July 31, the facility shall file settle-up cost reports for the period from the beginning of the interim payment rate to the first December 31 following the beginning of the interim payment rate.

A. An interim payment rate established on or before December 31, 1985, is subject to retroactive upward or downward adjustment based on the settle-up cost report and according to rules in effect when the interim rate was established.

B. An interim payment rate established on or after January 1, 1986, is subject to retroactive upward or downward adjustment based on the settle-up cost report and in accordance with parts 9553.0010 to 9553.0080 except that:

(1) parts 9553.0050, subparts 1, item A, subitems (2) and (3); 2, item E; and 3 and 9553.0060, subpart 6 do not apply;

(2) the settle-up property related payment rate must be calculated using the lesser of resident days or 96 percent of licensed capacity days but not less than 80 percent of licensed capacity days;

(3) the settle-up operating cost payment rates must be determined by dividing the allowable historical operating costs by the greater of resident days or 80 percent of licensed capacity days; and

(4) the settle-up total payment rate must not exceed the interim payment rate by more than 0.4166 percent for each full month between the effective date of the interim payment rate period and the end of the first fiscal period.

**Subp. 3. Total payment rate for nine-month period following settle-up period.** For the nine-month period following the settle-up reporting period, the total payment rate must be determined according to items A and B.

A. The allowable historical operating cost per diems must be determined in accordance with parts 9553.0010 to 9553.0080 except that:

(1) parts 9553.0050, subparts 1, item A, subitems (2) and (3); 2, item E; and 3, and 9553.0060, subpart 6 do not apply;

(2) the resident days must be the greater of an annualization of the resident days in the last three months of the interim reporting period or the resident days in the interim reporting period but not less than 85 percent of licensed capacity days; and

(3) the allowable historical operating cost per diems must be adjusted by multiplying those per diems by 9/12 of the percentage change in the all urban consumer price index (CPI/U) of Minneapolis/St. Paul as published by the Bureau of Labor Statistics between the two most recent Januarys prior to the beginning of the rate year, new series index (1967 = 100).

B. The property related payment rate must be determined according to parts 9553.0010 to 9553.0080.

**Subp. 4. Payment rate during the first rate year following the interim rate period.** The first total payment rate for the first rate year after the end of the interim rate period must be based on the settle-up cost report and must be calculated as in subpart 3, except that the allowable historical operating cost per diems shall be adjusted in accordance with part 9553.0050, subpart 2, item A.

### 9553.0080 APPEAL PROCEDURES.

**Subpart 1. Scope of appeals.** A decision by the commissioner may be appealed by the provider, provider group, or a county welfare or human services board if the following conditions are met:

A. the appeal, if successful, would result in a change to the facility's total payment rate;

B. the appeal arises from application of parts 9553.0010 to 9553.0080, 12 MCAR SS 2.05301-2.05315 [Temporary] or parts 9510.0500 to 9510.0890; and

C. the dispute over the decision is not resolved informally between the commissioner and the appealing party within 30 days of filing the written notice of intent to appeal under subpart 2, item A.

**Subp. 2. Filing of appeals.** To be effective, an appeal must meet the following criteria:

A. The provider, provider group, or county welfare or human services board must notify the commissioner in writing of its intent to appeal within 30 days of receiving the total payment rate determination or decision which is being appealed. A written appeal must be filed with the commissioner within 60 days after receiving the total payment rate determination or decision which is being appealed.

B. The appeal must specify:

- (1) each disputed item and the reason for the dispute;
- (2) the computation and the amount that the provider believes to be correct;
- (3) an estimate of the dollar amount involved in each disputed item;
- (4) the authority in statute or rule upon which the provider is relying in each disputed item; and
- (5) the name and address of the person or firm with whom contacts may be made regarding the appeal.

**Subp. 3. Resolution of appeal.** The appeal shall be heard under the contested case provisions in Minnesota Statutes, sections 14.57 to 14.62 and parts 1400.5100 to 1400.8300. Upon agreement of both parties, the dispute may be resolved informally through any informal dispute resolution method such as settlement, mediation, or modified appeal procedures established by agreement between the commissioner and the chief hearing examiner.

**Subp. 4. Payment rate during appeal period.** Notwithstanding any appeal filed under parts 9553.0010 to 9553.0080, the total payment rate established by the commissioner shall be the total payment rate paid to the provider while the appeal is pending.

**Subp. 5. Payments after resolution of appeal.** Upon resolution of the appeal any overpayments or underpayments shall be paid under part 9553.0041, subpart 13.

**Subp. 6. Appeal expenses.** Expenses incurred in the appeal or for individual items under appeal will be reimbursed to the provider to the extent that:

- A. the appeal or the individual item was resolved on behalf of the provider; and
- B. this amount is not in excess of limits determined under parts 9553.0010 to 9553.0080.

## Department of Public Safety Administration Division

### Proposed Rule Relating to School Safety Patrol Members

#### Notice of Intent to Adopt Rules without a Hearing

Notice is hereby given that the State Department of Public Safety is proposing to adopt the above entitled rules without a public hearing. The Commissioner of Public Safety has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow procedures set forth in Minn. Stat. Sections 14.21 through 14.28.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the proposed rules. Public comments are encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for comment, and any change proposed. The proposed rules may be modified prior to final adoption if modifications are supported by the data and views submitted to the Department of Public Safety and do not result in a substantial change in the proposed language.

If 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will be held. The written request must be specific on which rule(s) a hearing is desired. Identification of the portion of the proposed rule addressed, the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications are requested. Any person requesting a public hearing should state his or her name and address. In the

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event a public hearing is required, the department will proceed according to the provisions of Minn. Stat. Sections 14.13 through 14.20.

Persons who wish to submit comments or a written request for a public hearing, or persons who wish to receive a free copy of this notice and/or a free copy of the proposed rules, should address their correspondence to the address below and include the name of the rulemaking:

Harlan Olson  
Department of Public Safety  
211 Transportation Building  
St. Paul, MN 55155

The Department's authority to adopt the proposed rules is contained in Minnesota Statute section 126.15, subd. 4. A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available free from the Department of Public Safety upon request to the above address.

The department has considered the requirements of Minn. Stat. Section 14.115 and has determined that the proposed rules do not directly affect small businesses.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the date of submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written request to the above address.

Please be advised that Minn. Stat. Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minn. Stat. Section 10A.01, subdivision 11 defines a lobbyist as any individual: (a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) who spends more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

The department estimates that there will be no cost to local public bodies in the state to implement the rules for the two years immediately following their adoption, within the meaning of Minnesota Statutes Section 14.11, subdivision 1. Any costs incurred by local jurisdictions in the permit issuance process can be recovered through imposition of a fee authorized by the rules.

A copy of the proposed rules is attached to this notice.

Paul J. Tschida  
Commissioner of Public Safety

### Rule as Proposed

#### 7415.0500 POSITION AND PROCEDURE AT STREET INTERSECTION OR CROSSING.

A school patrol member must comply with the following procedures at street intersections and crossings:

A. to C. [Unchanged.]

D. When the lanes of the roadway are clear of traffic the patrol member shall extend the flag into the traffic lane at an angle of approximately 45 degrees upward. This will be the signal for all the children to start crossing the street. Holding the flag at a 45-degree angle will place it above the heads of the children. With two patrol members at one intersection, each member shall make a quarter turn in the direction of the oncoming traffic ~~with at least one foot remaining on~~ and remain as close as practicable to the curb or shoulder.

E. [Unchanged.]

F. ~~If the patrol member's view of traffic is obstructed by parked vehicles, the patrol member may step into the street a sufficient distance to obtain a clear view, but not into the street beyond the parked vehicles.~~ After the children have completed crossing the street, the patrol member shall return to the original position on the shoulder or curb.

G. [Unchanged.]

H. There shall be ~~at least two~~ one or more patrol members at each crossing. When two are used, one patrol member shall

operate as the sender on the side from which the children gather, and the other shall take a similar position on the opposite side of the roadway and operate as the receiver.

I. At least two patrol members shall be used at a particular crossing when, in the opinion of local law enforcement officials, traffic or other conditions are such that more than one patrol member is needed for the safety of the school children.

J. Patrol members shall continually watch oncoming traffic while children are crossing the roadway and be constantly alert for danger. They shall stand between the children and approaching traffic with at least one foot remaining on and remain as close as practicable to the curb or shoulder.

## Department of Revenue

### Proposed Rules Relating to Liquor Excise Tax

#### Notice of Intent to Adopt a Rule without a Public Hearing

Notice is hereby given that the Department of Revenue proposes to adopt the above-entitled rule without a public hearing. The Commissioner has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 14.21.

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

Unless twenty-five or more persons submit written requests for a public hearing on the proposed rule within the thirty-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statute, §§ 14.13-14.20.

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

Frank Newman, Acting Director  
Alcohol, Tobacco & Special Taxes Division  
Minnesota Department of Revenue  
9th Floor Capitol Square Building  
St. Paul, Minnesota 55101  
Telephone: (612) 296-3482

Authority for the adoption of these rules is contained in Minnesota Statutes § 340.485, subs. 1 and 3; and § 340.492, subd. 1. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule has been prepared and is available from Frank Newman upon request. A copy of the proposed rule is also available from Frank Newman.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rule as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Frank Newman.

The rule proposed for adoption relates to the administration of the alcoholic beverage excise tax. Notice is hereby given pursuant to M.S. 14.115, subd. 4, that this proposed rule will have an economic and administrative impact on small businesses.

The Commissioner has, in consultation with industry representatives, established a reporting system that minimizes the burden on the operators. The Statement of Need and Reasonableness further sets forth the efforts by the Commissioner to minimize the administrative burden necessarily incident to the collection of the excise tax.

July 2, 1985

Arthur C. Roemer  
Commissioner of Revenue

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## Rules as Proposed (all new material)

### 8122.0300 DEFINITIONS.

**Subpart 1. Scope.** For the purposes of parts 8122.0400 to 8122.1600, the following words and phrases have the meanings described, except where the context clearly indicates a different meaning.

**Subp. 2. Commissioner.** "Commissioner" means the commissioner of revenue of the state of Minnesota.

**Subp. 3. Barrel.** "Barrel" means a container for fermented malt beverages holding 31 U.S. gallons.

**Subp. 4. Director.** "Director" means the director of the Alcohol, Tobacco and Special Taxes Division, Department of Revenue.

**Subp. 5. Liter.** "Liter" means a metric unit of capacity equal to 1,000 cubic centimeters of distilled spirits at 15.56 degrees Celsius (60 degrees Fahrenheit) and equivalent to 33.814 U.S. fluid ounces. A liter is subdivided into 1,000 milliliters. When the term "liter" is used as a metric unit of capacity for wine, the temperature at which the measurement shall be made shall be four degrees Celsius instead of 15.56 degrees Celsius.

**Subp. 6. Military club.** "Military club" means any officers or noncommissioned officers club which is located on a United States government military base, and meets all federal criteria for its establishment and operation. The director shall publish a list of all clubs within Minnesota which will be available to wholesalers. Only military clubs named on this list are eligible to purchase tax exempt alcoholic beverages.

**Subp. 7. Miniature.** "Miniature" means any container of distilled spirits containing 50 milliliters or less.

**Subp. 8. Minnesota identification number.** "Minnesota identification number" means that number assigned to a taxpayer by the Department of Revenue, and is the same number used by the taxpayer for income tax, sales and use tax, and withholding returns.

**Subp. 9. Wine.** "Wine" means wine as defined in Code of Federal Regulations, title 27, sections 4.10(e) and 4.21 to 4.24 as they existed on April 1, 1977. However, the federal definition requiring wine to be at least seven percent alcohol by volume does not apply. Wine will be considered as wine if it is at least one-half percent alcohol by volume.

### 8122.0400 EXCISE TAX ON DISTILLED SPIRITS AND WINE.

Except for tax exempt sales described in parts 8122.0300 to 8122.1600, wholesalers shall be responsible for paying the amount of the tax levied on distilled wine and spirits by Minnesota Statutes, section 340.47. The tax must be paid at the time distilled spirits and wine are removed from the inventory for sale, delivery, or shipment.

A. Metric units of measure are used in determining the excise tax on distilled spirits and wine. The factor for conversion of U.S. gallons to metric standards is: one liter equals 0.264172 U.S. gallon.

B. Alcoholic content used for determining the excise tax on wine is the percent of alcohol by volume as shown on the label of the product. If the alcoholic content is not shown on the label, the alcoholic content as established by the chemical analysis required for brand label registration is used. If two or more percents of alcohol by volume are shown on the label, the higher figure is to apply in determining the excise tax.

### 8122.0500 CERTIFICATION LABEL FEE.

**Subpart 1. Payment.** The container fee must be paid by all wholesalers of distilled spirits and wine to the commissioner at the rate as contained in Minnesota Statutes, section 340.461. The wholesaler is responsible for the payment of this tax when the containers of distilled spirits and wine are removed from his inventory for sale, delivery, or shipment.

**Subp. 2. Exemptions.** Exemptions from the certification label fee are as follows:

- A. miniatures of distilled spirits;
- B. containers of fermented malt beverage;
- C. containers of intoxicating liquor or wine holding less than 200 milliliters;
- D. containers of wine intended exclusively for sacramental purposes;
- E. containers of alcoholic beverages sold to qualified, approved military clubs;
- F. containers of alcoholic beverages sold to common carriers engaged in interstate commerce;
- G. containers of alcoholic beverages sold to authorized food processors or pharmaceutical firms for use exclusively in the manufacturing of food products or medicines;
- H. containers of alcoholic beverages sold and shipped to dealers, wineries, or distillers in other states; and

I. containers of alcoholic beverages sold to other Minnesota wholesalers.

### **8122.0600 MONTHLY REPORT AND TAX RETURN FOR DISTILLED SPIRITS AND WINE.**

**Subpart 1. Filing and payment required.** All Minnesota licensed manufacturers and wholesalers of distilled spirits and/or wine must fill out and send to the commissioner a monthly return. The monthly return, form LB-56, or in the case of a farm winery, form LB-58, shall be filed no later than the tenth day of the next month and payment of the taxes shown on the return must accompany it. Failure to file this return and pay the taxes on time will result in additional charges described in Minnesota Statutes, section 340.485.

**Subp. 2. Information required.** The LB-56 or LB-58 report must include the following information:

A. Name, Minnesota identification number, and address of the wholesaler or distiller, and the month for which the report is being made.

B. Amount purchased or produced by type of alcoholic beverage for the month.

C. Beginning inventory by type of alcoholic beverage for the month.

D. Ending inventory by type of alcoholic beverage for the month. The ending inventory for one month must be used as the beginning inventory for the following month.

E. Total amount of alcoholic beverages sold, shipped, or delivered for the month.

F. Exemptions for the month which may include:

(1) Sales to Minnesota wholesalers. This exemption is to be permitted only if the sale or transfer is verified by the firm receiving the product.

(2) Shipment to dealers, wineries, and distillers located in other states. The shipments must be documented by properly executed bills of lading. Also, the out-of-state consignees must be authorized to receive distilled spirits and/or wines in their respective states, and they must have filed receipt of the shipments with their respective state liquor authorities.

(3) Sales to common carriers engaged in interstate commerce and qualified, approved military clubs. The sales must be documented by properly receipted invoices, delivery tickets, or bills of lading on file at the wholesaler's premises.

(4) Sales of wine to any regularly appointed and ordained rabbi, priest, minister, or pastor of any church or established religious organization. The sale must be documented by an affidavit executed by the purchaser at the time of purchase. The affidavit is to contain a statement that the quantity and type of wine purchased is to be used exclusively for religious or sacramental purposes. These affidavits are to be kept on file at the wholesaler's premises.

(5) Sales of distilled spirits and wines to authorized manufacturers of food products or pharmaceutical firms. The sale must be documented by an affidavit executed by the purchaser, at the time of purchase, stating that the quantity and type of distilled spirits or wine purchased is to be used exclusively in the manufacture of food products or medicines. The affidavits must be kept on file at the wholesaler's premises. For purposes of this part the manufacturer must have a permit to purchase and/or possess ethyl alcohol. For purposes of this part, "manufacturer" means a manufacturer of food products intended for sale to wholesalers and/or retailers for ultimate sale to the consumer.

(6) Distilled spirits and wines destroyed under the supervision of a Division of Alcohol, Tobacco and Special Taxes employee. The destructions must be documented by an affidavit executed by a division employee. The affidavit must be kept on file at the wholesaler's premises. The retailer must submit a refund application to the director for approval when a refund is sought based upon government ordered destruction of a product unfit for human consumption.

The director will issue a "memorandum of tax credit" to the applicant upon approval of the refund application.

A wholesaler who credits the retailer's account, upon presentation of the "memorandum of tax credit," will be reimbursed upon presentation to the director of the "memorandum of tax credit" and proof of allowance of the credit to the retailer.

(7) Breakage of distilled spirits and wine either while in transit to the wholesaler's premises or while in his warehouse. Under no circumstances will breakage be allowed on goods which have left the wholesaler's warehouse. In order to qualify for tax exempt status this breakage must be inspected and approved by an employee of the division. All broken bottles must be retained in the original carton or cases. Also, every bottle claimed as breakage must have an unbroken federal strip stamp or cap seal. After inspection by a division employee, breakage may be disposed of by the wholesaler. The burden of proof for establishing breakage allowances is upon the wholesaler. Any breakage that does not meet the above standards set by the division will not be allowed as tax

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exempt. Affidavits may be required in order to document the breakage. These affidavits are to be executed by the division employee and kept on file at the wholesaler's premises.

G. Sales of alcoholic beverages by type to retailers for the month. Wholesalers may subtract from the amount of their taxable sales the amount of the products returned by retail dealers. However, credit memos must have been prepared and kept in numerical order on file at the wholesaler's premises. No allowance will be given for breakage returned from retailers.

H. Miscellaneous taxable usage. This includes such items as salesman's samples and pilferage.

I. A computation of excise taxes due which shall be based on the total taxable sales, by type of alcoholic beverage, multiplied by the appropriate tax rate.

Overpayments of tax for prior periods as determined by audit may be deducted from the tax due. Notations in the form of audit credit must accompany the return.

**Subp. 3. Example of form.** Examples of completed LB-56 and LB-58 forms are contained in part 8122.1600, subparts 5 and 6. Blank copies of these forms and all other forms described in parts 8122.0300 to 8122.1600 may be obtained from the director.

### 8122.0700 MONTHLY REPORT FOR MANUFACTURERS, WHOLESALERS, AND IMPORTERS.

**Subpart 1. Filing required.** All manufacturers, wholesalers, and importers licensed to ship distilled spirits and/or wine into Minnesota must file with the commissioner a monthly report, form LB-37. No payment of any tax is required to be sent in with this report. The report must be filed no later than the tenth day of the following month, regardless of whether or not any shipments were made into Minnesota during the previous month. If this return is not filed, the director shall notify the Department of Public Safety, Liquor Control Division that the manufacturer, wholesaler, or importer has not complied with the terms of his or her licensing agreement under Minnesota Statutes, section 340.113, subdivision 2.

**Subp. 2. Information required.** The monthly report for manufacturers, wholesalers, and importers must include the following information:

A. name, address of the manufacturer, wholesaler, or importer, and the month for which the report is being made;

B. details of the shipment of alcoholic beverages into Minnesota during the month, specifying the consignee and the quantity, by type of alcoholic beverage and by size of container and quantity of each size, in each shipment; and

C. complete records of such shipments and transactions must be maintained by the manufacturer, wholesaler, or importer for a period of two years after the date of each transaction.

**Subp. 3. Example of form.** An example of a completed LB-37 form is contained in part 8122.1600, subpart 2.

### 8122.0800 RECORDS TO BE KEPT.

**Subpart 1. General requirements.** In order to ensure the orderly administration of the Minnesota excise tax law on alcoholic beverages, certain recordkeeping procedures are required of all wholesalers, retailers, and persons manufacturing, storing, or selling alcoholic beverages in the state. The records kept must include all normal books of account ordinarily maintained by the average prudent businessman engaged in the appropriate phase of the alcoholic beverage business. Also, all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account as well as all schedules or working papers used in connection with the preparation of the excise tax return must be kept.

Microfilm reproduction of general books of account will not be accepted in place of original records unless all phases of the microfilming process including preservation, indexing, cross-referencing, location, and inspection have received prior written approval from the director.

Electronic data processing records must include a method of producing visible and legible records from the machine-sensible records which will provide the necessary information for the verification of the taxpayer's excise tax liability. All machine-sensible records which are material in the administration of Minnesota Statutes, sections 340.44 to 340.56 are required to be maintained and retained in the same manner as printed records. In addition, all electronic data processing accounting systems must provide:

A. a general ledger with source references;

B. an identifiable audit trail;

C. the capability of tracing any transaction back to the original source or forward to a final total;

D. adequate record retention facilities for the storage of all supporting documents; and

E. a general description of the workings of the electronic data processing system itself including: programming technique, codes, glossary, abbreviations used, standard operating and control procedures, change log, and operator instructions.

**Subp. 2. Retail dealers.** In addition to the requirements in subpart 1, every retail dealer must keep a record, in book form, showing all distilled spirits, wine, and fermented malt beverage received on his or her premises, the quantity of the beverages, and



from whom received; or he or she must keep all invoices and bills for distilled spirits, wine, and fermented malt beverages received.

**Subp. 3. Wholesale distributors.** In addition to the requirements in subpart 1, all wholesale distributors are required to maintain:

A. **Receiving reports.** Wholesale distributors must prepare a receiving report upon receipt of each shipment of distilled spirits and wines imported into the state in containers or in bulk and under manifest, or purchased from other wholesalers or distributors within the state, or produced from bulk by the wholesaler. Each receiving report must be numbered and filed in numerical order. On shipments from outstate the manifest or bill of lading number assigned to that shipment must be recorded on the receiving report. The contents of the receiving report must be the same as shown on the manifest or bill of lading. If the contents shown on the receiving report differ from the manifest or bill of lading, a full and complete explanation of the difference must be attached to the receiving report.

B. **Inventories.** On June 30 and December 31 of each year certified physical inventories must be taken of all distilled spirits and wine in the possession of the wholesaler. The results of these certified inventories must be filed with the commissioner on a form approved by the director, together with the wholesalers' monthly excise tax report for June and December. This inventory statement must show the number of liters for each type of alcoholic beverage together with a count of bottles and miniatures. Wholesalers having bulk amounts of distilled spirits or wines must file separate inventories of bulk and bottled products.

Upon request of the wholesaler, the director may approve alternate dates for submission of inventory reports to coincide with the wholesaler's fiscal year. Wholesalers may request a waiver from the two inventory requirements from the director. If the waiver is approved, the director shall establish the time for submission of an annual inventory report.

C. **Record of sales and deliveries.** Wholesale distributors shall prepare invoices, delivery tickets, and/or bills of lading for each sale or delivery of distilled spirits or wine and shall retain copies in numerical order or by customer name. These records must include the customer's name and address and the point of delivery. These records must include any nontaxable sales or dispositions that may be allowed as an exemption under parts 8122.0300 to 8122.1600.

D. **Production and/or bottling records.** Minnesota licensed manufacturers and wholesale distributors that bottle or rectify distilled spirits or wines must prepare daily bottling and rectification reports. These reports must show the quantities of bulk product used, the quantities bottled each day, and the total for the month. A copy of the bottling report must be attached to the Minnesota excise tax report form LB-56.

Finished bottled products must be transferred from the bulk product to the regular stock, by receiving the bottled liters and bottles in the purchases section of the Minnesota excise tax report form LB-56. Individual receivings by bottling lots are preferable in certain operations, but a single receiving for the month based on the bottling report is permitted.

Minnesota bottlers of wine are permitted to exempt a certain amount of volume from the tax for leakage which occurs during the transportation of wine in bulk into the state and for wastage during the process of bottling. However, such claims are not permitted to be more than two percent of the volume imported or processed in any one calendar year. An affidavit must be sent in for each claim. This affidavit must accompany the monthly excise tax report for the month in which the leakage or wastage occurred.

**Subp. 4. Maintenance of records.** All records required to be kept must be maintained in good order and readily accessible for a period of four years. Destruction of records earlier than four years may occur only if written approval is received from the director.

**Subp. 5. Examination of records.** The examination of records may be carried out at the premises of the manufacturer, wholesaler, retailer, or at another location where these records are maintained.

## **8122.0900 BONDS REQUIRED.**

**Subpart 1. Filing of bonds.** Wholesalers of distilled spirits and wine shall file a surety bond with the commissioner. Bonds must be for a period of one year, beginning July 1 and ending June 30 of each year. The bonds must be filed with the commissioner no later than June 20 of the year before the bond is effective. The amount of bond required of each wholesaler and the forms of bond required will be furnished to each wholesaler by June 1 of each year.

After the bond has been acknowledged by the principal and been approved and acknowledged by the surety, two copies must be mailed to the director.

**Subp. 2. Amounts of bonds.** The amount of the bond must be computed by the director. The amount will be approximately 1-1/2 times the wholesaler's average monthly excise tax liability for the preceding calendar year.

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## PROPOSED RULES

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**Subp. 3. Certified check.** In lieu of the bond required in subpart 1, a certified check may be filed with the director. This check must be made in favor of the commissioner and will be kept in the office of the director. It must be drawn for an amount equal to a comparable surety bond for the particular wholesaler. The Department of Revenue is to pay no interest on funds encumbered by this check.

### 8122.1000 EXCISE TAX ON FERMENTED MALT BEVERAGE.

**Subpart 1. Payment of tax.** An excise tax must be paid on fermented malt beverages sold for beverage purposes within Minnesota. This excise tax must be paid by the brewer of fermented malt beverages brewed in Minnesota; or by the wholesaler or out-of-state brewer of fermented malt beverages imported into the state. The tax must be paid to the commissioner at the rates under Minnesota Statutes, section 340.47. No Minnesota excise tax is to be paid on fermented malt beverages:

- A. Sold and shipped into interstate commerce by Minnesota businesses.
- B. Transferred in bond from one brewery, to another. However, United States Government Form ATF 2035 must be properly filed with the appropriate federal agency documenting the transfer. Excise tax becomes due on these shipments when they leave the bonded premises of the brewery for shipment to a Minnesota wholesaler or retailer.
- C. Distributed to brewery employees for consumption on brewery premises under a contract of employment.
- D. Given away without a charge of any kind for consumption on brewery premises.
- E. Sold to qualified, approved military clubs.

**Subp. 2. Standard of measure.** The official standard of measure for fermented malt beverages is to be the barrel.

### 8122.1100 MONTHLY REPORT AND TAX RETURN FOR FERMENTED MALT BEVERAGES.

**Subpart 1. Filing and payment required.** Licensed Minnesota brewers and out-of-state brewers or importers must file monthly, with the commissioner, form LB-128. This report must be filed no later than the 15th day of the month and is to be made for all sales of fermented malt beverage within, or imported into, Minnesota for the preceding calendar month. The amount of excise tax to be paid on the sale or importation of these fermented malt beverages must be sent in together with form LB-128. Failure to file this return and pay the tax on time will result in penalties described in Minnesota Statutes, section 340.492.

**Subp. 2. Information required.** The LB-128 report is to contain the following information:

- A. name, Minnesota identification number, address of the brewer or importer, and the month for which the report is being made; and
- B. number of barrels of fermented malt beverage containing not more than 3.2 percent of alcohol by weight and the number of barrels of fermented malt beverage containing more than 3.2 percent of alcohol by weight that were sold or shipped into Minnesota during the month, and the amount of tax to be paid on each class of fermented malt beverage.

Form LB-128 may be supplemented by certain electronic data processing printouts in lieu of official Department of Revenue forms if prior written approval is received from the director.

**Subp. 3. Exemption.** Fermented malt beverages destroyed under supervision of an Alcohol, Tobacco and Special Taxes Division employee are exempt from Minnesota tax. However, duplicate affidavits must have been executed by an employee of the division. One copy of the affidavit must be filed with the LB-128 report; and one copy to be retained by the brewer or importer.

**Subp. 4. Example of form.** An example of a completed LB-128 form is contained in part 8122.1600, subpart 12.

**Subp. 5. Additional reports.** The monthly LB-128 form must be accompanied by one or more of the following forms which detail the monthly operation of the brewer or importer.

A. Out-of-state brewers and wholesale fermented malt beverage dealers must file, in connection with the LB-128, a monthly report, form LB-52, for all shipments into the state during the previous month. These reports are to contain the following information:

- (1) Name, Minnesota identification number, address of the brewer or importer, and the month for which the report is being made.
- (2) Taxable sales to licensed Minnesota wholesalers.
- (3) Nontax-paid shipments to licensed Minnesota wholesalers, for later delivery to other states or for tax exempt sale within the state to duly authorized common carriers engaged in interstate commerce or military clubs. Each of these nontax-paid shipments must be supported by an affidavit, or by a duplicate copy of the invoice. These documents must be filed with the report.
- (4) The amount of excise tax must be determined on the taxable sales at the rates described in Minnesota Statutes, section 340.47.
- (5) An example of a completed LB-52 form is contained in part 8122.1600, subpart 3.

B. Minnesota brewers must file, in connection with the LB-128 form, monthly reports for fermented malt beverage containing not more than 3.2 percent of alcohol by weight and for fermented malt beverage containing more than 3.2 percent of alcohol by weight on forms LB-88 and LB-89. These reports must contain the following information:

- (1) Name, Minnesota identification number, address of the brewer, and the month for which the report is being made.
- (2) The brewer's beginning and ending inventory.
- (3) Barrels of fermented malt beverage manufactured.
- (4) Tax exempt sales, which include fermented malt beverages:

(a) Consumed on the brewery premises by employees or others as provided in Minnesota Statutes, section 340.47, subdivision 2.

(b) Sold tax exempt to duly authorized common carriers engaged in interstate commerce or military clubs. Received invoices or properly executed bills of lading must be kept on file to verify each claim.

(c) Sold or exported to authorized dealers in other states. These sales must be individually recorded on supplemental forms S88 or S89. Invoices and properly executed bills of lading must be kept on file to verify each shipment. Exemption is also dependent on the report made by the consignee to the liquor tax authority in the respective state, stating the quantities of fermented malt beverages received in each shipment.

(d) Sold to Minnesota licensed wholesalers for later delivery into other states.

(e) Destroyed as approved by the federal government, or the Department of Revenue.

- (5) Taxable sales, which include fermented malt beverages:

(a) sold to duly licensed retailers;

(b) containing not more than 3.2 percent alcohol by weight sold to consumers as provided in Minnesota Statutes, section 340.02, subdivision 7; and

(c) sold to wholesalers authorized to sell beer in Minnesota.

(6) Excise tax shall be computed on the taxable sales at the rate including credits specified by Minnesota Statutes, section 340.47.

(7) an example of a completed Minnesota brewers reports SLB-88 and SLB-89 together with supplemental sheets are contained in part 8122.1600, subparts 8 to 10.

#### **8122.1200 MONTHLY REPORT FOR MINNESOTA FERMENTED MALT BEVERAGE WHOLESALER.**

**Subpart 1. Filing required.** Minnesota wholesale distributors of fermented malt beverages must file monthly informational reports with the commissioner no later than the 15th of the following month. For Minnesota tax-paid fermented malt beverages, form LB-52C must be completed. For nontax-paid fermented malt beverages, form LB-66 shall be used. Both of these reports must contain the following information:

A. Name, Minnesota identification number, and address of the wholesaler, and the month for which the report is being made.

B. Inventories; beginning and ending each month.

C. Quantities purchased, and from whom purchased.

D. Quantities sold. In addition, the name of the person to whom sold must be listed on form LB-66.

**Subp. 2. Noncompliance.** Failure to file these reports will result in the director notifying the Department of Public Safety, Liquor Control Division, that the wholesaler is not complying with the terms of his licensing agreement. The commissioner of public safety is permitted to revoke or not renew licenses of wholesalers who do not obey the law.

**Subp. 3. Examples.** Examples of completed fermented malt beverage wholesalers form LB-52C and LB-66 are contained in part 8122.1600, subparts 4 and 5.

**Subp. 4. Transfer to tax-paid inventory.** Nontax-paid fermented malt beverages in the possession of a Minnesota wholesale

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## PROPOSED RULES

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fermented malt beverages distributor may be transferred to his or her tax-paid inventory upon filing with the commissioner form LB-128 together with the payment of the tax due.

**Subp. 5. Wholesalers who import from foreign countries.** Wholesalers who import fermented malt beverages direct from foreign countries must file with the commissioner form LB-128 together with monthly report form LB-52C. These forms and the payment of the excise tax are due by the 15th day of the month on all fermented malt beverages imported into the state during the preceding month.

### 8122.1300 RECORDS TO BE KEPT.

**Subpart 1. Requirements.** The same requirements that are contained in part 8122.0800, subparts 1 and 3, pertain to Minnesota licensed brewers, wholesalers, and importers of fermented malt beverage.

**Subp. 2. Certified physical inventories not required.** Certified physical inventories are not required. However, if a physical inventory of the stock of a Minnesota brewer, wholesaler, or importer is taken, either by the person himself or by a federal agency, the results of that inventory must be forwarded to the director.

**Subp. 3. Maintenance of records.** All records must be maintained in accordance with part 8122.0800, subpart 4.

**Subp. 4. Examination of records.** Examination of books and records of brewers, wholesalers, and importers can be made under the procedure in part 8122.0800, subpart 5.

### 8122.1500 MONTHLY REPORT AND TAX RETURN FOR COMMON CARRIERS.

**Subpart 1. Filing required.** Common carriers engaged in interstate commerce licensed by the commissioner of public safety must maintain a daily record of all distilled spirits, wines, and fermented malt beverages sold within the state of Minnesota. Also, licensed common carriers engaged in interstate commerce must file monthly reports on LB-123 for the total sales of liquor, wine, and fermented malt beverages; together with the tax payment on the sales by the tenth day of the following month. Failure of a common carrier engaged in interstate commerce to timely submit reports and tax payments will make him subject to the penalties described in Minnesota Statutes, sections 340.485 and 340.492. The LB-123 report must contain the following information:

A. name, Minnesota identification number, and address for the common carrier, and the month for which the report is being made; and

B. quantity of distilled spirits, wine, and fermented malt beverages sold during the month and the tax due utilizing the appropriate tax rate.

**Subp. 2. Allocation formulas.** A common carrier engaged in interstate commerce is permitted to use a formula for the allocation of the total sales of alcoholic beverages between states on the basis of passenger miles in each state or some other method of allocation if written approval is received from the director. An alternative allocation method must include records for the entire system and an assignment of the share of the total beverage sold to each state. The director shall approve the plan if he is convinced that the allocation properly apportions the sales to the respective states.

**Subp. 3. Example.** An example of a completed common carrier LB-123 form is contained in part 8122.1600, subpart 12.

### 8122.1600 FORMS.

**Subpart 1. Generally.** Following are examples of the properly completed reports that must be sent in to the Department of Revenue. The forms are offered for purposes of illustration only.

All forms used in the administration of the Minnesota excise tax on alcoholic beverages are available from the division.

Subp. 2. LB Form 37.

LB Form 37 (Rev. 4/80)  
RV 02354-02



MONTHLY REPORT OF DISTILLED SPIRITS AND WINES SHIPPED INTO MINNESOTA  
(METRIC)

DUE BY THE 10TH  
OF EACH MONTH

MINNESOTA DEPARTMENT OF REVENUE  
Alcohol, Tobacco and Special Taxes Division  
Centennial Office Building  
St. Paul, Minnesota 55145  
Phone (612) 296-3482

Liquor Control Import License No. \_\_\_\_\_

Issued To \_\_\_\_\_

Division/D.B.A. \_\_\_\_\_

MONTH OF \_\_\_\_\_ 19\_\_\_\_

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

This report must be submitted to the Commissioner of Revenue not later than the 10th day after the close of the calendar month by all Distillers, Rectifiers, Importers, Winers, etc. who ship Distilled Spirits and Wines into the State of Minnesota.

Date	To Whom Shipped	Invoice No.	Distilled Spirits Liters	Champagnes and Sparkling Wines Liters	WINES		No. of Bottles Total	No. of Cases Total
					Over 14% Liters	14% or Less Liters		
TOTALS								

List each shipment separately. If additional space is needed sub total here and continue on reverse side.

AFFIDAVIT

I declare under the penalties of perjury that this report has been examined by me and to the best of my knowledge and belief is true, correct and complete.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

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**PROPOSED RULES**

			Distilled Spirits	Champagnes and Sparkling Wines	WINES		No. of Bottles	No. of Cases
					Over 14%	14% or Less		
Date	To Whom Shipped	Invoice No.	Liters	Liters	Liters	Liters	Total	Total
	TOTALS							

List each shipment separately.

**INSTRUCTIONS**

This report is due on or before the 10th of the following month. If no shipments were made, a report is still required. Indicate "NO TRANSACTIONS/SHIPMENTS".

Enter your current Importer's License Number, as issued by the Minnesota Liquor Control Division, in the space provided. Enter the name of Licensee and the division of D.B.A., if any.

Complete the identification portion of the form.

Submit a copy of EACH and EVERY INVOICE with your report. Recap each invoice prior to entry on LB Form 37.

Minnesota is on the metric basis, gallons must be converted to liters.

Official conversion factor: 1 liter = 0.264172 U.S. Gallons.

**Subp. 3. LB Form 52.**

LB-52 (Rev. 9/78)

**MONTHLY REPORT AND TAX RETURN-FERMENTED MALT BEVERAGES  
OUT STATE BREWERS AND WHOLESALE DISTRIBUTORS**

FOR DEPARTMENT USE ONLY—

Check \_\_\_\_\_  
Cash \_\_\_\_\_  
Rec'd \_\_\_\_\_  
Rec'd by Cashier \_\_\_\_\_

MINNESOTA DEPARTMENT OF REVENUE  
ALCOHOL, TOBACCO AND SPECIAL TAXES DIVISION  
Centennial Office Building  
St. Paul, Minnesota 55145  
Telephone (612) 296-3482

**DUE BY THE 15TH  
OF EACH MONTH**

MONTH OF January 19 78

NAME Summit Brewing Company #1234569  
ADDRESS 123 Park Road CITY Milwaukee STATE Wisconsin ZIP CODE 53203

This report must be filed with the Commissioner of Revenue after the close of each calendar month, and not later than the 15th of the following month, by all out of state brewers and wholesale distributors who import into Minnesota. Late filing and payment result in 10% penalty and 1% interest per month on the amount due.

**RECORD OF TAXABLE SHIPMENTS INTO MINNESOTA AND COMPUTATION OF TAX**

DESCRIPTION	OVER 3.2%			NOT OVER 3.2%			TOTAL TAX
	Quantity	Value	Tax	Quantity	Value	Tax	
1 Barrel		\$4.00	\$		\$2.00	\$	
4 Barrel	200	2.00	400.00	100	1.00	100.00	
1/4 Barrel	100	1.00	100.00	200	.50	100.00	
1/8 Barrel		.50			.25		
1/128 oz. cs.		.77416			.38708		
1/8/12 oz. cs.		.58064			.29032		
1/2/32-24/16 oz. cs.		.38708			.19354		
3/4/12 oz.-36/8 oz. cs.		.29032			.14516		
1/298 oz.-2/144oz.cs.	500		145.16	1,000		145.16	
1/8/7 oz. cs.		.33872			.16936		
1/6/7 oz. cs.		.25404			.12702		
1/5/7 oz. cs.		.24696		80	.12348	9.88	
1/2/7 oz. cs.		.22580			.11290		
1/4/8 oz. cs.		.19356			.09678		
1/4/7 oz. cs.		.16936			.08468		
2/12-1/144	1,000	.14516	145.16	3,000	.07258	217.74	
1/128 oz. (1 gal) ctn.		.12904			.06452		
<b>TOTAL TAX</b>			<b>\$ 790.32</b>			<b>\$ 572.78</b>	<b>\$ 1,363.10</b>

**AFFIDAVIT**

declare under the penalties of perjury and evasion, that I am familiar with the books, papers and records of the business from which this report was prepared, that this report has been examined by me and to the best of my knowledge and belief is true, correct, and complete.

S/ D. H. Green Vice-President February 13, 1978  
Signature Title Date

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**REPORT OF NON TAX-PAID SHIPMENTS INTO MINNESOTA**

Non tax-paid shipments into Minnesota will be grouped for each account and listed chronologically. Each shipment claimed exempt must be supported by an affidavit or by a duplicate of the invoice showing non-payment of tax and claim of exemption prepared and filed with the Commissioner at time of shipment.

**FERMENTED MALT BEVERAGES – OVER 3.2% ALCOHOL BY WEIGHT**

To Whom Shipped-Wholesalers	Half Barrels	Quarter Barrels	Eighth Barrels	12/32 oz. 24/16 oz.	24/12 oz.	48/7 oz.	35/7 oz.	32/7 oz.	24/8 oz.	24/7 oz.	12/12 oz.	1/128 oz.
					36/8 oz. 1/288 oz. 2/144 oz.						1/144 oz. (1 gal.)	
Smith Dist.					50							
For: USAF Air Base Invoice #00013												

**FERMENTED MALT BEVERAGES – NOT OVER 3.2% ALCOHOL BY WEIGHT**

To Whom Shipped-Wholesalers	Half Barrels	Quarter Barrels	Eighth Barrels	12/32 oz. 24/16 oz.	24/12 oz. 36/8 oz. 1/288 oz. 2/144 oz.	48/7 oz.	35/7 oz.	32/7 oz.	24/8 oz.	24/7 oz.	12/12 oz. 1/144 oz.	1/128 oz. (1 gal.)

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TOTAL TAXABLE IMPORTS	200	100		500					1,000		

FERMENTED MALT BEVERAGES – NOT OVER 3.2% ALCOHOL BY WEIGHT

Island Distributing	50	125		600		80			1,800		
King Wholesale	50	75		400					1,200		
TOTAL TAXABLE IMPORTS	100	200		1000		80			3,000		

REPORT NON TAX SALES ON REVERSE SIDE

Subp. 4. LB Form 52C.

LB-52C (Rev. 6-78)  
(Supplement to LB-51)

**WHOLESALE MONTHLY REPORT TAX PAID FERMENTED MALT BEVERAGES**

**NOT OVER 3.2% ALCOHOL**  
USE REVERSE SIDE FOR OVER 3.2%

MINNESOTA DEPARTMENT OF REVENUE  
ALCOHOL, TOBACCO AND SPECIAL TAXES DIVISION  
Centennial Office Building  
St. Paul, Minnesota 55145

DUE BY THE 15TH OF EACH MONTH

MONTH OF January 19 78

NAME <u>King Wholesale Company #2345678</u>			
ADDRESS <u>120 Broadway Street</u>	CITY <u>Minneapolis</u>	STATE <u>Minnesota</u>	ZIP CODE <u>55418</u>

This report must be filed with the Commissioner of Revenue after the close of each calendar month, and not later than the 15th, by all distributors, and wholesalers licensed to sell fermented malt beverages in Minnesota. Report tax paid purchases by showing the monthly total purchased from each brewer or supplier. The date of the brewer's invoice will determine the month of reporting.

**PURCHASES FROM MINNESOTA AND OUT-STATE BREWERS AND DISTRIBUTORS**

From Whom Purchased	Half Barrel	Quarter Barrel	Eighth Barrel	12/32 oz 24/16 oz	24/12 oz 36/8 oz 48/6 oz	48/7 oz	36/7 oz	35/7 oz	32/7 oz	24/8 oz	24/7 oz	12/12 oz 1/144 oz	1/128 oz Gallon
Summit Brewery	50	75			400							1200	
York Brewery	60				5000								
Total	110	75			5400							1200	

**RECORD OF TAX PAID INVENTORY, PURCHASES AND SALES**

Not Over 3.2%	Half Barrel	Quarter Barrel	Eighth Barrel	12/32 oz 24/16 oz	24/12 oz 36/8 oz 48/6 oz	48/7 oz	36/7 oz	35/7 oz	32/7 oz	24/8 oz	24/7 oz	12/12 oz 1/144 oz	1/128 oz Gallon
1. Inventory - First of Month	0	8			100							0	
2. Purchased During Month (add)	110	75			5400							1200	
3. Total	110	83			5500							1200	
4. Sales Within State	100	43			5300							1200	
5. On Hand End of Month	10	40			200							0	

I declare under the penalties of perjury that this report has been examined by me and to the best of my knowledge and belief is true, correct, and complete.

February 8, 1978  
Date

S/J. J. King  
Authorized Signature

President  
Title

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# PROPOSED RULES

LB-52C (Rev. 6-78)  
 (Supplement to LB-51)

## WHOLESALE MONTHLY REPORT TAX PAID FERMENTED MALT BEVERAGES

**OVER 3.2% ALCOHOL**  
 USE REVERSE SIDE FOR NOT OVER 3.2%

MINNESOTA DEPARTMENT OF REVENUE  
 ALCOHOL, TOBACCO AND SPECIAL TAXES DIVISION  
 Centennial Office Building  
 St. Paul, Minnesota 55145

DUE BY THE 15TH OF EACH MONTH

MONTH OF January 19 78

NAME King Wholesale Company #2345678  
 ADDRESS 120 Broadway Street CITY Minneapolis STATE Minnesota ZIP CODE 55418

This report must be filed with the Commissioner of Revenue after the close of each calendar month, and not later than the 15th, by all distributors and wholesalers licensed to sell fermented malt beverages in Minnesota. Report tax paid purchases by showing the monthly total purchased from each brewer or supplier. The date of the brewer's invoice will determine the month of reporting.

### PURCHASES FROM MINNESOTA AND OUT-STATE BREWERS AND DISTRIBUTORS

From Whom Purchased	Half Barrel	Quarter Barrel	Eighth Barrel	12/32 oz 24/16 oz	24/12 oz 36/8 oz 48/7 oz 72/8 oz	36/7 oz	35/7 oz	32/7 oz	24/8 oz	24/7 oz	12/12 oz 1/144 oz	1/128 oz Gallon
Summit Brewery	75	50			150							350
York Brewery Company	900	400	200		4000							3000
Total	975	450	200		4150							3350

### RECORD OF TAX PAID INVENTORY, PURCHASES AND SALES

Over 3.2%	Half Barrel	Quarter Barrel	Eighth Barrel	12/32 oz 24/16 oz	24/12 oz 36/8 oz 48/7 oz 72/8 oz	36/7 oz	35/7 oz	32/7 oz	24/8 oz	24/7 oz	12/12 oz 1/144 oz	1/128 oz Gallon
1. Inventory - First of Month	0	10	8		100							10
2. Purchased During Month (add)	975	450	200		4150							3350
3. Total	975	460	208		4250							3360
4. Sales Within State	900	450	188		4000							3300
5. On Hand End of Month	75	10	20		250							60

I declare under the penalties of perjury that this report has been examined by me and to the best of my knowledge and belief is true, correct, and complete.

February 8, 1978  
 Date

S/J. J. King  
 Authorized Signature

President  
 Title

**PROPOSED RULES**

**Subp. 5. LB Form 56.**

LB Form 56 MONTHLY REPORT OF DISTILLED SPIRITS AND WINES (METRIC)  
(Rev. 6/79) RV 02359-02

*For Department Use Only*

<input checked="" type="checkbox"/> WHOLESALE <input type="checkbox"/> PRODUCTION		Page 1	Check _____
MINNESOTA DEPARTMENT OF REVENUE ALCOHOL, TOBACCO AND SPECIAL TAXES DIVISION Centennial Office Building St. Paul, Minnesota 55145		NAME ABC Wholesale Liquor Co. #1234567	Cash _____
MONTH January                      19 83		ADDRESS 6420 Axel Street	Rec'd _____
		CITY St. Paul, Minnesota 55145	Rec'd by Cashier _____

TRANSACTIONS FOR THE MONTH	WINES					DISTILLED SPIRITS		NUMBER OF BOTTLES	LIQUOR MINIATURES
	OVER 24%	over 21% to 24%	SPARKLING	over 14% to 21%	14% and under				
	LITERS	LITERS	LITERS	LITERS	LITERS	LITERS	LITERS		
1. Purchases		126 90	2,508 00	-0-	29,397 64	4,351 73	38,580	3,000	
Beginning									
2. Inventory		56 40	2,280 00	15,040 00	2,509 00	3,780 00	25,060	2,000	
3. Subtotal		183 30	4,788 00	15,040 00	31,906 64	8,131 73	63,640	5,000	
Less Ending									
4. Inventory		37 60	1,140 00	13,285 20	1,737 00	1,890 00	25,040	1,000	
5. Balance		145 70	3,648 00	1,754 80	30,169 64	6,241 73	38,600	4,000	
<b>TAX EXEMPT:</b>									
6. Shipments to Wholesalers			683 92		9 26	370 26	1,524		
7. MISC Exempt Sales					27 13	90 72	156	1,560	
8. Shipments Out of State		26 43		165 44		113 40	524		
9. Authorized Brkge./Dest.		119 27	24 59				36		
10. TOTAL Exemptions		145 70	708 51	165 44	36 39	574 38	2,240	1,560	
11. Line 5 Less 10		-0-	2,939 49	1,589 36	30,133 25	5,667 35	36,360	2,440	

COMPUTATION OF EXCISE TAX DUE				<i>For Department Use Only</i>	
TOTAL TAXABLE SALES	ENTER TOTALS FROM LINE 11	RATE	EXCISE TAX		
12. Wines - over 24%		.81			
13. Wines - over 21% to 24%		.42			
14. Wines - Sparkling	2,939.49	.40	1,175.79		
15. Wines - over 14% to 21%	1,589.36	.21	333.77		
16. Wines - 14% and under	30,133.25	.07	2,109.33		
17. Total - Lines 12-16				\$ 3,618.89	
18. Distilled Spirits	5,667.35	\$1.16	\$6,574.13		
19. Bottle Sales - Line 11	36,360	.01Ea	363.60		
20. Liquor - Miniatures	2,440	.12Ea	292.80		
21. Total - Lines 18 to 20				7,230.53	
22. Less Credits					
23. Total - Line 21 Less Line 22				7,230.53	
24. Tax Due - Total Lines 17 & 23				\$ 10,849.42	

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

**PROPOSED RULES**

Page 2

**DETAIL OF PURCHASES**

PURCHASES DURING MONTH									
DATE	FROM WHOM PURCHASED AND MANIFEST NUMBER	WINES					DISTILLED SPIRITS LITERS	NUMBER OF BOTTLES	NUMBER OF LIQUOR MINIATURES
		OVER 24%	Over 21% to 24%	SPARKLING	Over 14% to 21%	14% and under			
		LITERS	LITERS	LITERS	LITERS	LITERS			
1/07	Quality Distillers P6001 Q4702						4363.07	5,396	3,000
1/15	Acme Company			2508.00				3,300	
1/20	Zenith Distillers P7304 S3471					29406.91		29,718	
1/28	Vintage Company		126.90					180	
TOTAL PURCHASES			126.90	2508.00		29406.91	4363.07	38,604	3,000
						9.27	11.34	24	
			126.90	2508.00		29397.64	4351.73	38,580	3,000

If Additional Space Is Required Use Supplemental Sheets.

**DETAILS OF TAX EXEMPTIONS**

SHIPMENTS TO WHOLESALERS										
DATE	TO WHOM SHIPPED	INVOICE NUMBER	WINES					DISTILLED SPIRITS LITERS	NUMBER OF BOTTLES	NUMBER OF LIQUOR MINIATURES
			OVER 24% LITERS	Over 21% to 24% LITERS	SPARKLING LITERS	Over 14% to 21% LITERS	14% and under LITERS			
/08	Smith Wholesale	87						370.26	612	
/22	PDQ Liquor & Wine Co.	95			683.92				900	
/25	Rose Wholesale Wine	122					9.26		12	
TOTALS CARRIED FORWARD TO LINE 6					683.92		9.26	370.26	1,524	

MISCELLANEOUS TAX EXEMPTIONS <small>(Sacramento Sales, Common Carriers, Military Posts)</small>										
/09	JKL Airline	90						90.72	120	1,560
/14	USAF Air Base	94					27.13		36	
TOTALS CARRIED FORWARD TO LINE 7							27.13	90.72	156	1,560

If Additional Space Is Required Use Supplemental Sheets

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# PROPOSED RULES

Page 4

## DETAIL OF TAX EXEMPTIONS - Continued

SHIPMENTS TO DEALERS AND DISTILLERIES OUT OF STATE										
DATE	TO WHOM SHIPPED	INVOICE NUMBER	WINES					DISTILLED SPIRITS LITERS	NUMBER OF BOTTLES	NUMBER OF LIQUOR MINIATURES
			OVER 24% LITERS	over 21% to 24% LITERS	SPARKLING LITERS	over 14% to 21% LITERS	14% and under LITERS			
/20	Hawkeye, Inc.	120						113.40	240	
/25	Prairie Wholesale	125				165.44			248	
/29	Fox Company	130		26.43					36	
TOTALS CARRIED FORWARD TO LINE 8				26.43		165.44		113.40	524	

AUTHORIZED BREAKAGE/SUPERVISED DESTRUCTION										
DATE	INSPECTOR WHO SUPERVISED DESTRUCTION	AFFIDAVIT NUMBER	WINES					DISTILLED SPIRITS	NUMBER OF BOTTLES	NUMBER OF LIQUOR MINIATURES
			OVER 24% LITERS	over 21% to 24% LITERS	SPARKLING LITERS	over 14% to 21% LITERS	14% and under LITERS			
/22	A. Q. Jones	874		119.27	24.59				36	
TOTALS CARRIED FORWARD TO LINE 9				119.27	24.59				36	

This report shall be submitted and the tax paid to the Commissioner of Revenue by the 10th day of the month following the First Sale. The following penalties are provided for late or fraudulent reporting.

Minnesota Statutes Chapter 340 provides that:

A five percent per month penalty shall be imposed unless the report is submitted and the tax paid in the designated time.  
Any person who shall file a fraudulent report shall be subject to a penalty equivalent to the sum of 100 per cent of the amount of tax evaded.

The affiant is familiar with the statements made herein and knows them to be true and correct to the best of his knowledge, and that the same complies with the Laws and Regulations of the State of Minnesota. The affiant further states that he is familiar with the provisions of Minnesota Statutes Chapter 340.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
\_\_\_\_\_  
Notary Public.  
\_\_\_\_\_  
County, Minn  
My commission expires \_\_\_\_\_

Signed,  
ABC Liquor Wholesale Company  
Name of Firm  
S/S. S. Smith, President  
(Authorized Signature) Title



Subp. 6. LB Form 58.

LB Form 58 MONTHLY REPORT OF MINNESOTA FARM WINERY (METRIC)  
RV-02365-01

For Department Use Only

MINNESOTA DEPARTMENT OF REVENUE  
ALCOHOL, TOBACCO AND SPECIAL  
TAXES DIVISION  
Centennial Office Building  
St. Paul, Minnesota 55145  
Telephone (612) 296-3482

PAGE 1

MONTH  
November 1982

NAME	Permented Vineyard, Inc.
ADDRESS	14 Catawba Street
CITY	St. Peter, Minnesota 55123

Check \_\_\_\_\_  
Cash \_\_\_\_\_  
Rec'd \_\_\_\_\_  
Rec'd by Cashier \_\_\_\_\_

RECORD OF PRODUCTION  
SUMMARY OF WINES IN BULK FROM— DEPARTMENT OF THE TREASURY

TRANSACTIONS FOR THE MONTH	14% and under		over 14%		NUMBER OF BOTTLES
	LITERS		LITERS		
SECTION A—BULK WINES					
1. ON HAND FIRST OF MONTH	5,000	00	2,000	00	
2. PRODUCED	3,500	00	1,100	00	
3. BOTTLED WINE DUMPED TO BULK	-0-		9	00	
4. SUBTOTAL	8,500	00	3,109	00	
5. LESS ON HAND LAST OF MONTH	4,100	00	800	00	
6. BOTTLED (To Section B)	4,400	00	2,309	00	8,021

MONTHLY REPORT  
OF WINE CELLAR OPERATIONS

AFT F 5120.17 (702) (1-80)

RECORD OF SALES

For Department Use Only

TRANSACTIONS FOR THE MONTH	14% and under		over 14%		NUMBER OF BOTTLES
	LITERS		LITERS		
SECTION B—BOTTLED WINES					
1. ON HAND FIRST OF MONTH	450	00	540	00	960
2. BOTTLED (From Section A)	4,400	00	2,309	00	8,021
3. SUBTOTAL	4,850	00	2,849	00	8,981
4. LESS ON HAND LAST OF MONTH	4,300	00	749	00	5,767
5. BALANCE	550	00	2,100	00	3,214
<b>TAX EXEMPT</b>					
6. DUMPED TO BULK	-0-		-0-		-0-
7. USED FOR TASTING/TESTING	1	50	-0-		2
8. BREAKAGE	5	25	1	50	8
9. SHIPMENTS TO DEALERS OUT OF STATE	90	00	81	00	228
10. MISCELLANEOUS EXEMPT SALES	5	00	900	00	1,205
11. TOTAL EXEMPTIONS	101	75	982	50	1,443
12. TAXABLE SALES LINE 5 LESS LINE 11	449	25	1,117	50	
COMPUTATION OF EXCISE TAX (RATE)					
	\$	\$	\$	\$	\$
EXCISE TAX	17.97	145.28	163.25		
LESS CREDITS					-0-
EXCISE TAX DUE					163.25

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# PROPOSED RULES

PAGE 2

## DETAIL OF TAX EXEMPTIONS

SHIPMENTS TO DEALERS OUT OF STATE					
Date Shipped	TO WHOM SHIPPED Name and Address	INVOICE NUMBER	14% and under LITERS	over 14% LITERS	NUMBER OF BOTTLES
11-10	Sid's Wine City, Tulsa, Oklahoma	20	90.00	81.00	228
TOTALS CARRIED FORWARD TO LINE 9			90.00	81.00	228

MISCELLANEOUS TAX EXEMPTIONS <small>(Sacramental Sales, Common Carriers, Military Posts)</small>					
Date shipped	TO WHOM SHIPPED Name and Address	INVOICE NUMBER	14% and under LITERS	over 14% LITERS	NUMBER OF BOTTLES
1-23	Rev. Harry Krishna	30	5.00		5
1-30	Church of the Redeemer	40		900.00	1,200
TOTALS CARRIED FORWARD TO LINE 10			5.00	900.00	1,205

This report shall be submitted and the tax paid to the Commissioner of Revenue by the 10th day of the month following the First Sale. The following penalties are provided for late or fraudulent reporting.

Minnesota Statutes Chapter 340 provides that:

A five percent per month penalty shall be imposed unless the report is submitted and the tax paid in the designated time. Any person who shall file a fraudulent report shall be subject to a penalty equivalent to the sum of 100 per cent of the amount of tax evaded.

The affiant is familiar with the statements made herein and knows them to be true and correct to the best of his knowledge, and that the same complies with the Laws and Regulations of the State of Minnesota. The affiant further states that he is familiar with the provisions of Minnesota Statutes Chapter 340.

Subscribed and sworn to before me this \_\_\_\_\_

Signed,

day of \_\_\_\_\_, 19 \_\_\_\_\_

Fermented Vineyard, Inc. \_\_\_\_\_  
Name of Firm

\_\_\_\_\_, Notary Public.

S/D. L. Gray, President \_\_\_\_\_  
(Authorized Signature) Title

\_\_\_\_\_, County, Minn.

My commission expires \_\_\_\_\_

**Subp. 7. LB Form 66.**

LB Form 66 (Rev. 10/73)

**WHOLESALE MONTHLY REPORT  
NON TAX-PAID FERMENTED MALT BEVERAGES**

STATE OF MINNESOTA  
DEPARTMENT OF REVENUE  
Centennial Office Building  
St. Paul, Minnesota 55145

**DUE BY THE 15th  
OF EACH MONTH**

MONTH OF  
January 19 78

NAME <u>KING WHOLESALERS #2345678</u>			
ADDRESS <u>120 Broadway Street</u>	CITY <u>Minneapolis</u>	STATE <u>Minnesota</u>	ZIP CODE <u>55418</u>

This report must be filed with the Commissioner of Revenue, after the close of each calendar month, and not later than the 15th, by all licensed wholesalers who sell non tax-paid fermented malt beverages.

**RECORD OF NON TAX-PAID INVENTORY, PURCHASES AND SALES**

Not Over 3.2%	Barrels	Half Barrels	Quarter Barrels	Eighth Barrels	12/32 oz. - 24/12 oz.									
					48/12 oz.	24/16 oz.	36/8 oz.	36/7 oz.	35/7 oz.	24/8 oz.	24/7 oz.	12/12 oz.		
1. On Hand First of Month														
2. Purchased During Month														
3. Total to be Accounted for														
4. Untaxed Sales														
a. To Out of State Retailers														
b. To Out of State Wholesalers														
c. Military Posts and Railroads														
5. Total of 4a, 4b, and 4c.														
6. Balance on Hand End of Month														
Over 3.2%	Barrels	Half Barrels	Quarter Barrels	Eighth Barrels	12/32 oz. - 24/12 oz.									
					48/12 oz.	24/16 oz.	36/8 oz.	36/7 oz.	35/7 oz.	24/8 oz.	24/7 oz.	12/12 oz.		
1. On Hand First of Month														
2. Purchased During Month														
3. Total to be Accounted for														
4. Untaxed Sales														
a. To Out of State Retailers														
b. To Out of State Wholesalers														
c. Military Posts and Railroads														
5. Total of 4a, 4b, and 4c.														
6. Balance on Hand End of Month														

**AFFIDAVIT**

I declare, under the penalties of perjury and evasion, that I am familiar with the books, papers, and records of the business from which this return was prepared, that this report and return has been examined by me and to the best of my knowledge and belief is true, correct and complete.

February 14, 1978  
Date

S/J. J. King  
Signature

President  
Title

SEE INSTRUCTIONS PAGE 4.

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



SALES OF NON TAX-PAID FERMENTED MALT BEVERAGES

Date	Not Over 3.2% To Whom Sold	Barrels	Half Barrels	Quarter Barrels	Eighth Barrels	48/12 oz.	12/32 oz. 24/16 oz.	24/12 oz. 36/8 oz.	36/7 oz.	35/7 oz.	24/8 oz.	24/7 oz.	12/12 oz.
	4a. Out of State Retailers Total												
	4b. Out of State Wholesalers Monthly Total for Each												
	Total												
	4c. Military Posts and Railroads Name and Dates for each Purchaser												
	Total												
Date	Over 3.2% To Whom Sold	Barrels	Half Barrels	Quarter Barrels	Eighth Barrels	48/12 oz.	12/32 oz. 24/16 oz.	24/12 oz. 36/8 oz.	36/7 oz.	35/7 oz.	24/8 oz.	24/7 oz.	12/12 oz.
	4a. Out of State Retailers Total												
	4b. Out of State Wholesalers Monthly Total for Each												
	Total												
	4c. Military Posts and Railroads Name and Dates for each Purchaser												
8	USAF Air Base							50					
	St. Paul-Minneapolis												
	Building #7												
	Total							50					

SPECIFY LINE 4a, 4b, OR 4c AS PER INSTRUCTIONS ON PAGE 4 AND ENTER TOTALS ON PAGE 1.

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## INSTRUCTIONS

### Report of Non Tax-Paid Fermented Malt Beverages

General: This report must be filed for each calendar month in which the wholesaler has inventory, purchases or sales of non tax-paid fermented malt beverages.

The report will not be filed by wholesalers who have had no dealings in non tax-paid beer.

### DIRECTIONS FOR USE OF ITEM LINES ON PAGES 1, 2 and 3.

#### Item

1. The inventory on hand at close of business of preceding month.
2. On page 2 of report, fill in by date the amount of unstamped beer purchased, and the total at bottom of page 2 is carried to face of report as Item 2. The date of the brewer's invoice will determine the month for reporting.
3. Totals of Item 1 and Item 2.
4. Non tax-paid sales claimed exempt from tax to be shown in the following detail on page 3.
  - a. Give total monthly sales to out-of-state retailers by states, naming each state.
  - b. Give sales to out-of-state wholesalers, naming the state and the buyer and the monthly total sales to each.
  - c. Give non tax-paid sales to buyers such as railroads with dining or club car service, or to military organizations such as the Fort Snelling Post Exchange, which has been recognized as exempt. Name each buyer and date of each sale to it.
5. Totals of 4a, b, and c. Subtract this item from Item 3, which will give you --
6. Balance on hand end of month.

LB-88/89 (Rev. 5/83)  
RV 02363-02

NOT OVER 3.2%

Minnesota Department of Revenue  
Alcohol, Tobacco and Special Taxes Division  
Centennial Office Building  
St. Paul, Minnesota 55145  
Telephone 296-3482

MINNESOTA MANUFACTURERS OF BEER - MONTHLY REPORT AND TAX RETURN  
FERMENTED MALT BEVERAGES - (NOT OVER 3.2%)

For the month of \_\_\_\_\_ 19\_\_\_\_

Filed by \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

This report and return shall be filed with the Department of Revenue, St. Paul, Minnesota, after the close of each calendar month, and not later than the 15th, by all manufacturing brewers located in the State of Minnesota. Late filing and payment result in penalty and interest as prescribed by law.

RECORD OF PACKAGES PRODUCED AND DISPOSITION

Not Over 3.2%	Barrels	Half Barrels	Quarter Barrels	Eighth Barrels		24/16 oz. 12/32 oz. 6/64 oz.	24/12 oz. 12/24 oz. 36/8 oz.		A. 35/7 oz. B. 36/7 oz.	24/8 oz.	24/7 oz.	12/12 oz. Carton	Total Barrels
1. Inventory—First of Month													
2. Produced during Month													
3. Total													
Deduct non taxable													
4. Inventory End of Month													
5. Consumed on Premises													
6. Shipments Out of State Other items (specify)													
7.*													
8.*													
9. Total Deductions													
10.* Taxable Sales within State													

COMPUTATION OF MINNESOTA EXCISE TAX (Beer not over 3.2%)

Tax Rates (\$2.00 per bbl.)	\$2.00	\$1.00	.50	.25		.19354	.14516		A. .12348 B. .12702	.09678	.08468	.07258	Total
11. Tax (Multiply line 10 by tax rate)													
12. Total Tax Payment for Beer Sold in Minnesota Containing Not More Than 3.2% of Alcohol by Weight.													

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

Month of \_\_\_\_\_ 19\_\_\_\_

**REPORT OF TAXABLE SALES WITHIN MINNESOTA  
FERMENTED MALT BEVERAGES NOT OVER 3.2% OF ALCOHOL BY WEIGHT**

NOTE: Sales to railroads will be listed chronologically for each. The same applies to any other exempt sales.

Filed by \_\_\_\_\_

To Whom Shipped	Barrels	Half Barrels	Quarter Barrels	Eighth Barrels		24/16 oz.	24/12 oz.		A. 35/7 oz.	24/8 oz.	24/7 oz.	12/12 oz.
						12/32 oz. 6/64 oz.	12/24 oz. 36/8 oz.		B. 36/7 oz.			Carton
Tax Exemptions Claimed												
Name												
City												
Total (Lines 7 and 8)												
Total Sales to Retailers												
Total Sales to Consumers												
*Sales to Wholesalers (Monthly Total for Each)												
Name												
City												
Total--Taxable Sales--Line 10												

\*For each Wholesaler, list Gross Sales in black - Credits in red.



FERMENTED MALT BEVERAGES OVER 3.2% OF ALCOHOL BY WEIGHT													
To Whom Shipped		Barrels	Half Barrels	Quarter Barrels	Eighth Barrels		24/16 oz. 12/33 oz. 6/64 oz.	24/12 oz. 12/24 oz. 36/8 oz.		A. 35/7 oz. B. 36/7 oz.	24/8 oz.	24/7 oz.	12/12 oz. Carton
Tax Exemptions Claimed													
Name													
City													
Total (Lines 7 and 8)													
Total Sales to Retailers													
Total Sales to Consumers													
*Sales to Wholesalers (Monthly Total for Each)													
Name													
City													
Total-Taxable Sales-Line 10													

\*For each Wholesaler, list Gross Sales in black - Credits in red.

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**OVER 3.2%**

**FERMENTED MALT BEVERAGES (OVER 3.2%)**

For the month of \_\_\_\_\_ 19\_\_

Filed by \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

This report and return shall be filed with the Department of Revenue, St. Paul, Minnesota, after the close of each calendar month, and not later than the 15th, by all manufacturing brewers located in the State of Minnesota. Late filing and payment result in penalty and interest as prescribed by law.

**RECORD OF PACKAGES PRODUCED AND DISPOSITION**

Over 3.2%	Barrels	Half Barrels	Quarter Barrels	Eighth Barrels		24/16 oz. 12/32 oz. 6/64 oz.	24/12 oz. 12/24 oz. 36/8 oz.		A. 35/7 oz. B. 36/7 oz.	24/8 oz.	24/7 oz.	12/12 oz. Carton	Total Barrels
1. Inventory—First of Month													
2. Produced during Month													
3. Total													
Deduct non taxable													
4. Inventory End of Month													
5. Consumed on Premises													
6. Shipments Out of State Other items (specify)													
7.*													
8.*													
9. Total Deductions													
10. *Taxable Sales within State													

**COMPUTATION OF MINNESOTA EXCISE TAX (Beer over 3.2%)**

Tax Rates (\$4.00 per bbl.)	\$4.00	\$2.00	\$1.00	.50		.38708	.29032		A. .24696 B. .25404	.19356	.16936	.14516	Total
11. Tax (Multiply line 10 by tax rate)													
12. Total Tax Payment for Beer Sold in Minnesota Containing More Than 3.2% of Alcohol by Weight.													

**AFFIDAVIT**

I declare, under the penalties of perjury and evasion, that I am familiar with the books, papers, and records of the business from which this return was prepared, that this report and return has been examined by me and to the best of my knowledge and belief is true, correct and complete.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

\*Supply detail for lines 7, 8 and 10 on next page.

File in Duplicate

NOTE: Report out-of-state shipments by states showing the individual monthly totals of each account.

STATE OF MINNESOTA  
Department of Revenue

REPORT OF OUT-STATE SHIPMENTS

FERMENTED MALT BEVERAGES (Not Over 3.2%)

LB Form S88 (Rev. 10/73)  
Supplemental to Form 88

Month of \_\_\_\_\_ 19 \_\_\_\_

State of \_\_\_\_\_

Reported by \_\_\_\_\_

To Whom Shipped	Barrels	Half Barrels	Quarter Barrels	Eighth Barrels	48/12 oz.	12/32 oz. 6/64 oz. 24/16 oz.	24/12 oz. 12/24 oz. 36/8 oz.	4/64 oz. Picnic	36/7 oz.	24/8 oz.	24/7 oz.	12/12 oz. Carton
Name												
City												
TOTAL												

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File in Duplicate

I.B.S89 - Supplement to Form 89  
RV.02366-01

STATE OF MINNESOTA  
Department of Revenue  
Alcohol, Tobacco and Special Taxes Division

## REPORT OF OUT-STATE SHIPMENTS

FERMENTED MALT BEVERAGES (Over 3.2%)

NOTE:  
Report out-of-state shipments by  
states showing the individual  
monthly totals of each account.

Month of January 19 78

State of North Dakota

Reported by York Brewing Company

To Whom Shipped	Barrels	Half Barrels	Quarter Barrels	Eighth Barrels	48/12 oz.	24/16 oz. 12/32 oz. 6/64 oz.	24/12 oz. 12/24 oz. 36/8 oz.		A. 35/7 oz. B. 36/7 oz.	24/8 oz.	24/7 oz.	12/12 oz. Carton
Name City												
North Dakota Dist. Co. Fargo, North Dakota		50	20				500					
TOTAL		50	20				500					

Subp. 11. LB Form 123.

LB Form 123 (Rev. 4/80)  
RV 02369-0C

COMMON CARRIER MONTHLY REPORT AND TAX RETURN (METRIC)  
(see Reverse Side)



MINNESOTA DEPARTMENT OF REVENUE  
Alcohol, Tobacco and Special Taxes Division  
Centennial Office Bldg.—St. Paul, MN 55145  
Phone (612) 296-3482

DUE BY THE 10th  
OF EACH MONTH

For Department Use

Check \_\_\_\_\_

Cash \_\_\_\_\_

Rec'd \_\_\_\_\_

Rec'd by Cashier \_\_\_\_\_

Month of January 19 83

Name JKL Airline, Inc. 5763297

Address International Airport City Minneapolis/St. Paul State Minnesota Zip Code 55111

This report must be submitted to the Commissioner of Revenue not later than the 10th day of the succeeding month, by all Common Carriers who sold distilled spirits, wines and fermented malt beverages to passengers being transported while within the State of Minnesota, in accordance with Chapter 340, Minnesota Statutes.

MINNESOTA TAXABLE SALES (Liters)/QUANTITY FROM REVERSE SIDE

Item	Excise Tax	Minnesota Liters	Total Amount
Liquor	\$1.16	24.57	28.50
Wines over 24%	.81		
Wines over 21% to 24%	.42		
Sparkling Wine	.40		
Wines 14% to 21%	.21		
Wines under 14%	.07		
Miniatures	.12 ea.	Bottles 35	4.20
Total Tax on Liquors & Wines			32.70

Fermented Malt Beverages	Rate	Minnesota Quantity	Tax per Unit	Amount
Beer Containing less than 3.2% alcohol	\$2.00 Bbl.	Case 24-12 oz.	\$1.14516	\$
		12 oz. Bottle	.00605	
Beer Containing more than 3.2% alcohol	\$4.00 Bbl.	Case 24-12 oz. 3	.29032	.87
		12 oz. Bottle	.01210	
Total Tax on Beer				.87
Total Tax Payment . . . . .				33.57

AFFIDAVIT

I declare, under the penalties of perjury and evasion, that I am familiar with the books, papers, and records of the business from which this return was prepared, that this report and return has been examined by me and to the best of my knowledge and belief is true, correct and complete.

Signature S/ Sven Olaf Title Vice-President Date February 8, 1983

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# PROPOSED RULES

## INSTRUCTIONS

Please indicate method used to report the quantity of Alcoholic beverages sold during the month:

- Monthly totals from daily records of alcoholic beverages sold within the state. Report usage on LB form 123.
- Allocation of passenger mileage. Complete the following schedule if this method is used.

Minnesota passenger miles for the month 10,000  
 Total passenger miles for the month 100,000  
 Percentage 10 %

### DISTILLED SPIRITS, WINES AND MINIATURES

	Distilled Spirits Liters		Wines					Bottles Liquor Miniatures
			Over 24% Liters	over 21% to 24% Liters	Sparkling Liters	over 14% to 21% Liters	14% and under Liters	
Total Taxable Sales	245	70	-0-	-0-	-0-	-0-	-0-	350 00
Percentage	10 %		%	%	%	%	%	10 %
Minnesota Taxable Sales	24	57						35 00

### FERMENTED MALT BEVERAGES

	Containing Less Than 3.2% Alcohol		Containing More Than 3.2% Alcohol	
	Case 24-12 oz.	12 oz. Bottle	Case 24-12 oz.	12 oz. Bottle
Total Taxable Sales	-0-	-0-	30 00	-0-
Percentage	%	%	10 %	%
Minnesota Taxable Sales			3 00	

Minnesota Taxable Sales forwarded to front of LB-form 123

### PURCHASES DURING THE MONTH FROM MINNESOTA WHOLESALERS

Date	Purchased From	A Invoice or Manifest No.	Indicate (✓) Products Purchased			
			Distilled Spirits	Wines	Miniatures	Beer
1/09/83	ABC Wholesale Liquor Co.	90	90.72		1,560	

Subp. 12. LB Form 128.

LB Form 128 (Rev. 3/75)

STATE OF MINNESOTA  
DEPARTMENT OF REVENUE  
CENTENNIAL OFFICE BUILDING  
ST. PAUL, MINNESOTA 55145

DO NOT WRITE IN THIS SPACE

Check \_\_\_\_\_

Cash \_\_\_\_\_

TAX REMITTANCE COVER SHEET

MONTH OF JANUARY 19 78

We herein transmit to the Commissioner of Revenue from:

Name \_\_\_\_\_

YORK BREWING CO. #12345678

Address \_\_\_\_\_

348 BROADWAY MPLS MINN

Zip Code  
55413

check, bank draft, or money order in payment of taxable sales for malt beverages shipped into or sold within the State of Minnesota in accordance with M.S. 340.47, Subd. 2.

Taxable sales of 392.90 barrels of beer containing  
less than 3.2% alcohol by weight  
@ \$2.00 per barrel ..... Tax \$ 785.80  
LESS CREDIT 1ST 75M BBLs ..... 785.80  
-0-

Taxable sales of 3036.93 barrels of beer containing  
more than 3.2% alcohol by weight  
@ \$4.00 per barrel ..... Tax \$ 12,147.70  
LESS CREDIT 1ST 75M BBLs ..... 6,073.85

Total Tax Payment ..... \$ 6,073.85

This payment is accompanied by tax reports and returns, LB forms 51 and 52 or 88 and 89 as required by law and regulations.

Date	Signature	Title
2/8/78	S/ R. J. Johnson	Vice President

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# PROPOSED RULES

## Waste Management Board

### Proposed Emergency Rules Governing The Solid Waste Processing Facility Capital Assistance Program

#### Notice of Intent to Adopt Emergency Rules

Notice is hereby given that the Minnesota Waste Management Board proposes to adopt the above-entitled emergency rules. The Chairman of the Waste Management Board will follow the procedures set forth in Minnesota Statutes, sections 14.29-14.36 in adopting these rules.

Persons interested in these emergency rules shall have 25 days from the date the rules are published in the *State Register* to submit comments on the proposed rules. Each comment should identify the portion of the proposed rule addressed by the comment, reason for the comment, and any change that is proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language.

Persons who wish to submit oral or written comments should submit the comments to:

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

Authority to adopt these rules is contained in Minnesota Statutes, section 115A.06, subd. 2 (1984) and 115A.49 to 115A.54 (1984), as amended. The Board is authorized by these sections to adopt rules for the administration of a solid waste processing facility capital assistance program to provide grants to local units of government to develop solid waste processing facilities which are feasible and prudent alternatives to disposal. Accordingly, the proposed emergency rules include grant application procedures, eligibility criteria, information required on grant applications, supporting documentation required to be submitted with grant application, application review and evaluation procedures, and required contents of grant agreements.

Upon adoption of the emergency rules, the proposed rules, this notice, all written comments received, and the emergency rules as adopted, will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change.

These emergency rules will be effective for 180 days or until permanent rules are adopted, whichever occurs first.

One free copy of this notice, the proposed emergency rules or notice of the date of submission of the final emergency rules as adopted to the Attorney General may be obtained by contacting Mr. Troolin. Persons who wish to receive a copy of the emergency rules as adopted should also request it from Mr. Troolin.

July 8, 1985

Robert G. Dunn, Chairman  
Waste Management Board

#### Emergency Rules as Proposed (all new material)

##### 9200.6000 [Emergency] DEFINITIONS.

**Subpart 1. Scope.** For the purposes of parts 9200.6000 to 9200.6800 the following terms have the meaning given them, unless the context requires otherwise.

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

**Subp. 3. Chairperson.** "Chairperson" means the chairperson and chief executive officer of the board.

**Subp. 4. Cities.** "Cities" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 4.

**Subp. 5. Comprehensive solid waste management plan.** "Comprehensive solid waste management plan" means a written plan prepared pursuant to Minnesota Statutes, section 115A.46.

**Subp. 6. Disposal.** "Disposal" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 9.



**Subp. 7. Final engineering/architectural plans.** "Final engineering/architectural plans" means those engineering drawings and specifications used to secure bids for construction or equipment.

**Subp. 8. Institutional arrangements.** "Institutional arrangements" means methods of financing, marketing, procurement, securing the waste supply, or joint efforts by more than one local government unit.

**Subp. 9. Mixed municipal solid waste.** "Mixed municipal solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 21.

**Subp. 10. On-site transmission facilities.** "On-site transmission facilities" means any steam, water, or electrical facilities within the geographic boundaries of the waste processing facility site, which are used to transmit energy to markets.

**Subp. 11. On-site utilities.** "On-site utilities" means gas, electrical, water, and sewer facilities within the geographic boundaries of the waste processing facility site, which are used for facility operations, excluding transmission of energy to markets.

**Subp. 12. Preliminary engineering/architectural plans.** "Preliminary engineering/architectural plans" means conceptual plans adequate to obtain preconstruction permits and to meet the needs of an environmental assessment.

**Subp. 13. Processing.** "Processing" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25.

**Subp. 14. Project.** "Project" means a processing facility, together with any transfer stations, transmission facilities, and other related and appurtenant facilities primarily serving the processing facility.

**Subp. 15. Recyclable materials.** "Recyclable materials" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25a.

**Subp. 16. Recycling.** "Recycling" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25b.

**Subp. 17. Recipient.** "Recipient" means an applicant who has received a grant under the solid waste processing facilities capital assistance program.

**Subp. 18. Resource recovery.** "Resource recovery" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 27.

**Subp. 19. Resource recovery facility.** "Resource recovery facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 28.

**Subp. 20. Solid waste.** "Solid waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 10.

**Subp. 21. Solid waste disposal facilities and equipment.** "Solid waste disposal facilities and equipment" means structures, machinery, or devices at a disposal site necessary for efficient land disposal of solid wastes, including machinery or devices designed to move earth during burial of wastes or to increase the density of wastes buried or to be buried, and facilities in which solid waste is temporarily stored and concentrated prior to transport to a disposal site.

**Subp. 22. Solid waste management district.** "Solid waste management district" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 32.

**Subp. 23. Special waste stream.** "Special waste stream" means materials normally found in the solid waste stream in sufficient quantity to be recovered for subsequent use, if separated from the solid waste stream and processed separately. Examples of special waste streams include used tires, wood wastes, and agricultural wastes.

**Subp. 24. Transfer station.** "Transfer station" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 33.

**Subp. 25. Waste processing equipment.** "Waste processing equipment" means machinery or devices acquired and used as an integral component of a waste processing facility.

**Subp. 26. Waste processing facility.** "Waste processing facility" means structures and equipment singly or in combination, designed, constructed, and used to separate, modify, convert, heat, prepare, or otherwise process solid waste so that materials, substances, or energy contained within the waste may be recovered for subsequent use.

#### **9200.6100 [Emergency] SOLID WASTE PROCESSING FACILITIES CAPITAL ASSISTANCE PROGRAM.**

Parts 9200.6000 to 9200.6800 [Emergency] implement the solid waste processing facilities capital assistance program created

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## PROPOSED RULES

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and described in Minnesota Statutes, sections 115A.49 to 115A.54 by establishing the substantive criteria and procedural conditions under which the board may award grants for capital costs of solid waste processing facilities.

### **9200.6200 [Emergency] GRANT APPLICATION PROCEDURES.**

**Subpart 1. Applications.** An application may be submitted to the board when the applicant has met the information and documentation requirements in parts 9200.6400 [Emergency] and 9200.6500 [Emergency]. The applicant is encouraged to contact the chairperson and request a preapplication review of the proposed project.

**Subp. 2. Review of applications.** Upon receipt of an application, the chairperson or a designee shall conduct an initial review of the application pursuant to part 9200.6600 [Emergency]. The board shall evaluate projects and award grants.

**Subp. 3. Applications accepted.** The board shall accept applications for funds under the waste processing facilities capital assistance program until funds for the program are depleted or until March 30, 1987, whichever occurs first.

### **9200.6300 [Emergency] ELIGIBILITY CRITERIA.**

**Subpart 1. Eligible applicants.** Eligible applicants are limited to cities, counties, and solid waste management districts established pursuant to Minnesota Statutes, sections 115A.62 to 115A.72.

**Subp. 2. Eligible projects.** Six types of projects are eligible for grants: waste to energy; materials recovery; chemical, physical, or biological modifications; transfer stations; special waste streams; and waste incineration with resource recovery. Eligible projects are limited to those in which the land, buildings, and equipment are publicly owned.

Projects which were awarded assistance by the board pursuant to applications submitted under Minnesota Statutes, sections 115A.49 to 115A.54 before July 1, 1985, are eligible for additional assistance under this program, provided that no project may receive a total amount of grant assistance in excess of the limits specified in part 9200.6700 [Emergency], subpart 1. Previously funded projects seeking additional funding under this program shall complete the documentation required pursuant part 9200.6500 [Emergency].

**Subp. 3. Eligible costs.** Eligible costs under part 9200.6000 to 9200.6800 [Emergency] shall be limited to the costs of waste processing equipment, structures necessary to house the waste processing equipment, on-site transmission facilities, appropriate and necessary on-site utilities, structures necessary to concentrate and temporarily store solid waste prior to transportation to a waste processing facility, and final design and engineering specifications.

**Subp. 4. Ineligible costs.** Ineligible costs include any costs related to acquisition of land, solid waste disposal facilities and equipment, structures for housing and maintenance of rolling stock, or any costs related to resource recovery studies, feasibility analyses, or preliminary design and engineering.

### **9200.6400 [Emergency] INFORMATION REQUIRED ON GRANT APPLICATION.**

Applications for waste processing facilities grants shall include the following information as required in the application forms supplied by the board:

- A. the name of each applicant making the grant application;
- B. the name of each political subdivision affected by the project, located in the area studied in the project, or located in the area in which the project is intended to be implemented;
- C. resolutions from each applicant in conformance with Minnesota Statutes, sections 115A.54, subdivision 2a, clause (1) and 115A.54, subdivision 3;
- D. the name, qualifications, and address of the project manager;
- E. the name and qualifications of the facility operator, if available;
- F. the total capital cost of the project;
- G. the total grant-eligible cost of the project;
- H. the amount of grant funding requested;
- I. the amount and sources of all other funding contributions, including the amount of funds to be contributed by the applicant; and
- J. the type of waste processing facility for which the grant application is being submitted: waste to energy; materials recovery; chemical, physical, or biological modification; transfer stations; special waste stream; or waste incineration with resource recovery.

### **9200.6500 [Emergency] SUPPORTING DOCUMENTATION REQUIRED TO BE SUBMITTED WITH GRANT APPLICATION.**

Applications for waste processing facilities grants must include the following supporting documentation:

A. A conceptual and technical feasibility report which includes at least the following: a detailed description of the proposed waste processing facility; a description of the institutional arrangements necessary for project implementation and operation; a description of the method of facility procurement; and an analysis of the waste stream for the facility.

B. A financial plan which contains:

- (1) initial capital development costs and the method of financing those costs;
- (2) annual operating and maintenance costs;
- (3) 15-year projections of total facility costs;
- (4) total facility costs per ton;
- (5) total facility costs to generator; and
- (6) revenues or funds accruing to the facility through sales, tipping fees, taxes, and subsidies.

C. A report demonstrating that the project is not financially feasible without state assistance, due to the applicant's financial capacity and the problems inherent in waste management in the area. The report shall include the following documentation:

(1) financing alternatives, both public and private, explored by the applicant for the projects and reasons for selecting the proposed financial plan;

(2) information on the applicant's financial situation including the applicant's current credit rating on general obligation bonds, the amount of general obligation bonds outstanding, general obligation debt divided by market valuation, and debt service levy divided by total levy. If the applicant has issued general obligation bonds in the past two years, the documentation must include the most recent general purpose financial statements, current year budgets, and official statement on bond issuance;

(3) projected facility tipping fees, revenues, operating and maintenance costs and debt service on a per capita basis, with and without board assistance.

(4) impact of proposed project on existing solid waste commitments, obligations and expenditures, and total current solid waste management costs on a per capita basis;

(5) general information on the applicant's location, population characteristics, employment base, and other characteristics pertinent to a discussion of financial capacity;

(6) transportation distances, both in waste collection and to markets for recovered resources;

(7) waste supply characteristics;

(8) availability of markets for recovered resources; and

(9) other characteristics of waste management in the area which render state assistance necessary to the financial feasibility of the project.

D. A comprehensive solid waste management plan.

E. Preliminary design and engineering/architectural plans and specifications of the proposed waste processing facility and equipment.

F. Documentation that waste supplies will be committed to the project and that the applicant has the authority and mechanism to commit such wastes.

G. A market analysis of recovered materials/energy, including market commitments such as letters of intent or market contracts.

H. A report on the status of required permits from permitting agencies.

I. A report on time frames of project development.

J. Resolutions assuring compliance with the requirements of Minnesota Statutes, sections 115A.54, subdivision 2a, clause (1) and 115A.54, subdivision 3.

K. If the applicant, pursuant to Minnesota Statutes, section 115A.49, requests priority based on any of the following conditions, documentation of the existence of the condition:

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## PROPOSED RULES

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- (1) the natural geologic and soil conditions which are claimed to be unsuitable for land disposal of solid waste;
- (2) the available capacity of existing solid waste disposal facilities are claimed to be less than five years; or
- (3) the claim that the proposed project would serve more than one local government unit.

L. If the project has previously received funding from the board under the board's solid waste processing facility demonstration program, documentation of how the project has changed since the previous award and why the project is not financially feasible without additional funding. This documentation must include:

- (1) a description of changes in the scope or design of the project;
- (2) a description of changes in major external factors affecting the project;
- (3) an explanation and demonstration of why the project is no longer financially feasible without additional state assistance; and
- (4) a revised implementation schedule.

M. If the project serves eligible jurisdictions in only a single county, documentation demonstrating that cooperation with jurisdictions in other counties is not needed or not feasible, including:

- (1) a description of past efforts to develop multi-county facilities or waste management programs; and
- (2) a description of characteristics of the applicant's individual situation which preclude or inhibit cooperation with other counties, such as waste supply, market availability, technology constraints, geographic factors, or factors involving institutional arrangements.

### 9200.6600 [Emergency] REVIEW AND EVALUATION OF APPLICATIONS.

**Subpart 1. Determination of eligibility and completeness.** Upon receipt of an application, the chairperson or a designee shall determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the project specified in the application, and the completeness of the application.

**Subp. 2. Notice of determination of eligibility and completeness.** Within 14 days after receiving the application, the chairperson shall notify the applicant of the chairperson's determinations of eligibility and completeness. If the chairperson determines that the applicant, the project, any of the costs, or any part of the project is ineligible, or that the application is incomplete, the chairperson may reject the application, return it to the applicant, and notify the applicant of the reasons for the rejection. The applicant shall have 14 days after receipt of the rejection of the application to correct any inadequacies identified in the application. If the inadequacies are corrected within the time allowed, the application will be further considered.

**Subp. 3. Legislative priorities.** The board shall give priority to projects located in cities, counties, or districts in which:

- A. the natural geologic and soil conditions are unsuitable for land disposal of solid waste;
- B. the capacity of existing solid waste disposal facilities is less than five years; or
- C. the project serves more than one local government unit.

**Subp. 4. Evaluation of applications.** If the applicant, the costs, and the project are determined to be eligible and the application is complete, the board shall evaluate the application to determine whether the application demonstrates:

- A. that the project is conceptually and technically feasible;
- B. that affected political subdivisions are committed to implementing the project, providing necessary local financing, and accepting and exercising the government powers necessary for project implementation and operation;
- C. that operating revenues from the project, considering the availability and security of sources of solid waste and of markets for recovered resources together with any proposed federal, state, or local financial assistance, will be sufficient to pay all costs over the projected life of the project;
- D. that the applicant has evaluated the feasible and prudent alternatives to disposal and has compared and evaluated the costs of the alternatives, including capital and operating costs, the effects of the alternatives on the cost to generators, and the effects of the alternatives on the solid waste management and recycling industry within the project's service area;
- E. that for projects serving eligible jurisdictions in only a single county, cooperation with jurisdictions in other counties to develop the project is not needed or not feasible;
- F. that resource recovery facilities which burn waste, convert waste to energy, or convert waste into materials for combustion will not accept recyclable materials except for transfer to a recycler; and
- G. that the project is not financially feasible without state assistance, because of the applicant's financial capacity and the

problems inherent in the waste management situation in the area, particularly transportation distances and limited waste supply and markets for resources recovered.

**Subp. 5. Evaluation process.** In evaluating the application pursuant to subpart 4, the board shall evaluate applications in two stages. First, the board shall evaluate financial feasibility documentation submitted by the applicant. Second, the board shall evaluate the remainder of the documentation submitted by the applicant.

**Subp. 6. Evaluation of financial feasibility.** In making a determination of financial feasibility, the board shall evaluate the information supplied in part 9200.6500 [Emergency], item C to determine whether or not board assistance is necessary for facility development. If the board determines that assistance is not necessary, evaluation of the application shall cease and the application shall be returned to the applicant. If the board determines that assistance is necessary, evaluation will proceed to the second stage. During the second stage, the board shall evaluate part 9200.6500 [Emergency], items A, B, and D to M.

**Subp. 7. Board determination.** Following evaluation of the supporting documentation, the board shall determine whether the application demonstrates the requirements of subpart 4. If the board determines that the application demonstrates the requirements of subpart 4, the board shall determine the amount of the grant award and the applicant shall be so notified. If the board determines that the application fails to demonstrate the requirements of subpart 4, the board shall reject the application and the chairperson shall return the application to the applicant, together with a statement of the reasons for the determination.

**Subp. 8. Consultation with other agencies.** In its evaluation of the application, the board shall consider any recommendations provided by the Pollution Control Agency, the appropriate regional development commission, the State Planning Agency, and if appropriate, the Metropolitan Council.

#### **9200.6700 [Emergency] LIMITATIONS.**

**Subpart 1. Maximum grant award.** The maximum grant award shall be 25 percent of the eligible capital costs of the project or \$2,000,000, whichever is less.

**Subp. 2. Limitations on grant award.** No grant shall be awarded for costs for which the applicant has applied and received funds from another source.

Grants shall be awarded to cover the eligible costs of only those tasks which are undertaken and completed during the period established in the grant agreement.

Grants shall not be awarded to cover any cost associated with tasks performed prior to the grant award or after the expiration of the grant agreement.

**Subp. 3. Limitations on disbursement of funds.** No funds shall be disbursed until the board has determined the total estimated capital cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

#### **9200.6800 [Emergency] GRANT AGREEMENT.**

**Subpart 1. Requirements.** A grant agreement shall:

- A. include as attachments the resolutions required under Minnesota Statutes, sections 115A.54, subdivision 2a, clause (1) and 115A.54, subdivision 3;
- B. incorporate by reference the final grant application submitted to the board in accordance with part 9200.6200 [Emergency];
- C. allow the recipient to enter into contracts to complete the work specified in the agreement subject to any board approval which may be required in the agreement;
- D. provide that any cost overruns incurred in the development of the proposed facility shall be the sole responsibility of the recipients;
- E. provide that the board will not approve amendments to the agreement to provide additional grant funds to the recipient;
- F. require that the recipient provide periodic written reports to the board on the developmental and operational history of the project so that knowledge and experience gained from the project may be made available to other communities in the state; and

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## PROPOSED RULES

G. require total repayment of the grant if the facility is sold to a private enterprise within three years of the effective date of the grant agreement. Beginning on the third anniversary of the grant, the amount of the grant which must be repaid shall be reduced ten percent each year. The sales agreement between the recipient and the private enterprise shall transfer the responsibilities outlined in subpart 1, item F to the private enterprise.

**Subp. 2. Rescission of grant.** If a project is not completed and operational in accordance with the terms and conditions of the grant agreement, including time schedules, the grant shall be rescinded, and the entire amount of the grant shall be repaid unless the board determines that variances from the respective agreements are justified and that the original objectives of the project will be accomplished.

**Subp. 3. Disbursement.** The board shall disburse grants in accordance with the payment schedule set out in the grant agreement.

## ADOPTED RULES

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

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

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

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

## Energy and Economic Development Department Energy and Economic Development Authority

### Adopted Emergency Rules Relating to Hazardous Waste; Processing Facility Loans

The emergency rules proposed and published at *State Register*, Volume 9, Number 41, pages 2243-2245, April 8, 1985 (9 S.R. 2243) are adopted with the following modifications:

#### Rules as Adopted, Emergency

#### 8300.5003 [Emergency] ELIGIBLE PROJECT FOR HAZARDOUS WASTE PROCESSING FACILITY LOAN.

An eligible project must be a hazardous waste processing facility as defined in part ~~8300.5000~~ 8300.5001 [Emergency], subpart 6.

#### 8300.5004 [Emergency] PROCEDURES FOR HAZARDOUS WASTE PROCESSING FACILITY LOAN APPLICATIONS.

**Subp. 2. Contents.** Applications must comply with part 8300.3012 [Emergency], subparts 2 and 3.

Also, applications must include information necessary for certification by the board under Minnesota Statutes, section 115A.162 and information demonstrating that general casualty and pollution liability insurance is available for the proposed hazardous waste processing facility and the cost of obtaining the insurance must be included in all financial data required to be provided under part 8300.3012 [Emergency], subpart 2, item J.

In addition, the application must contain a certification that the applicant, the officers and directors of the applicant, any shareholder or partner which has a five percent or more ownership of the applicant, and the proposed hazardous waste processing facility, if any, have never been a defendant in any civil or criminal action or the respondent in any administrative consent decree or assurance relating to the collection or processing of hazardous waste as those terms are defined in Minnesota Statutes, section 115A.03, subdivisions 5, 13, and 25.

#### 8300.5005 [Emergency] PROCEDURES FOR APPLICATION PROCESSING.

**Subpart 1. In general.** Processing of applications must comply with ~~part~~ parts 8300.3013 and 8300.3014 [Emergency], subparts 2 to 7 and 9 to 11.

**8300.5006 [Emergency] REVIEW AND APPROVAL.**

**Subp. 2. Authority review and approval.** If the board has certified an application, the authority shall approve the application and make the loan if funds are available and if the authority finds that the following criteria are satisfied:

A. the application is complete and contains all required certifications;

B. the development and operation of the hazardous waste processing facility as proposed in the application is economically feasible; and that the hazardous waste processing facility's feasibility is sufficient to allow the authority to sell the bonds as required for its financing;

~~B. C.~~ upon review of the application, there is a reasonable expectation that the principal and interest on the loan will be fully repaid; and

~~C. D.~~ the hazardous waste processing facility is unlikely to be developed and operated without a loan from the authority as certified to by the applicant in the application.

**Subp. 3. Authority review and disapproval.** The authority shall disapprove the application if it finds that one or more of the criteria set forth in subpart 2 have not been satisfied.

**Subp. 4. Additional information and certifications.** The following additional information is required by the authority, if applicable, prior to disbursing financial assistance:

A. all additional information and certifications required under part 8300.3013 [Emergency], subpart 2; and

B. a certificate of the general casualty insurer and a certificate of the pollution liability insurer that the insurance is in full force and effect. Prior to expiration of any insurance policy, the applicant shall furnish the commissioner with evidence that the policy has been renewed, replaced, or is no longer required.

## Department of Human Services

### Adopted Rules Relating to Hospital Medical Assistance Reimbursement

The rules proposed and published at *State Register*, Volume 9, Number 35, pages 1927-1943, February 25, 1985 (9 S.R. 1927) are adopted with the following modifications:

#### Rules as Adopted

##### 9500.1090 PURPOSE AND SCOPE.

Parts 9500.1090 to 9500.1155 establish a prospective reimbursement system for all hospitals that participate in and are reimbursed ~~directly~~ by medical assistance.

All provisions of parts 9500.1090 to 9500.1155, except part 9500.1155, subpart 5, shall apply to general assistance medical care substituting the terms and data for general assistance medical care for the terms and data referenced for medical assistance.

##### 9500.1100 DEFINITIONS.

**Subpart 1. Scope.** As used in parts 9500.1090 to 9500.1155, the terms in subparts 2 to ~~48~~ 50 have the meanings given them.

**Subp. 2. Adjusted base year cost per admission.** "Adjusted base year cost per admission" means an allowable base year cost per admission cumulatively multiplied by the hospital cost index ~~for years prior to the budget through a hospital's current~~ year.

**Subp. 3. Admission.** "Admission" means the act that allows ~~the~~ a recipient to officially enter a hospital to receive inpatient hospital services under the supervision of a physician who is a member of the medical staff.

**Subp. 9. Base year.** "Base year" means ~~the~~ a hospital's fiscal year ending during calendar year 1981.

**Subp. 10. Budget year.** "Budget year" means ~~the~~ a hospital's fiscal year for which a prospective reimbursement system is being determined.

**Subp. 11. Case mix.** "Case mix" means ~~the~~ a distribution of admissions in the diagnostic categories.

**Subp. 12. Categorical rate per admission.** "Categorical rate per admission" means the adjusted base year cost per admission

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## ADOPTED RULES

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multiplied by the budget year hospital cost index and the relative value of the appropriate diagnostic category plus the budget year pass-through cost per admission.

**Subp. 13. Claims.** "Claims" means ~~the~~ information contained on the inpatient hospital invoices submitted to the department on forms or computer tape by a hospital to request reimbursement for inpatient hospital services provided to a recipient.

**Subp. 15. Cost outlier.** "Cost outlier" means an admission whose reimbursable inpatient hospital cost exceeds the geometric mean cost per admission for diagnostic ~~categories O and W~~ category O, under subpart 20 by one standard deviation and diagnostic category W, under subpart 20, by three standard deviations.

**Subp. 17. Current year.** "Current year" means ~~the~~ a hospital's fiscal year which occurs immediately before ~~the~~ that hospital's budget year.

**Subp. 18. Day outlier.** "Day outlier" means an admission whose length of stay exceeds the geometric mean length of stay for a diagnostic ~~category by three standard deviations~~ categories A to N, and P to II, under subpart 20 by two standard deviations or for diagnostic category O, under subpart 20 by one standard deviation.

**Subp. 32. Medicare crossover claims.** "Medicare crossover claims" means ~~the~~ information contained on the inpatient hospital invoices submitted to the department on forms or computer tape by a hospital to request reimbursement for inpatient hospital services provided to a recipient who is also eligible for medicare.

**Subp. 33. Metropolitan statistical area hospital or MSA hospital.** "Metropolitan statistical area hospital" or "MSA hospital" means a hospital located in a metropolitan statistical area as determined by Medicare.

**Subp. 34. Non-metropolitan statistical area hospital or non-MSA hospital.** "Non-metropolitan statistical area hospital" or "non-MSA hospital" means a hospital not located in a metropolitan statistical area as determined by Medicare.

**Subp. ~~33~~ 35. Operating costs.** "Operating costs" means ~~the~~ reimbursable inpatient hospital costs ~~of a hospital~~ excluding pass-through costs.

**Subp. ~~34~~ 36. Outlier.** "Outlier" means a day outlier or a cost outlier.

**Subp. ~~35~~ 37. Out-of-area hospital.** "Out-of-area hospital" means any hospital outside of Minnesota.

**Subp. ~~36~~ 38. Pass-through costs.** "Pass-through costs" means reimbursable inpatient hospital costs not subject to the HCI.

**Subp. ~~37~~ 39. Prior authorization.** "Prior authorization" means prior approval for inpatient hospital services by the department established under parts 9505.5000 to 9505.5020 [Emergency].

**Subp. ~~38~~ 40. Prior year.** "Prior year" means the hospital's fiscal year immediately before the current year.

**Subp. ~~39~~ 41. Prospective reimbursement system.** "Prospective reimbursement system" means a method of reimbursing hospitals for inpatient hospital services on a categorical rate per admission, rate per admission, or rate per day, or some combination thereof, determined by the department in advance of the delivery of inpatient hospital services.

**Subp. ~~40~~ 42. Readmission.** "Readmission" means an admission which occurs within seven days of a discharge, whose diagnostic category or a related diagnostic category is the same as that identified for that discharge.

**Subp. ~~41~~ 43. Recipient.** "Recipient" means a person who has applied to a local agency and has been determined eligible for medical assistance.

**Subp. ~~42~~ 44. Reimbursable inpatient hospital costs.** "Reimbursable inpatient hospital costs" means those costs allowable under Title XVIII of the Social Security Act for inpatient hospital services.

**Subp. ~~43~~ 45. Relative value.** "Relative value" means the arithmetic mean of the reimbursable inpatient hospital cost per admission for all admissions in each diagnostic category in relation to the arithmetic mean of the reimbursable inpatient hospital cost per admission of all admissions in all other diagnostic categories on a statewide basis.

**Subp. 44 46. Routine service.** "Routine service" means those inpatient hospital services included by a hospital in a daily room charge. Routine services are composed of two broad components: (1) general routine services, and (2) special care units including nursery care units, coronary care units, and intensive care units.

**Subp. 45 47. Second surgical opinion.** "Second surgical opinion" means the ~~confirming~~ confirmation or ~~denying~~ denial of the need for ~~the~~ a proposed surgery by a recommended second physician as specified in part 9505.5030 [Emergency] and Minnesota Statutes, section 256B.503.

**Subp. 46 48. Total hospital admissions.** "Total hospital admissions" means the total number of acts that allow persons to officially enter a hospital during the base year to receive a service provided under the supervision of a physician and furnished in a hospital by a physician, or a vendor of an ancillary service prescribed by a physician.



**Subp. 47 49. Total reimbursable costs.** "Total reimbursable costs" means the costs identified in a hospital's base year medicare/medical assistance cost report, Health Care Financing Administration (HCFA) Form 2552, 1981 revision, Worksheet A, column 7, line 84. Health Care Financing Administration Form 2552, 1981 revision is incorporated by reference. The form is published by Medicare, Part A Office, 3535 Blue Cross Road, P.O. Box 43560, Saint Paul, Minnesota 55164. The form is available through the minitex interlibrary loan system.

**Subp. 48 50. Transfer.** "Transfer" means the movement of a recipient after admission from one hospital to another.

**9500.1110 DETERMINATION AND PUBLICATION OF RELATIVE VALUES OF DIAGNOSTIC CATEGORIES.**

**Subpart 1. Determination of relative values.** To determine the relative values of the diagnostic categories the department shall:

D. determine reimbursable inpatient hospital costs for each hospital's admissions for state fiscal years 1983 and 1984 using each hospital's base year data from the HCFA Form 2552 Worksheet, 1981 revision according to subitems (1) to (4):

- (1) ~~establish~~ determine the cost of routine services ~~determined~~ by multiplying the routine services charge for each admission identified in item B by the appropriate routine service cost-to-charge ratio determined in the base year,
- (2) ~~establish~~ determine the cost of ancillary services by multiplying the ancillary charges for each admission identified in item B by the appropriate cost-to-charge ratio as identified in Worksheet C determined in the base year,
- (3) ~~establish~~ determine the cost of services rendered by interns and residents not in an approved teaching program for each admission in item B by multiplying the number of days for the appropriate routine services by the per diem cost identified in Worksheet D-2, Part I of the base year, and

**Subp. 2. Redetermination of relative values.** The department shall redetermine the relative values of the diagnostic categories prior to the beginning of each state fiscal biennium. The redetermination of the relative values shall be based on claims from the two most recently completed state fiscal years reimbursed on or before March 1 of the second year of the biennium and the cost-to-charge ~~ratio~~ ratios determined during the base year.

These redetermined relative values shall be the basis of reimbursement for the next biennium.

**9500.1115 DETERMINATION OF ALLOWABLE BASE YEAR COST PER ADMISSION.**

To determine the allowable base year cost per admission the department shall:

A. determine reimbursable inpatient hospital costs for each hospital's base year admissions according to part 9500.1110, subpart 1, item D, substituting the terms and data for base year admissions for the terms and data referenced for state fiscal years 1983 and 1984;

B. subtract from the amount determined in item A the amounts in subitems (1) and (2):

- (2) pass-through costs except malpractice insurance costs apportioned to medical assistance based on the ratio of reimbursable inpatient hospital costs as adjusted in subitem (1) to total reimbursable costs;

**9500.1125 DETERMINATION OF CATEGORICAL RATE PER ADMISSION.**

**Subp. 2. Determination of budget year pass-through cost per admission.** The department shall determine the budget year pass-through cost per admission from the submitted pass-through cost report as specified in subpart 1 as follows:

Items	Prior Year (Actual)	Current Year (Budget)	Budget Year (Budget)
A. Ratio of reimbursable inpatient hospital costs <u>as determined in part 9500.1115, item A</u> to total reimbursable costs <del>pursuant to part 9500.1115, item B, subitem (2)</del>	_____	_____	_____
B. Pass-through costs as specified in subpart 1, item G multiplied by item A	_____	_____	_____
C. Number of base year admissions <del>excluding</del> <u>including</u> outliers <del>pursuant to part 9500.1115, item D, subitem (4)</del>	_____	_____	_____
D. Pass-through cost per admission (item B divided by item C)	_____	_____	_____

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## ADOPTED RULES

**Subp. 4. Pass-through cost per admission adjustment.** After the end of each budget year, the commissioner shall redetermine the categorical rate per admission. The commissioner shall substitute actual pass-through costs as determined by medicare for budgeted pass-through costs in subpart 2, item B for that year. If the adjustment indicates an overpayment to the a hospital, the that hospital shall pay to the commissioner the entire overpayment within 60 days of receiving the written notification from the commissioner. If the adjustment indicates an underpayment to a hospital, the commissioner shall pay that hospital the underpayment within 60 days of written notification from the commissioner.

**Subp. 6. Effective date.** The categorical rate per admission shall be effected effective for all admissions that occur on or after the effective date of parts 9500.1090 to 9500.1155.

### **9500.1126 RECAPTURE OF DEPRECIATION.**

**Subpart 1. Recapture of depreciation.** The commissioner shall use Medicare to determine the recapture of depreciation due to a change in the ownership of a hospital and that is apportioned to medical assistance.

**Subp. 2. Payment of recapture of depreciation to commissioner.** A hospital shall pay the commissioner the recapture of depreciation within 60 days of written notification from the commissioner. Interest charges must be assessed according to part 9500.1125, subpart 5.

Interest charges must be assessed on the recapture of depreciation due the commissioner outstanding after the deadline. The annual interest rate charged must be the rate charged by the commissioner of revenue for late payment of taxes in effect on the 61st day after the written notification.

### **9500.1130 REIMBURSEMENT PROCEDURES.**

**Subpart 1. Submittal of claims.** Claims must may be submitted to the department after the a recipient is discharged or after 30 days, whichever occurs first. A hospital that submits a claim to the department after 30 days from admission but before discharge shall submit a final claim after discharge, but must not submit any other interim claims except as part of an appeal.

**Subp. 3. Reimbursement in response to submitted claims.** The department will reimburse a hospital for inpatient hospital services only after processing that hospital's properly submitted claim. The department shall reimburse a hospital a categorical rate per admission, out-of-area categorical rate per admission, or the categorical rate per admission for MSA or non-MSA hospitals.

**Subp. 4. Adjustment to reimbursement.** Reimbursements made by the department shall be adjusted by the department for the reasons specified in subpart 5 and for inappropriate utilization as determined by the commissioner under parts 9505.1910 to 9505.2020 ~~{Emergency}~~. Adjustment to a hospital's account shall be by debit.

**Subp. 5. Rejection of claims.** Claims will not be reimbursed for a hospital's failure to:

- B. provide documentation of a confirming second surgical opinion;

**Subp. 7. Reimbursement for transfers.** The department shall reimburse hospitals who discharge transfers and who admit transfers. Each hospital shall be reimbursed as follows:

Transfer Reimbursement = [(adjusted base year cost per admission) multiplied by (the relative value of the appropriate diagnostic category), divided by (the geometric mean length of stay of the diagnostic category) and multiplied by (the number of days of inpatient hospital services), plus (budget year pass-through cost per admission)]

In no case may a hospital receive a transfer reimbursement for a transfer that exceeds the adjusted base year cost per admission multiplied by the relative value of the appropriate diagnostic category unless the transfer is an outlier.

**Subp. 8. Reimbursement for admissions readmissions.** An admission and readmission to the same hospital shall be reimbursed with one categorical rate per admission and ~~reimbursed for~~ as an outlier if appropriate. A readmission to a different hospital shall be reimbursed as a transfer as specified in subpart 7.

**Subp. 9. Reimbursement for outliers.** The department shall reimburse a hospital for outliers with a categorical rate per admission, out-of-area categorical rate per admission, or the categorical rate per admission for MSA or non-MSA hospitals, plus an amount for outliers as follows:

- A. To determine reimbursements for day outliers the department shall:

(1) multiply a hospital's adjusted base year cost per admission by the relative value of the appropriate diagnostic category;

(2) divide the product in subitem (1) by the geometric mean length of stay for the diagnostic category;

(3) multiply the per day amount as determined in subitem (2) by 60 percent ~~to establish~~ for diagnostic categories A to N, and P to II, under part 9500.1100, subpart 20 or 80 percent for diagnostic category O, under part 9500.1100, subpart 20 to determine the per day rate for the diagnostic category;

(4) subtract the number of inpatient days at three standard deviations for the diagnostic category as identified in part 9500.1110, subpart 1, item G from the actual number of inpatient days to establish the number of outlier days ~~subtract the number of days of inpatient hospital services at two standard deviations for diagnostic categories A to N and P to II under part 9500.1100, subpart 20 or the number of days of inpatient hospital services at one standard deviation for diagnostic category O, under part 9500.1100, subpart 20, as determined under part 9500.1110, subpart 1, item G from the actual number of days a recipient has received inpatient hospital services to determine the number of outlier days;~~ and

(5) multiply the product determined in subitem (3) by the number of days determined in subitem (4).

B. To determine reimbursements for cost outliers the department shall:

(1) determine a statewide base year cost-to-charge ratio according to hospitals' statewide base year medicare/medical assistance cost reports;

(2) multiply the hospital's billed charges by the statewide cost-to-charge ratio;

(3) subtract the cost at three standard deviations for the diagnostic category categories A to N, and P to II, under part 9500.1100, subpart 20 and one standard deviation for diagnostic category O, under part 9500.1100, subpart 20 as identified in part 9500.1110, subpart 1, item G from the adjusted cost from subitem (2); and

(4) multiply the amount determined in subitem (3) by 60 percent for diagnostic categories A to N, and P to II, under part 9500.1100, subpart 20 or by 80 percent for diagnostic category O, under part 9500.1100, subpart 20.

**Subp. 10. Reimbursement to out-of-area hospital.** The department shall reimburse out-of-area hospitals based on the lesser of billed charges or the out-of-area hospital categorical rate per admission. The department shall determine the out-of-area categorical rate per admission as follows in items A to E G:

**Subp. 11. Reimbursement for MSA and non-MSA hospitals statewide ~~which that do not have admissions in the base year.~~** The department shall reimburse statewide hospitals which do not have admissions in the base year by using the statewide adjusted base year cost per admission as specified in subpart 10, item C, multiplied by the relative value of the appropriate diagnostic category plus the budget year pass-through cost per admission according to part 9500.1125, subpart 2. The pass-through cost per admission will be adjusted under part 9500.1125, subpart 4, and will be subject to part 9500.1125, subpart 5. The department shall determine reimbursements for MSA hospitals statewide that do not have admissions in the base year according to items A to E:

A. Multiply the adjusted allowable base year cost per admission in effect on the first day of a calendar year for each MSA hospital statewide by the number of admissions in each MSA hospital's base year, excluding outliers.

B. Sum the products in item A.

C. Divide the sum from item B by the sum of all admissions for all MSA hospitals statewide, excluding outliers, to determine the statewide adjusted allowable base year cost per admission for MSA hospitals.

D. The budget year pass-through cost per admission must be determined according to part 9500.1125, subpart 2. The pass-through cost per admission will be adjusted under part 9500.1125, subpart 4, and must be subject to part 9500.1125, subpart 5.

E. Determine the categorical rate per admission for MSA hospitals statewide as follows:

<p>Categorical Rate per Admission For Hospitals Statewide Which Do Not Have Admissions in The Base Year</p>	=	<p>{(statewide adjusted base year cost per admission) multiplied by (the relative value of the appropriate diagnostic category) plus (budget year pass-through cost per admission)}</p>
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<p>Categorical Rate per Admission for MSA Hospitals</p>	=	<p>{(adjusted base year cost per admission for MSA hospitals statewide) multiplied by (the relative value of the appropriate diagnostic category) plus (budget year pass-through cost per admission)}</p>
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<p>Statewide Which Do Not Have Admissions In The Base Year</p>	=	
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## ADOPTED RULES

F. Determine the categorical rate per admission for non-MSA hospitals by substituting non-MSA hospitals terms and data for the MSA hospitals terms and data used in items A to E.

### 9500.1135 DISPROPORTIONATE POPULATION ADJUSTMENT.

**Subpart 1. Determination of disproportionate population adjustment.** The department shall increase the adjusted base year cost per admission for hospitals whose medical assistance and general assistance medical care admissions exceed 15 percent of total hospital admissions according to the following schedule:

Percentage of Total Hospital Admissions Which are Medical Assistance and General Assistance Medical Care	Increase in Adjusted Base Year Cost Per Admission
15-20 percent	1/4 percent for each percentage point above 15 percent <u>up to 20 percent</u>
21-25 percent	1/2 percent for each percentage point above 20 percent <u>up to 25 percent</u>
26-30 percent	3/4 percent for each percentage point above 25 percent <u>up to 30 percent</u>
31 percent and above	1 percent for each percentage point above 30 percent

The department shall multiply the disproportionate population adjustment by the adjusted base year cost per admission after the application of any statutory limits to the growth in hospital rates or unit costs.

**Subp. 2. Limitation on disproportionate population adjustment.** In no case shall the disproportionate population adjustment exceed twice the HCI as determined in part 9500.1120.

### 9500.1140 APPEALS.

**Subpart 1. Appointment of Appeals board.** ~~The appeals board shall be appointed by~~ The commissioner shall appoint an appeals board to review hospitals' requests for changes in their reimbursement rates. The appeals board shall consist of two public representatives, two representatives of the hospital industry, and one representative of the business or consumer community. Any hospital that desires to have its rate reviewed by the appeals board shall submit to the commissioner a written request which states the rate and reasons for the request. Within 90 days of the request, the appeals board shall meet with persons selected by the hospital and persons from the department. The appeals board shall make a written report and recommendation to the commissioner. The commissioner shall issue a written decision on the request for a change in the hospital's rate within 30 days after receiving the report of the appeals board.

**Subp. 2. Composition of appeals board Contested case hearing.** The appeals board shall consist of two public representatives, two representatives of the hospital industry, and one representative of the business or consumer community. Representatives shall serve for a period of two years. A hospital may appeal a decision of the commissioner issued pursuant to subpart 1, by filing a written notice of appeal with the commissioner within 30 days of the date of service of the decision appealed. The appeal must be conducted as a contested case hearing under Minnesota Statutes, chapter 14 and the rules of the Office of Administrative Hearings.

**Subp. 3. Duties of appeals board.** The appeals board shall review a hospital's request that its reimbursement rate be changed and recommend to the commissioner what action should be taken on the request.

### 9500.1145 PROCEDURES OF APPEALS BOARD.

**Subpart 1. Notice of appeal.** A hospital that wants to appeal a rate must notify the department of its intent to appeal within 30 days of the effective date of the rate appealed or within 30 days of the change in circumstances which prompted the appeal. The notice of appeal must state the rate appealed and the reasons for the appeal.

A. Within 90 days of the receipt of a notice of appeal, the board shall conduct a hearing.

B. The appeals board shall send a notice of hearing to the hospital at least 20 days before the hearing. The notice shall contain, at a minimum, the following:

- (1) the time, date, and place for the hearing;
- (2) the name, address, and telephone number of the department's representative to be contacted to discuss informal disposition of the dispute;
- (3) notification that a party need not be represented by an attorney but may choose to be represented by an attorney or any other person of their choice; and
- (4) a statement advising parties that failure to appear at the hearing will result in default.

**Subp. 2. Rights and obligations of appeals board.** The following are the rights and obligations of the appeals board:

A. A member of the appeals board shall be free of any personal, political, or economic association that would impair his or

her ability to function in a fair and objective manner. Should a board member believe that he or she cannot comply with this rule, the member shall withdraw from hearing the appeal.

B. A member of the appeals board shall not communicate, directly or indirectly, with any person or party concerning any issue of fact or law relevant to a pending case except upon notice to all parties and opportunity for them to participate except as otherwise permitted by these rules.

C. Consistent with law and parts 9500.1090 to 9500.1155, the appeals board shall perform the following duties:

- (1) Appoint one of its members to act as chairperson.
- (2) Examine witnesses as necessary to make a complete record.
- (3) Issue a written report to the commissioner regarding each appeal. The report shall contain findings of fact, conclusions, and a recommended disposition.
- (4) All actions of the appeals board shall be by majority rule of the board members present.
- (5) Do all things necessary and proper to the performance of the foregoing.

**Subp. 3. Appeal rights.** A hospital may appeal a decision of the commissioner by serving a written notice of appeal with the commissioner within 30 days of the date of service of the decision appealed. The appeal shall be conducted under the contested case procedures of Minnesota Statutes, chapter 14 and the rules of the Office of Administrative Hearings.

**9500.1150 REIMBURSEMENT OF ADMISSIONS FOR HOSPITAL FISCAL YEARS BEGINNING ON OR AFTER JULY 1, 1983, UNTIL JULY 28, 1985 THE EFFECTIVE DATE OF PARTS 9500.1090 TO 9500.1155.**

**Subpart 1. Purpose-Statutory limit.** Under Minnesota Statutes, section 256.969, the annual increase in the cost per service unit for inpatient hospital services under medical assistance or general assistance medical care shall not exceed five percent for hospital rate years beginning during the 1985 biennium.

**Subp. 2. Definitions.** As used in this part, the following terms have the meanings given to them.

A. "Adjusted base year costs" means an allowable base year costs cumulatively multiplied by the hospital cost index for through a hospital's fiscal years prior to the budget current year, and adjustments resulting from appeals.

E. "Rate per day" means the allowable adjusted base year cost per day of inpatient hospital services multiplied by the budget year HCI and adding the budget year pass-through cost per day of inpatient hospital services.

**Subp. 3. Determination of allowable base year costs, allowable base year cost for each admission, and allowable base year cost per day.** The department shall determine allowable base year costs from the base year medicare/medical assistance cost report, using data from the HCFA Form 2552 Worksheet, 1981 revision. The department shall make the determination following the steps outlined in items A to P:

- A. reimbursable inpatient hospital costs (Worksheet E-5, Part + I, line 13);
- B. reimbursable malpractice insurance costs (Worksheet E-5, Part + I, line 5);
- C. reimbursable professional services (Worksheet E-5, Part + I, line 11);
- D. net reimbursable inpatient hospital costs (subtract items B and C from item A);
- E. total reimbursable costs (Worksheet A, column 7, line 84);
- F. ratio of net reimbursable inpatient hospital costs to total reimbursable costs (item D divided by item E);
- G. pass-through costs, except malpractice insurance costs;
- H. medical assistance pass-through costs, except malpractice insurance costs (item F multiplied by item G);

**Subp. 4. Determination of rate per admission and rate per day.** The department shall determine the rate per admission and rate per day according to items A to G.

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# ADOPTED RULES

B. The department shall determine the budget year pass-through cost per admission or per day, or both, from the submitted pass-through cost reports as specified in item A as follows:

Subitem	Prior Year (Actual)	Current Year (Budget)	Budget Year (Budget)
(1) Ratio of net reimbursable inpatient hospital costs to total reimbursable costs [subpart 3, item F]	_____	_____	_____
(2) Pass-through costs as specified in [subpart 4, item A, subitem (7)]	_____	_____	_____

E. After the end of each budget year, the commissioner shall redetermine the rate per admission or rate per day, or both. The commissioner shall substitute actual pass-through costs as determined by medicare for budgeted costs in item B, subitem (2) for that year. If an adjustment indicates an overpayment to the hospital, the hospital shall pay the ~~department commissioner~~ the overpayment within 60 days of ~~formal written~~ notification from the ~~department commissioner~~. If the adjustment indicates an underpayment to the hospital, the department shall pay ~~the~~ that hospital the underpayment within 60 days of ~~formal written~~ notification from the ~~department commissioner~~. Interest charges will be assessed according to part 9500.1125, subpart 5.

G. The department shall apply the disproportionate population adjustment as specified in part 9500.1135, subpart 1, substituting the term adjusted base year cost per admission with a the term rate per admission or rate per day.

## 9500.1155 REIMBURSEMENT OF ADMISSIONS THAT OCCUR ON OR AFTER JANUARY 1, 1982, UNTIL PART 9500.1150 BECOMES EFFECTIVE.

**Subp. 2. Definitions.** As used in this part, the following terms have the meanings given them:

C. “Allowable rate period costs” means a hospital’s reimbursable inpatient hospital costs as identified in a hospital’s rate period medicare/medical assistance cost report with the following adjustments:

(1) subtract malpractice insurance costs that have been apportioned to medical assistance;

(2) subtract pass-through costs, except malpractice insurance costs, apportioned to medical assistance based on the ratio of net reimbursable inpatient hospital costs to total hospital costs.

D. “Eight percent cap” means the limit on the annual cost increase per service unit under Minnesota Statutes, section 256.966.

E. “Rate per admission” means the allowable base year cost for each admission multiplied by the eight percent cap and adding the rate year pass-through cost per admission.

F. “Rate per day” means the allowable base year cost per day of inpatient hospital services multiplied by the eight percent cap and adding the rate year pass-through cost per day of inpatient hospital services.

G. “Rate year period” means any hospital portion of a hospital’s fiscal year that includes any portion of the period from January 1, 1982, until part 9500.1150 becomes applicable.

H. “Total hospital costs” means the costs identified in the hospital’s base year medicare/medical assistance cost report, HCFA Form 2552, 1981 revision, Worksheet A, column 3, line 84.

**Subp. 3. Determination of allowable base year costs, allowable base year cost for each admission, and allowable base year cost per day.** The department shall determine allowable base year costs from the base year medicare/medical assistance cost report, using data from the HCFA Form 2552 Worksheet, 1981 revision. The department shall make the determinations by following the steps outlined in items A to Q:

- A. reimbursable inpatient hospital costs (Worksheet E-5, Part 4 I, line 13);
- B. reimbursable malpractice insurance costs (Worksheet E-5, Part 4 I, line 5);
- C. net reimbursable inpatient hospital costs (subtract item B from item A);
- D. total hospital costs (Worksheet A, column 3, line 84);
- E. malpractice insurance costs (Worksheet A, column 5, line 71);
- F. net total hospital costs (subtract item E from item D);
- G. ratio of net reimbursable inpatient hospital costs to net total hospital costs (item C divided by item F);
- H. pass-through costs, except malpractice insurance costs;
- I. medical assistance pass-through costs, except malpractice insurance costs (item G multiplied by item H);

- J. routine service costs before limitation (Worksheet D-1, line 57);
- K. reimbursable routine service costs (Worksheet D-1, line 61);
- L. reimbursable routine service costs subject to limitation (subtract item K from item J);
- M. allowable base year costs (subtract item I from item C and add item L);
- N. base year ~~admission~~ admissions excluding medicare crossovers;
- O. allowable base year cost for each admission (item M divided by item N);
- P. base year patient days excluding medicare crossovers; and
- Q. allowable base year cost per day of inpatient hospital services (item M divided by item P).

**Subp. 4. Determination of allowable rate period costs, allowable rate period cost for each admission, and allowable rate period cost per day.** The department shall determine allowable rate period costs from the rate period medicare/medical assistance cost report using data from the HCFA Form 2552 worksheet, 1981 revision. The department shall make the determinations by following the steps outlined in items A to N:

- A. reimbursable inpatient hospital costs (Worksheet E-5, Part I, line 13);
- B. reimbursable malpractice insurance costs (Worksheet E-5, Part I, line 5);
- C. net reimbursable inpatient hospital costs (subtract item B from item A);
- D. total hospital costs (Worksheet A, column 3, line 84);
- E. malpractice insurance costs (Worksheet A, column 5, line 71);
- F. net total hospital costs (subtract item E from item D);
- G. ratio of net reimbursable inpatient hospital costs to net total hospital costs (item C divided by item F);
- H. pass-through costs, except malpractice insurance costs;
- I. medical assistance pass-through costs except malpractice insurance costs (item G multiplied by item H);
- J. allowable rate period costs (subtract item I from item C);
- K. rate period admissions excluding medicare crossovers;
- L. allowable rate period cost for each admission (item J divided by item K);
- M. rate period patient days excluding medicare crossovers; and
- N. allowable rate period cost per day of inpatient hospital services (item J divided by item M).

**Subp. 5. Determination of rate per admission and rate per day.** The following data shall be determined:

A. The department shall determine the rate ~~year~~ period pass-through costs per admission or per day of inpatient hospital services, or both, for the rate ~~year~~ period as specified in part 9500.1150, subpart 4, item B.

C. The department shall determine the rate per admission for a rate ~~year~~ period as follows:

$$\begin{array}{l} \text{Rate} \\ \text{Per} \\ \text{Admission} \end{array} = \frac{\text{Lesser of the [(allowable base year cost for each admission) multiplied by (\$ \text{eight} \text{ percent cap}), \text{ or the } \text{allowable rate period cost for each admission plus (rate } \text{year} \text{ period pass-through cost per admission)]}}{\text{admission}}$$

~~In calculating the rate year pass-through cost per admission, the department shall use the total admissions from the hospital's base year.~~

After the initial year, adjusted base year costs are used in the rate per admission formula instead of allowable base year costs.

D. The department shall determine the rate per day for a rate ~~year~~ period as follows:

$$\begin{array}{l} \text{Rate} \\ \text{Per} \\ \text{Day} \end{array} = \frac{\text{Lesser of the [(allowable base year cost per day of inpatient hospital services) multiplied by (\$ \text{eight} \text{ percent cap}), \text{ or the } \text{allowable rate period cost per day of inpatient hospital services plus (rate } \text{year} \text{ period pass-through cost per day of inpatient hospital services)]}}{\text{day}}$$

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## ADOPTED RULES

~~In calculating the rate year pass-through cost per day of inpatient hospital services, the department shall use the total days of inpatient hospital services from the hospital's base year.~~

After the initial year, adjusted base year costs are used in the rate per day formula instead of allowable base year costs.

F. The department shall apply the disproportionate population adjustment as specified in part 9500.1135, substituting the term adjusted base year cost per admission with the term rate per admission or rate per day.

**Subp. 5 6. Four percent reduction.** Reimbursement for admissions is reduced four percent from January 1, 1983, through June 30, 1983, as provided in Laws of Minnesota 1982, Third Special Session, chapter 1, article 2, section 2, subdivision 4, paragraph (a), clause (4). Each rate per admission and each rate per day as determined under subpart 4 for each admission during the period from January 1, 1983, through June 30, 1983, shall be reduced by four percent.

**Effective Date.** Parts 9500.1090 to 9500.1155 are effective August 1, 1985.

## Department of Natural Resources

### Adopted Rules Relating to Fees for Water Resource and Gas Storage Permits

The rules proposed and published at *State Register*, Volume 9, Number 24, pages 1330-1336, December 10, 1984 (9 S.R. 1330) are adopted with the following modifications:

#### Rules as Adopted

##### 6115.0030 DEFINITIONS.

Words used in parts 6115.0010 to 6115.0100 have the meanings normally ascribed to them except:

J. "State agency" has the meaning given in Minnesota Statutes, section 16.011.

~~The effective date of this rule will be March 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 cause the effective date to be later.~~

##### 6115.0060 PERMIT APPLICATION FEES.

A permit application fee of \$30 shall accompany permit applications submitted under Minnesota Statutes, section 105.41, appropriation and use of water, Minnesota Statutes, section 105.535, relating to dams, Minnesota Statutes, section 105.42, relating to alterations of protected waters, Minnesota Statutes, section 105.64, relating to the drainage or diversion of water to facilitate mining, and Minnesota Statutes, section 105.391, relating to water bank.

A minimum additional permit application fee of \$20 if required by part 6115.0080 must accompany each permit application for applications submitted under Minnesota Statutes, section 105.42, relating to alterations of protected waters and Minnesota Statutes, section 105.64, relating to the drainage or diversion of water to facilitate mining. (For permit applications requiring an additional permit application fee, the minimum payment to accompany the application is \$50; a \$30 application fee plus a \$20 additional permit application fee.)

If the permit application fee and the minimum additional permit application fee required by part 6115.0080 do not accompany the application, the applicant will be so notified. If no fee is received within 30 days from mailing of the written notice, the commissioner shall consider the application withdrawn and no further action shall be taken on it unless the applicant submits a new application accompanied by the minimum fee.

If a project requires several permit applications, the permit application fee and minimum additional permit application fee must accompany each application. For example, if a project entails both appropriating water and changing the course, current, or cross-section of a lake, there shall be two applications and two sets of fees.

The permit application fee and minimum additional permit application fee are not returnable, whether the application is permitted, modified, or denied, unless the commissioner determines the activity does not require a permit.

Payment of all fees covered by parts 6115.0010 to 6115.0030, 6115.0060, 6115.0080 to 6115.0100, and 6115.0130 shall be made by check or money order payable to the Minnesota state treasurer. Cash cannot be accepted.

~~The effective date of this rule will be March 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 cause the effective date to be later.~~

##### 6115.0065 AMENDMENT AND TRANSFER FEE.

Each request to amend or transfer an existing permit shall be accompanied by a \$30 fee.



The effective date of this part will be August 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 cause the effective date to be later.

**6115.0080 ADDITIONAL FEES ~~REQUIRED~~ AUTHORIZED BY MINNESOTA STATUTES, CHAPTER 105.**

**Subpart 1. Additional permit application fees.** Additional permit application fees for works affecting protected waters, authorized under Minnesota Statutes, sections 105.42 and 105.64 shall be based on estimated project cost, the amount of material deposited in or removed from the protected waters, and the amount of shoreline affected by the project. The commissioner shall make the final determination of project cost used to calculate the additional permit application fee. The additional permit application fee shall be based on the project parameter resulting in the largest fee using the following table: at least \$20 but otherwise the lesser of (1) \$250, (2) one percent of the project cost, or (3) the largest of the fees calculated from the following three parameter schedules.

<u>PROJECT COST</u>	<u>SHORELINE AFFECTED</u>	<u>FILL-EXCAVATION</u>	<u>FEE</u>
\$1 to \$10,000	1 to 200 feet	1 to 200 cubic yards	one percent of project cost or 50 cents per cubic yard of material or foot of shoreline; subject to a \$20 minimum.
\$10,001 to \$50,000	201 to 1,000 feet	201 to 1,000 cubic yards	\$100 plus one-half of one percent of project cost in excess of \$10,000; or 25 cents per cubic yard of material or foot of shoreline in excess of 200
\$50,001 to \$200,000	1,001 to 2,500 feet	1,001 to 2,500 cubic yards	\$300 plus 1/10 of one percent of project cost in excess of \$50,000; or 10 cents per cubic yard of material or foot of shoreline in excess of 1,000
greater than \$200,000	greater than 2,500 feet	greater than 2,500 cubic yards	\$450 plus 1/10 of one percent of project cost in excess of \$250,000 or five cents per cubic yard of material or foot of shoreline in excess of 2,500.

1. Project Cost Parameter

<u>Cost</u>	<u>Fee</u>
\$1 to \$10,000	one percent of project cost.
\$10,001 to \$40,000	\$100 plus one-half percent of project cost in excess of \$10,000.
Greater than \$40,000	\$250.

2. Shoreline Affected Parameter

<u>Length</u>	<u>Fee</u>
1 to 200 feet	50 cents per foot of shoreline.
201 to 800 feet	\$100 plus 25 cents per foot of shoreline in excess of 200 feet.
Greater than 800 feet	\$250.

3. Fill-Excavation Parameter

<u>Yards of Material</u>	<u>Fee</u>
1 to 200 cubic yards	50 cents per cubic yard of material.
201 to 800 cubic yards	\$100 plus 25 cents per cubic yard of material in excess of 200 cubic yards.
Greater than 800 cubic yards	\$250.

B. For water level control structures, the \$20 minimum additional permit application fee withstanding, the maximum additional permit application fee to be charged will not be greater than that which would be charged for dams subject to the initial fee

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## ADOPTED RULES

contained in part 6115.0520 of the dam safety rules (2.5 percent of the first \$100,000 of project cost, 1.5 percent of the next \$400,000 of project cost, 10 percent of the next \$500,000 of project cost, and 0.5 percent of project costs in excess of \$1,000,000).

~~C.~~ Additional permit application fee for protection of shoreline from erosion by placement of riprap and to recover shoreland lost by erosion or other natural forces, shall be limited to \$20.

~~D.~~ For projects sponsored by a public agency which is not a state or federal agency, the maximum additional permit application fee is \$500.

~~E.~~ The commissioner may require on any project a cost estimate prepared by a registered professional engineer, licensed contractor, planning consultant, or other qualified professional entity. A cost estimate prepared by a qualified professional entity will be required for any project costing in excess of \$25,000. For projects costing less than \$25,000, in lieu of a cost estimate prepared by a qualified professional entity, the commissioner may determine a project cost estimate upon which the additional permit application fee is based.

~~C.~~ If a dispute arises between the commissioner and a permit applicant over project cost, the commissioner may require the permit applicant to submit a project cost estimate prepared by a registered professional engineer, contractor, planning consultant, or other qualified professional entity.

~~F.~~ D. No additional permit application fee shall be charged for any dam subject to parts 6115.0300 to 6115.0520.

~~G.~~ E. If the department decides to issue a permit, a bill will be submitted to the applicant for the additional amount due along with a statement describing the scope of the permit to be issued. Fees are payable within 30 days of receipt; failure to pay is grounds for denying the application.

~~H.~~ F. If the application is denied, there is no additional fee due beyond the amount required with the application.

~~I.~~ G. The additional permit application fee for permit applications filed after the work applied for has been partially or wholly completed (except for emergency work provided for in existing permit rules and policies) shall be double the amount that would have been charged if a timely application had been filed. In the case of a belated permit application, the permit application fee and the additional permit application fee shall both accompany the application or the commissioner shall proceed to issue a restoration order pursuant to Minnesota Statutes, section 105.461. If the belated permit application is denied, all but \$70 (the application fee and double the minimum permit application fee) will be returned.

~~J.~~ H. If a hearing is demanded and if the outcome of the hearing is a decision to issue a permit, payment of all required fees must precede issuance. The fee charged will be based on the schedules contained in this part regardless of whether a permit application has been filed.

The effective date of this subpart will be July 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 causes the effective date to be later.

**Subp. 2. Field inspection fees.** If a field inspection is conducted, field inspection fees shall be charged only for: (1) projects requiring an environmental assessment worksheet (EAW) or environmental impact statement (EIS) pursuant to Minnesota Statutes, chapter 116D and the environmental review program rules, parts 4410.0200 to 4410.7800; (2) projects undertaken without a permit or application as required by Minnesota Statutes, sections 105.37 to 105.64; or (3) projects undertaken in excess of limitations established in an issued permit.

The fee charged will be the actual cost of the field inspection ~~or~~, but shall not be less than \$25 whichever is not greater than \$750. Examples of field inspection costs are:

D. living expenses away from home, based on current Department of Administration rates or rates specified in applicable bargaining unit agreements;

F. laboratory expenses and analysis of data.

Field inspection fees shall not be charged for any dam subject to parts 6115.0300 to 6115.0520. Such dams are subject to the inspection fee requirements of part 6115.0520. Field inspection fees for all other water level control structures shall be charged pursuant to ~~these rules~~ parts 6115.0010 to 6115.0130.

The effective date of this ~~part~~ subpart will be ~~March~~ August 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 requires a later effective date.

### 6115.0090 FEES FOR MONITORING ACTIVITIES.

If the project requires an environmental assessment worksheet (EAW) or environmental impact statement (EIS) pursuant to Minnesota Statutes, chapter 116D, and parts 4410.0200 to 4410.7800, the commissioner shall charge an additional fee for monitoring subject to the following:

B. When the commissioner determines after the permit is issued, that there is a need for monitoring, the commissioner

shall notify the permittee in writing of the nature of and reasons for the monitoring, and after opportunity for hearing, shall modify the permit accordingly. The actual costs of the monitoring shall be paid by the permittee.

Actual costs incurred and charged by the state are determined in the same manner as prescribed for field inspections.

The commissioner may allow the permittee to provide the monitoring service or employ a consultant for that purpose, subject to the right of the commissioner to charge for state costs related to private monitoring, including the costs of periodically monitoring the monitor.

Fees for monitoring activities shall not be charged for any dam subject to parts 6115.0300 to 6115.0520.

~~The effective date of this rule will be March 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 cause the effective date to be later.~~

#### **6115.0110 ANNUAL WATER APPROPRIATION PROCESSING FEE.**

**Subp. 2. Fee schedule.** The fee shall be based on the following schedule:

A. for irrigation permits, ~~\$40~~ \$15 for each ~~the first~~ permitted ~~40~~ 160 acres or portion thereof, and \$25 for each additional permitted 160 acres or portion thereof;

C. the annual water appropriation processing fee shall not exceed a total fee of ~~\$250~~ \$500 per permit.

**Subp. 3. Billing and payment.** A notice of the fees owed will be mailed to the permittee, with the reporting forms, by the commissioner.

The fee, with accompanying report, for the calendar year's appropriation or use of water, shall be sent to the commissioner no later than February 15 of the following year.

Failure to pay the fee shall be sufficient cause for terminating a permit 30 days following written notice by the commissioner.

~~The effective date of this part will be August 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 cause the effective date to be later.~~

#### **6115.0130 FEE SCHEDULE FOR UNDERGROUND STORAGE OF GAS OR LIQUID IN NATURAL FORMATIONS.**

**Subp. 3. Additional fees.** The permit applicant shall pay the actual costs of processing, reviewing, analyzing, and inspection necessary prior to issuing the permit and for monitoring after the permit is issued, which will include but not necessarily be limited to the cost of:

A. salaries, including fringe benefits and overhead, of state personnel based on records of actual hours, and hourly rates;

B. transportation (including travel time) of state personnel to and from the project site, laboratories, and other documented travel sites, based on current Department of Administration rates, or rates specified in applicable bargaining unit agreements;

C. living expenses away from home;

D. consultants hired by the state;

E. public hearings;

F. office operations, computer services, and supplies;

G. laboratory expenses and analysis of data; and

H. ~~equipment purchase, rental, or repair~~ The applicant or permittee shall pay the actual costs of field inspection and monitoring as follows.

A. When a field inspection is conducted, the costs charged will be the sum of: salaries (inspection time of state employees multiplied by actual hourly rates); transportation to and from inspection site, based on current state Department of Administration rates; fair rental for any special equipment and supplies; and inspection and consultant services contracted for by the state.

B. When the commissioner determines that a permitted activity requires monitoring of water or related land resources, the permit shall specify the procedures and scope of such monitoring. Actual costs of the monitoring, whether conducted by state personnel or by consultants hired by the state, shall be paid by the permittee in accordance with procedures in the permit.

When the commissioner determines after the permit is issued that there is a need for monitoring, the commissioner shall notify

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## ADOPTED RULES

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the permittee in writing of the nature of and reasons for the monitoring, and after opportunity for hearing, shall modify the permit accordingly. The actual costs of monitoring shall be paid by the permittee.

The commissioner may allow the permittee to provide monitoring services, or employ a consultant for that purpose, subject to the right of the commissioner to charge for state costs related to private monitoring, including the costs of periodically monitoring the monitor.

**Subp. 5. Billing and payment of fees.** The commissioner shall submit an itemized bill to the applicant or permittee for all additional fees. Fees are payable within 30 days of receipt; failure to pay is grounds for suspending the permit or for taking other legal actions as required. In the case of an applicant, a permit shall not be issued until all fees owed have been paid.

~~The effective date of this part will be March 1, 1985, unless adoption procedures specified in Minnesota Statutes, chapter 14 cause the effective date to be later.~~

## OFFICIAL NOTICES

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

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

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### Department of Commerce Board of Abstracters

#### Outside Opinion Sought Concerning Amendments to Rules Governing the Examination, Licensing, and Standards of Conduct of Abstracters

Notice is hereby given that the Minnesota State Board of Abstracters is soliciting information and opinions from sources outside the Board and is preparing to promulgate amendments to rules relating to examination, licensing and standards of conduct for abstracters pursuant to Minn. Stat. § 386.63 (1984).

The Board of Abstracters requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comments orally or in writing. Written statements should be addressed to:

Mary Bakken, Executive Secretary  
Minnesota State Board of Abstracters  
316 East Main Street  
Anoka, Minnesota 55303  
(612) 427-6831

All statements of information and comment shall be accepted until August 31, 1985. Any written material received by the State Board of Abstracters shall become part of the record in the event that the rules are promulgated.

A. L. Winczewski  
Chairman, State Board of Abstracters

### State Board of Education Department of Education Partnerships Division

#### Outside Opinion Sought Regarding Amending Required Curriculum Offerings for Three- and Four-Year Senior Secondary Schools to Include Secondary Vocational Programs

Notice is hereby given that the State Board of Education is seeking information or opinions from sources outside the agency to amend the Required Curriculum Offerings for Three- and Four-Year Senior Secondary Schools to Include Secondary Vocational Programs. The amendment of these rules is authorized by Minnesota Statutes, section 121.11, subsds. 7 and 12.

The State Board of Education requests information and comments concerning the subject matter of these rules. Interested persons may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Dayton Perry  
Minnesota Department of Education  
527 Capitol Square Building  
550 Cedar Street  
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-8027 or in person at the above address.

All statements of information and comments shall be accepted until August 23, 1985. Any written material received by the State Board of Education shall become part of the record in the event that the rules are amended.

July 22, 1985

J. Thomas Strom, Manager  
Secondary Vocational Education  
Partnerships Division

## **Ethical Practices Board**

### **Request for Advisory Opinion Re: Campaign Contributions**

The Minnesota State Ethical Practices Board solicits opinions and comments to the following request for an advisory opinion which will be discussed at its August 9, 1985, Board meeting. Written comments concerning the opinion request should be forwarded to arrive at the Board's office prior to August 5, 1985.

Ethical Practices Board  
41 State Office Building  
St. Paul, Minnesota 55155

To The Board:

I am about to commence on a campaign to run for the State Senate, and I have several questions that I would like to pose to you relative to raising money for the Senate race versus the House race. I would like to conduct a great deal of my fund raising during this calendar year in order to have it out of the way before the campaign, but I would also like to retain the option that if it appears that I can't put together enough support for the Senate race to be able to revert back to run again for the House. Consequently, my questions deal with the maintenance of separate campaign accounts and what happens to such monies if unused.

1. What ability exists to transfer money from a Senate account to a House account in such a situation? It seems to me that people are contributing to me as a candidate, and all of the people who will contribute to me for the Senate certainly would support me in a House race. If a great deal of money was raised in a Senate campaign, which would then be left unused, it seems that it would be somewhat non-sensible to not allow transfer. For instance, if I had \$40,000 in a Senate account, it would seem that there ought to be some opportunity or mechanism to allow transfer to another account where the Senate account was totally terminated. Otherwise, money would simply sit there for years on-end without anything happening with it.

2. The rule indicates that campaign contributions can be returned within 60 days of receipt without a need to report. Would there be any problem with returning campaign contributions to a Senate race subsequent to the 60 days to all the contributors with the proper reporting conducted. That would seem to be the only way to diminish the account.

3. I have a personal loan which I took out through the bank that handles my campaign account. The money was then transferred by me as a personal loan to my volunteer committee, and the money from the loan was used primarily for some constituent services. I have begun to pay back the principal on the loan, but if I transfer to a Senate race is there any way I can raise the money to pay back the loan? Would this be done by maintaining the House account and using it strictly for the purpose of paying back the loan or could I use the Senate account? I have already had two fund raisers in which I have indicated that I need money for a campaign debt, and although I have been able to diminish the loan somewhat, the fund raisers could not get enough money to

## OFFICIAL NOTICES

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diminish it tremendously. It had been my hope to put aside from each subsequent fund raiser a small amount to payment of the loan. In addition the loan was made by me personally to the bank. Would there be any problem with simply having a loan paid back to me personally whether it's through a House or a Senate campaign?

I would very much appreciate your consideration in addressing these issues that I now face.

Thank you very much for your attention to this matter.

Sincerely yours,  
Richard J. Cohen

## Department of Health

### Emergency Medical Services Licensure Application—St. Luke's Hospital/Life Flight, Fargo ND

As of July 22, 1985 a complete application for a license to operate an Advanced Life Support Transportation Service by helicopter was submitted by St. Luke's Hospital/Life Flight, 5th Street No. at Mills Avenue, Fargo, North Dakota 58122.

This notice is given pursuant to Minnesota Statutes 1979, Section 144.802, which requires in part that the Commissioner of Health publish the notice at the applicant's expense in the *State Register*.

Each municipality, county, community health services agency, and any other interested person wishing to comment on this application may submit comments to the Min-Dak Health Systems Agency, 631 Center Ave., Moorhead, Minnesota 56560, Attn: Michael Pattee. The comments must reach the Health Systems Agency before August 21, 1985 or be submitted at the public hearing.

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

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

## Department of Health

### Outside Opinion Sought Concerning Rules Relating to Smoking in Public Places, Factories, Warehouses, and Similar Places of Work

NOTICE IS HEREBY GIVEN that the Minnesota Department of Health is seeking information or opinions from sources outside the agency in preparing to propose the adoption of rules governing smoking in factories, warehouses, and similar places of work and the amendment of rules governing smoking in public places (Minnesota Rules, Chapter 4620). The adoption and amendment of these rules is authorized by: Minnesota Statutes, section 144.417, subdivision 1 which requires the agency to adopt rules and regulations necessary and reasonable to implement the provisions of section 144.411 to 144.417; and by Minnesota Statutes, section 144.414. This section requires the agency to establish rules to restrict or prohibit smoking in factories, warehouses and similar places of work where the close proximity of workers or the inadequacy of ventilation causes smoke pollution detrimental to the health and comfort of nonsmoking employees.

The Minnesota Department of Health requests information and comments concerning the subject matter of the proposed rule and amendments. Interested or affected persons or groups may submit data or views on the subject matter of concern orally or in writing. Written statements should be addressed to: Mary Thompson, Health Program Representative, Section of Environmental Field Services, Minnesota Department of Health, P.O. Box 9441, Minneapolis, Minnesota 55440. Oral statements will be received during regular business hours over the telephone at (612) 623-5336 and in person at the above address.

All statements of information and comment shall be accepted until 60 days from the date this notice is published. Any written material received by the Minnesota Department of Health shall become part of the rulemaking record in the event that the rule is adopted.

July 14, 1985

Department of Health  
Sister Mary Madonna Ashton  
Commissioner

**Department of Health  
Office of Health Systems Development****Outside Opinion Sought Concerning Requests for Waiver of HMO Statutes and Rules by  
Physicians' Health Plan and HMO Minnesota**

Notice is hereby given that the Department of Health is seeking opinions and comments pertaining to requests by Physicians' Health Plan and HMO Minnesota for waiver of HMO statutes and rules for its Medicare related contracts. Such waivers are authorized for demonstration projects by Minn. Stat. § 62D.30.

The requests submitted by Physicians' Health Plan and HMO Minnesota are available for inspection during normal business hours at the following location:

Office of Health Systems Development  
Minnesota Department of Health  
Room 216  
717 Delaware Street, S.E.  
Minneapolis, Minnesota 55440

Comments on the application must be received at the Department of Health by August 5, 1985.

**Department of Human Services;  
Department of Health; and  
Department of Public Safety****End of Solicitation Period for Comment Concerning Merit System Rules**

Notice is hereby given that the comment period for the notice of intent to solicit outside opinion concerning Minnesota Merit System rules, published in the *State Register* on May 20, 1985, will end on August 12, 1985.

Questions concerning the end of the comment period may be addressed to:

Ralph W. Corey, Supervisor  
Minnesota Merit System  
Fourth Floor, Centennial Office Building  
658 Cedar Street  
St. Paul, Minnesota 55155  
Phone (612) 296-3996

**Department of Human Services  
Social Services Division  
Long Term Care Management****Outside Opinion Sought Concerning Proposed Rules Governing the Community  
Alternatives for Children Program**

Notice is hereby given that the Minnesota Department of Human Services is seeking information or opinions from sources outside the agency in preparing to adopt permanent rules governing the Community Alternatives for Children Program. The permanent rules will govern eligibility and administrative requirements for the Community Alternatives for Children Program which is a Medicaid waiver designed to provide home and community based services to eligible Medicaid recipients authorized under the provisions of sections 1902 (a) (10) and 1915 (c) of the Social Security Act and includes case management services, respite care, environmental modifications to the home, homemaker, family counseling, family training, and foster care services to categorically, optional categorically, and medically needy, chronically disabled children under 21 years of age who would otherwise require medical institutional care.

## OFFICIAL NOTICES

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The adoption of permanent rules is authorized by Minnesota Statutes, section 256B.49.

The Minnesota Department of Human Services requires information and comments concerning the subject of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing.

Written statements should be addressed to:

Catherine Griffin  
Department of Human Services  
Social Services Division  
Long Term Care Management  
6th Floor, 444 Lafayette Road  
St. Paul, MN 55101

Oral statements of information and comment will be received over the telephone at (612) 296-2917 between the hours of 8:30 a.m. and 4:00 p.m.

All statements of information and comment shall be accepted until further notice. Any written material received by the Department of Human Services shall become a part of the rule file in the event that the rules are adopted.

### **Pollution Control Agency Division of Water Quality**

#### **Outside Opinion Sought Concerning Revisions to Rules Governing Award of State and Federal Grants and Loans for Municipal Wastewater Treatment Facilities**

Notice is hereby given that the Minnesota Pollution Control Agency is seeking information or opinions from sources outside the Agency in preparing to promulgate permanent rules governing the municipal wastewater treatment facilities state and federal construction grants programs.

Minnesota Rules Chapter 7075 governs the award of federal grants and state grants for the planning and construction of publicly owned wastewater treatment facilities. The rules will be revised to provide for administration of a grant and loan program for abatement of combined sewer overflows, as authorized in Minnesota Laws 1985, Ex. Sess., Chapter 14, Art. 19, Section 3. In addition, Part 7075.0428, subpart 4 will be revised to reflect the increase from 15% to 30% in the maximum supplemental grants available for a grantee experiencing financial hardship. See Minnesota Laws 1985, Ex. Sess., Chapter 14, Art. 19, Sections 5 and 6. Other rule revisions will be considered after public comments are received.

Promulgation of permanent rules is authorized by Minnesota Statutes, sections 116.16, subdivision 5, and Minnesota Laws 1985, Ex. Sess., Chapter 14, Art. 19, Section 3.

The Minnesota Pollution Control Agency requests information and comments concerning the subject of these rules. Interested or affected persons or groups may submit statements of information or comments orally or in writing.

Written statements should be addressed to:

Sharon Meyer  
Division of Water Quality  
Minnesota Pollution Control Agency  
1935 West County Road B-2  
Roseville, Minnesota 55113

Oral statements of information and comment will be received over the telephone at (612) 296-7230 between the hours of 9:00 a.m. and 4:00 p.m.

All statements of information and comment shall be accepted until August 30, 1985. Any written material received by the Minnesota Pollution Control Agency shall become a part of the rule file in the event that the rules are promulgated.

### **Office of the Secretary of State**

#### **Notice of Vacancies in Multi-Member State Agencies**

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is August 13, 1985.



**GOVERNOR'S NUCLEAR WASTE COUNCIL** has 4 vacancies open immediately for citizen members. The council shall monitor the federal high-level radioactive waste disposal program under Public Law 97-425 and advises the Governor and Legislature on the program. Members are appointed by the Governor. Members receive \$35 per diem plus expenses. For specific information contact the Governor's Nuclear Waste Council, Rachel Wobschall, 130 State Capitol, St. Paul 55155; (612) 296-0057.

**TASK FORCE ON PRIVATE PROPRIETARY SCHOOLS** has 7 vacancies open for the following: (a) 1 member to represent schools regulated under Minnesota Statutes, Chapter 141, that are not members of the Minnesota Association of private post-secondary schools; (b) 1 member to represent institutions registered under Minnesota Statutes, sections 136A.61 to 136A.71, that are not members of the private college council; (c) 1 member to represent schools regulated by Minnesota Statutes, Chapter 141, sections 136A.61 to 136A.71; (d) 4 members who are knowledgeable about the areas of study. The task force shall study issues and make recommendations relating to private proprietary schools. For specific information contact the Task Force on Private Proprietary Schools, Rachel Wobschall, 130 State Capitol, St. Paul 55155; (612) 296-0057.

**COUNCIL ON ASIAN PACIFIC-MINNESOTANS** has 9 vacancies open immediately for representatives of the Asian-Pacific community of the state. The council shall advise the Governor and Legislature on issues confronting Asian-Pacific people in this state. Members are appointed by the Governor. Members receive \$35 per diem plus expenses. For specific information contact the Council on Asian Pacific-Minnesotans, Rachel Wobschall, 130 State Capitol, St. Paul 55155; (612) 296-0057.

**BOARD OF THE MINNESOTA SCHOOL FOR THE ARTS AND RESOURCE CENTER** has 15 vacancies open immediately for members. Must have at least 1 member from each congressional district. The board has the powers necessary for the care, management, and control of the Minnesota School for the Arts and Resource Center. Members are appointed by the Governor with the advice and consent of the Senate. Members receive \$35 per diem plus expenses. For specific information contact the Board of the Minnesota School for the Arts and Resource Center, Rachel Wobschall, 130 State Capitol, St. Paul 55155; (612) 296-0057.

**HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD** has 5 vacancies open immediately for (a) 1 physician knowledgeable in toxicology; (b) 1 member must be a member of the bar of this state; (c) 1 member must be a health professional knowledgeable in the area of hazardous substance injuries; (d) 2 public members. Members are appointed by the Governor with advice and consent of the Senate. Members receive \$35 per diem plus expenses. For specific information contact the Hazardous Substance Injury Compensation Board, Rachel Wobschall, 130 State Capitol, St. Paul 55155; (612) 296-0057.

**ZOOLOGICAL BOARD** has 4 vacancies open immediately for members. Must have a background or interest in Zoological societies or zoo management or an ability to generate community interest in the Minnesota Zoological Garden. Members are appointed by the Governor. Members must file with Ethical Practices Board. The board operates and maintains the Minnesota Zoological Board. Monthly meetings; members receive \$35 per diem plus expenses. For specific information contact the Zoological Board, Stephen A. Iserman, 12101 Johnny Cake Rd., Apple Valley 55124; (612) 432-9010.

**COMPENSATION COUNCIL** has 8 vacancies open immediately for members (one from each congressional district). The council is created each even numbered year to assist the legislature in establishing the compensation of constitutional officers, members of the legislature, justices of the supreme court and judges of the court of appeals, district court, county court and county municipal courts. Members are appointed by the Governor. Members receive \$35 per diem. For specific information contact the Compensation Council, Janet Lund, Legislative Coordinating Commission, B-46 Capitol, St. Paul 55155; (612) 297-3697.

**MINNESOTA ACADEMIC EXCELLENCE FOUNDATION** has 1 vacancy open for a business representative. The foundation shall promote academic excellence in Minnesota public schools through a public-private partnership (a non-profit organization). Members are appointed by the Governor. For specific information contact the Minnesota Academic Excellence Foundation, Toyse J. Kyle, 707 Capitol Square Bldg., St. Paul 55101; (612) 296-2358.

**COSMETOLOGY ADVISORY COUNCIL** has 1 vacancy open for a public member. The council advises the Commissioner of Commerce on matters relating to cosmetology services and on licensing procedures. Members are appointed by the Commissioner. Meetings at least once a year at the call of the Commissioner; members are compensated for expenses. For specific information contact the Cosmetology Advisory Council, John Apitz, Dept. of Commerce, 500 Metro Square Bldg., St. Paul 55101; (612) 297-3562.

**ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY** has 1 vacancy open for a member. The authority shall implement loan programs that assists and encourages the establishment, maintenance and growth of small businesses in Minnesota; assist the financing and development of alternating sources of energy and energy conservation; assist in the financing of improvements to public buildings for the purpose of energy conservation or the use of alternative energy resources. Members are appointed by the Governor. Members receive \$35 per diem. Members must file with Ethical Practices Board. For specific information contact the Energy and Economic Development Authority, Edward Meyers, Dept. of Energy and Economic Development, 980 American Center, 150 E. Kellogg Blvd., St. Paul 55101; (612) 296-6424.

**ADVISORY SEED POTATO CERTIFICATION TASK FORCE** has 6 vacancies open for members who are growers of certified seed potato industry. Members are appointed by the Commissioner of Agriculture for 2 year terms. Meetings twice annually; mem-

## OFFICIAL NOTICES

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bers are compensated for expenses. For specific information contact the Advisory Seed Potato Certification Task Force, 90 W. Plato Blvd., St. Paul 55107; (612) 296-9310.

WORKERS' COMPENSATION COURT OF APPEALS has 1 vacancy open for a member. Must be learned in the law. Must be selected on the basis of experience with and knowledge of workers' compensation and the workers' compensation laws of Minnesota. The court of appeals has appellate jurisdiction on all workers compensation claims, and original jurisdiction on peace officers dependent claims. Members are appointed by the Governor and confirmed by the Senate; serve 6 year terms. Members must file with Ethical Practices Board. Full time position; members receive \$54,450 per year. For specific information contact the Workers' Compensation Court of Appeals, M.E.A. Bldg., 55 Sherburne Ave., St. Paul 55103; (612) 296-6526.

MINNESOTA CRIME VICTIM AND WITNESS ADVISORY COUNCIL has 12 vacancies open for the following members: (a) 2 members of the Minnesota legislature who have demonstrated expertise and interest in crime victims issues, one from each house; (b) 1 district court judge appointed upon recommendation of the chief justice of the Supreme Court; (c) 1 county attorney appointed upon recommendation of the Minnesota County Attorney's Association; (d) 1 public defender appointed upon recommendation of the State public defender; (e) 1 peace officer; (f) 1 medical or osteopathic physician licensed to practice in this state; (g) 5 members who are crime victims or crime victim assistance representatives. The appointments should take into account sex, race and geographic distribution. The council shall review on a regular basis the treatment of victims by the criminal justice system and the need and availability of services to victims. Members are appointed by the Commissioner of Public Safety after consulting with the Commissioner of Corrections. Members serve without compensation. For specific information contact the Minnesota Crime Victim and Witness Advisory Council, Barbara Johnson, Dept. of Public Safety, 211 Transportation Bldg., St. Paul 55155; (612) 296-6642.

STATE CURRICULUM ADVISORY COMMITTEE has 11 vacancies open for the following: (a) 9 members to be appointed from the Educational Cooperative Service Units; (b) 2 at-large members. The committee shall advise the State Board and Dept. of Education on the planning, evaluation, and reporting process. Members are appointed by the Commissioner of Education. For specific information contact the State Curriculum Advisory Committee, Daniel Loritz, 709 Capitol Square Bldg., St. Paul 55101; (612) 296-3271.

ADVISORY COMMITTEE ON NONPUBLIC SCHOOLS has 15 vacancies open immediately for members who shall be representatives of the various areas of the state and knowledgeable about nonpublic schools. The committee shall advise the Commissioner and State Board of Education on issues related to nonpublic schools. Members are appointed by the Commissioner of Education. Members receive \$35 per diem plus expenses. For specific information contact the Advisory Committee on Nonpublic Schools, Daniel Loritz, 709 Capitol Square Bldg., St. Paul 55101; (612) 296-3271.

ADVISORY COMMITTEE ON TECHNOLOGY IN EDUCATION has 15 vacancies open immediately for members representing public school teachers and administrators, school boards, parents, Department of Education, Minnesota Education Computing Consortium, one regional management information center, Council on Quality Education, higher education and at least 2 members from high technology business and industry. Member shall be knowledgeable about the use of technology in elementary and secondary education. The committee shall encourage school districts to develop and adopt as part of their education policies written technology utilization plans. Members are appointed by the Governor. For specific information contact the Advisory Committee on Technology in Education, Gilbert Valdez, 682 Capitol Square Bldg., St. Paul 55101; (612) 296-4067.

COUNCIL ON BIOTECHNOLOGY has 15 vacancies open for the following: (a) 6 members representing the public and private post-secondary education; (b) 7 members representing the business or financial community; (c) 2 members representing state agencies. The council shall develop a strategic plan to facilitate economic expansion in the state by encouraging biotechnology-related developments. Members are appointed by the Commissioner of Energy and Economic Development. Members receive expenses. For specific information contact the Council on Biotechnology, Marilyn Bach, 150 E. Kellogg Blvd., St. Paul 55101; (612) 297-1897.

# STATE CONTRACTS

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

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

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-6152. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

## Department of Administration Procurement Division

### Commodities Contracts and Requisitions Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
27-152-46304	Periodical Magazine Subscription Service	Anoka Ramsey Community College	Coon Rapids	Contact buyer
43-000-05980	Excavation & Lot Grading Aurora	Iron Range Resources & Rehabilitation Board	Eveleth	Contact buyer
27-144-46627	Hockey Equipment & Clothing	Itasca Community College	Grand Rapids	Contact buyer
Contract	Telephone Equipment	Various	Various	\$50,000-70,000
Contract	Blasting Material	Various	Various	\$10,000-20,000
02-520-46126	3M Onyex Printing Supplies	Administration—Printing & Mailing	St. Paul	Contact buyer
02-515-46294	Computerized Fire Maintenance & Mailing Service	State Register & Public Documents	St. Paul	Contact buyer
26-175-06154-1038	Campus Life Booklet	Southwest State University	Marshall	Contact buyer
26-148-46637-9460	Fall, Winter, Spring Brochure	Rochester Community College	Rochester	Contact buyer
37-080-08564-9536	Education Update 1985-86	Education	St. Paul	Contact buyer
32-300-13418	CPT Word Processing Supplies	Pollution Control Agency	Roseville	Contact buyer
Contract	Mini Computer Systems	All Agencies	All Agencies	Contact buyer
27-151-47223-9501	Continuing Education Community Quarterly Brochure	Minneapolis Community College	Minneapolis	Contact buyer
21-200-09867	Partitions	Economic Security	St. Paul	Contact buyer
29-000-40023	Telephone Answering Machine	Natural Resources	Various	Contact buyer
02-520-46121	Exposure System	Administration—Printing	St. Paul	Contact buyer
27-061-15473	Scientific Instrumentation	Mankato State University	Mankato	Contact buyer
27-148-46636	Service & Repair	Rochester Community College	Rochester	Contact buyer
26-071-15468	Function Generator	Mankato State University	Mankato	Contact buyer
26-071-15459	Lab Work Stations	Mankato State University	Mankato	Contact buyer
26-071-15458	Calibrator	Mankato State University	Mankato	Contact buyer
27-148-46633	Recondition Microscopes	Rochester Community College	Rochester	Contact buyer

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Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
26-071-15460	Oscilloscope	Mankato State University	Mankato	Contact buyer
55-304-06768	X-Ray Film Processor	Brainerd State Hospital	Brainerd	Contact buyer
26-071-15467	Electronic Instrumentation	Mankato State University	Mankato	Contact buyer
Contract 37-090-07537	Telescopic Square Tubing Maintain Burroughs Text-Editing Equipment	Various Education	Various St. Paul	\$125,000-175,000 Contact buyer
Contract 55-201-06231	Crushed Rock Salt Hospital Equipment	Various Cambridge State Hospital	Various Cambridge	Contact buyer Contact buyer
06-000-05422	Library Shelving	Attorney General	St. Paul	Contact buyer
75-250-06437	Elevator Maintenance Contract	MN Veterans Home	Minneapolis & Hastings	Contact buyer
75-200-06810				
02-307-46002	Window Washing Capitol Complex	Administration—Plant Management	Admin Plant Management	Contact buyer
07-500-33802	Emergency Lights	Public Safety	St. Paul	Contact buyer
Rebid 79-000-47183	Airport Ret. Taxiway Markers	Transportation—Aeronautics	St. Paul	Contact buyer
06-000-05419	Purchase Xerox Word Processing System	Attorney General	St. Paul	Contact buyer
27-148-46642	Maint. Offset Press	Rochester Community College	Rochester	Contact buyer
26-175-1036 & 1039 06151 & 06162	Continuing Ed. Bulletin & Focus Tabloids	Southwest State University	Marshall	Contact buyer
27-144-46627	Addendum #1—Hockey Equipment & Clothing	Itasca Community College	Grand Rapids	Contact buyer
55-000-91756	Data Recorder	Human Services	St. Paul	Contact buyer

Contact 296-6152 for referral to specific buyers.

## Department of Economic Security

### Request for Proposals for the Temporary Housing Program

The Minnesota Department of Economic Security seeks proposals from community action agencies, housing and redevelopment authorities and other public and private non-profit agencies for projects to be funded under the Temporary Housing Program. Economic Security has an appropriation of \$170,000 to make grants in this fiscal year.

Economic Security will accept proposals that initiate, maintain or expand programs which provide temporary housing and support services for the homeless. Applicants wishing application guidelines or further information regarding the program may contact Janice Kofoid (guidelines) at 612/296-4657, or Mary Katherine Johnson (information) at 612/297-2206. An original and two copies of the completed application must be received no later than 4:30 p.m. on August 20, 1985.

Applications should be sent to:

Department of Economic Security  
Community Services Division  
690 American Center Building  
150 East Kellogg Boulevard  
St. Paul, MN 55101  
ATTN: Beverly Gleeson

An announcement of awards is expected in September, 1985. This request for proposals is subject to all laws, rules and regulations promulgated by a federal, state and municipal authority having jurisdiction as the same and may be amended from time to time: All applications for this RFP are prepared at the sole risk, cost and expense of the applicant.

## **Department of Energy and Economic Development Energy Division**

### **Request for Proposals for Graphic Design Services**

The Energy Division of the Minnesota Department of Energy and Economic Development is requesting proposals from contractors to provide the following graphic design services:

- cover and layout design, type specs, and camera-ready mechanicals for brochures, reports, factsheets, ads, etc.
- slides and overhead transparencies
- artwork for displays
- technical illustrations, graphs, charts, maps
- logos

The \$18,000 contract may be divided among several contractors. Services must be available upon request from August 19, 1985, through June 30, 1986.

Proposals should be submitted by August 7, 1985, stating services offered, hourly rate for those services and any minimum requirements. Samples of work also must be included.

Contractors must apply for a Certificate of Compliance from the Minnesota Department of Human Rights. Applications can be obtained by written request from the Minnesota Department of Human Rights, Fifth Floor, Bremer Building, St. Paul, MN 55101. All contract bids must include a statement indicating that the bidder has applied for the certificate.

All questions related to this notice and all proposals should be directed to:

Elsa Larson  
Energy Division  
Department of Energy and  
Economic Development  
900 American Center Building  
150 East Kellogg Boulevard  
St. Paul, MN 55101  
(612) 296-1880

## **Department of Energy and Economic Development Energy Division**

### **Request for Proposals for a Wind Farm Demonstration Project**

The Minnesota Department of Energy and Economic Development is making a request for Proposals (RFP) for a Wind Farm Demonstration Project. The Department is seeking a private developer experienced in wind energy to work with the Department and a Minnesota city or county to establish a Wind Farm.

Up to \$250,000 in financial assistance may be available through the Small Cities Economic Development Program subject to the rules of the Small Cities Block Grant Program.

Copies of the RFP may be obtained from and completed proposals must be submitted to:

Dennis M. Devereaux (612) 296-9078  
Department of Energy and Economic Development  
900 American Center Building  
150 East Kellogg Boulevard  
St. Paul Minnesota 55101

All completed proposals must be received no later than 4:00 p.m., August 5, 1985 in order to be considered.

### Minnesota Community College System

#### Contract Available for Development of Enrollment Management Plan

The Minnesota Community College System wishes to enter into a contract with a firm experienced in the area of enrollment management. The project will include coordination and on-site review and consultation with the 18 colleges and the central office of the system and the development of a master enrollment management plan for the system and each of the 18 colleges.

Activities will include the development of communication strategies; enhancement of the skills, knowledge, and attitude of personnel involved in enrollment management; research, including survey and focus group research and its subsequent analysis; development of an enrollment management task force; training those personnel involved in the planning process of the enrollment management plan.

Extensive research is to be conducted to include present students, faculty, and administration; high school seniors and non-traditional students to identify their perceptions of community colleges; the business community, local to the various community colleges, to determine their needs and how the colleges can help meet those needs. Data will cover the areas of enrollment, public relations, admissions, and financial aid areas. Interviews are also to be conducted in these areas. The contractor is responsible for the design of all research tools as well as all data tabulation, analysis, and reports.

Oral and written reports are to be presented to each institution regarding each area of research obtained.

The master enrollment plan must be designed to address short and long-range objectives and how the colleges can best meet the expectations of their publics.

In order that college can be "self-sufficient," training must be offered to all personnel so that the plans can be carried out, maintained, and continuously reviewed. Therefore, the contractor must be able to offer training programs for appropriate college personnel. Training is also to be offered to admissions personnel so they will understand and be able to develop appropriate recruiting procedures.

Background requirements for this project include a minimum of five years experience in the area of enrollment management. The contractor must have had experience with a diversity of educational institutions/organizations, including community colleges. The contractor must have the ability to do research, training, and develop an enrollment master plan.

Contract cost is estimated at \$200,000.

The deadline for submission of proposals is 4:30 p.m. August 12, 1985.

Information can be obtained from:

Anne F. Geisser  
Director of Community Relations  
301 Capitol Square Building  
550 Cedar Street  
St. Paul, MN 55101  
612/296-5157

### Department of Natural Resources

#### Request for Proposals for Recreation Use Study

The Department of Natural Resources is requesting proposals from highly qualified firms or individuals to collect data to be used in the determination of the recreation value of Minnesota surface water. The study will cover all Minnesota residents and include participation patterns in water-related recreation and the out-of-pocket expenditures made in conjunction with such recreation. The data are scheduled to cover the period from September of 1985 to August of 1986. The cost of the project is approximately \$75,000.

Participation data will be collected through telephone interviews of randomly dialed households in the 13 planning regions of Minnesota. Each region will receive a share of the sample of approximately 8,000 to 12,000 interviews. A nightly quota will be obtained for each region. Each household will be asked to provide a knowledgeable spokesperson to respond to participation questions.

Expenditure data will require contact with individuals who generated participation events in the seven days prior to the interview. These respondents will be contacted with telephone interviews at prearranged times or by mail, at the choice of the research group conducting the survey. The economic information may be obtained from a sufficient subset of sample household members with participation events or from a separate sample of households.

The following data items are the minimum to be collected:

- 1) Home county of recreation households.
- 2) Number of recreation events by type in the most recent seven days prior to household contact.
- 3) Age and sex of each recreating household member by recreation events.
- 4) Length of participation time in each recreation event.
- 5) Location of each recreation event by:
  - a) County
  - b) Public land survey township, or lake, or recreation facility.
- 6) Out-of-pocket expenditures made in conjunction with recreation events for:
  - a) Lodging
  - b) Food or groceries
  - c) Meals eaten out (including liquor)
  - d) Recreational equipment
  - e) Clothing
  - f) Fees or licenses
  - g) Gas or oil
  - h) Other transportation
  - i) Personal or miscellaneous items
  - j) Entertainment
- 7) Day in last seven days when each recreation event occurred.
- 8) Household income.
- 9) Employment of household members.

Interested parties may request a detailed request for proposal by writing to:

William H. Becker  
Office of Planning  
Department of Natural Resources  
Box 10F  
500 Lafayette Road  
St. Paul, Minnesota 55146  
Or call 296-3093.

Proposals are due in Mr. Becker's office at the Department of Natural Resources at 4 p.m. twenty one days following the publication of this request in the *State Register*.

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

## **State Designer Selection Board**

### **Request for Proposals for State Projects**

#### **TO ARCHITECTS AND ENGINEERS REGISTERED IN MINNESOTA:**

The State Designer Selection Board has been requested to select designer for two projects. Design firms who wish to be considered for this project should submit proposals on or before 4:00 p.m., August 27, 1985, to George Iwan, Executive Secretary, State Designer Selection Board, Room G-10, Administration Building, St. Paul, Minnesota 55155-1495.

#### **The proposal must conform to the following:**

1. Six copies of the proposal will be required.
2. All data must be on 8½" x 11" sheets, soft bound.

## STATE CONTRACTS

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3. The cover sheet of the proposal must be clearly labeled with the project number, as listed in number 7 below, together with the designer's firm name, address, telephone number and the name of the contact person.

4. The proposal should consist of the following information in the order indicated below:

- a) Number and name of project.
- b) Identity of firm and an indication of its legal status, i.e. corporation, partnership, etc.
- c) Names of the persons who would be directly responsible for the major elements of the work, including consultants, together with brief descriptions of their qualifications. If the applicant chooses to list projects which are relevant in type, scale, or character to the project at hand, the person's role in the project must be identified.
- d) A commitment to enter the work promptly and to assign the people listed in "C" above and to supply other necessary staff.
- e) A list of design projects in process or completed in the three (3) years prior to the date of this request for agencies or institutions of the State of Minnesota, including the University of Minnesota, by the firm(s) listed in "b" together with the approximate fees associated with each project.
- f) A section of not more than fourteen (14) faces containing graphic material (photos, plans, drawings, etc.) as evidence of the firm's qualification for the work. The graphic material must be identified. It must be work in which the personnel listed in "c" have had significant participation and their roles must be clearly described.

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

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

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

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

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

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

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

### 7a) PROJECT—10-85

National Guard Armory

Brainerd, Minnesota

Estimated Project Cost: \$1,789,000.00

### DESCRIPTION OF THE PROJECT:

1) **General:** The proposed project consists of a 23,909 square foot building, a 19,962 square foot enclosed military vehicle storage facility, 4200 square yards of bituminous vehicle parking area and access road, sidewalks, 825 linear feet of security fencing, enclosed vehicle wash platform, fuel dispensing system and flagpole.

2) **Site Location:** Brainerd, Minnesota.

3) **Project Details:** Single story facility will have concrete floors, concrete block walls faced with brick on the building exterior, interior wall surfaces exposed block painted; assembly hall roof system, wood roof deck supported by laminated wood purlins supported by laminated wood beams; balance of roof systems, steel deck supported by steel joists; metal doors and door frames; both wood and metal windows (depending on type and location); ceilings exposed wood deck (assembly hall) with balance of ceilings fire-rated suspended; hot water heat utilizing No. 2 oil fired boilers. Construction to be in accordance with State of Minne-



sota Building and Energy Codes plus all other applicable codes and standards. This building is similar to typical school construction. Basic room areas include an assembly hall, offices, classrooms, storage areas, arms vaults, kitchen, firing range, locker rooms, washrooms, mechanical room and custodian room. Also included is a 19,962 square foot enclosed military vehicle storage facility utilizing concrete block walls with brick exterior, build up roof and concrete floor.

**4) Work to be Performed by the Designer:** The work basically includes: acquisition of the topographic survey and soil test borings; the design of the complete facility; the preparation of required drawings, specifications and allied documents to include bidding documents for same; preside at the bid opening; the handling of contract documents; the general supervision of the construction work for the owner; assist in the preparation of supplemental agreements; review and approval of shop drawings and payment requests; assist in final acceptance of the work.

**5) Designer's Fee for the Work:** Government established at 5.6% of the construction cost of the work. This may appear lower than normal, but in fulfilling this contract, the Designer will be carrying out a basic scope of work furnished by the Owner. Preliminary work by the designer will be minimal insofar as trial designs and presentations are concerned. The preliminary drawings for the work will be basically the final working drawings, partially completed. The work does not involve the Corps of Engineers in any way. The specification format will be the designer's normal for commercial work, tailored to the project. We have experienced no difficulty in the past in engaging designers for this type of work under this fee schedule.

The designers for the work will work directly with the Department of Military Affairs' Facilities Management Officer, Lieutenant Colonel Wayne A. Johnson, Camp Ripley, Little Falls, Minnesota 56345 (telephone (612) 632-6631, (Extension 315). All questions relative to this project should be referred directly to him.

#### **7b) PROJECT—11-85**

**Repair Administration Building**

**Parking Ramp**

**Capitol Complex—St. Paul, Minnesota**

**Total Appropriation: \$357,000.00**

#### **DESCRIPTION OF THE PROJECT:**

The ramp has delaminated concrete floors, and columns, concrete haunches and beams. A structural investigation report describing the existing conditions and recommended corrective work is available for use.

The exact boundaries of the deteriorated area should be determined. A pedestrian plaza area has numerous leaks which must be corrected.

Quality assurance of the restoration work is essential and full time inspection and supervision is recommended.

The exact boundaries of the deteriorated area should be determined. A pedestrian plaza area has numerous leaks which must be corrected.

Quality assurance of the restoration work is essential and full time inspection and supervision is recommended.

The construction work is expected to start in the spring of 1986 and be completed by late fall of 1986.

Questions concerning this project may be referred to Gary Paulsen at 296-3427.

John D. Nagel, Chairman  
State Designer Selection Board

## **Waste Management Board**

### **Grant Applications Sought for Hazardous Waste Processing Facilities**

The Waste Management Board hereby provides that it is soliciting applications for Hazardous Waste Processing Facilities Grants as authorized in Minnesota Stat. 115A.156 and according to procedures specified in MCAR 9200.6002-9200.6008. Grants of up to \$50,000, matched by an equal or greater amount by the applicant, are available for specific types of work related to development of certain types of hazardous waste processing facilities.

#### Eligible Projects

Projects leading to development of commercial hazardous waste processing facilities or services are generally eligible, but the Board particularly encourages projects which address organic waste streams, involve an innovative approach, or make a significant impact on waste management in Minnesota. The following types of projects, while potentially eligible, are discouraged:

- 1) market assessments of the inorganic waste stream (the WMB has previously funded several projects of this type)
- 2) PCB treatment projects (the Board believes the PCB market is already being adequately served in Minnesota)

## STATE CONTRACTS

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3) collection services and transfer-storage facilities (the Board has funded, under a separate program, a major project intended to address this need)

4) incineration projects (the State Planning Agency has recently completed a feasibility study for a "stand alone" incinerator. That study concluded that such an incinerator is not economically feasible in Minnesota due to the size of the market here and availability of competitive facilities. The Board will accept applications for incinerator projects but only if the applicant has reviewed the State Planning Agency study and demonstrates in the application that the proposed project is likely to be feasible).

The Board reserves the right to further define and restrict the type of projects which will be eligible under this program.

### Eligible Work

Proposals for the following types of work which are preliminary to the development and operation of specific types of commercial facilities and services for processing hazardous waste are eligible:

- 1) market assessment, including generator surveys;
- 2) conceptual design and preliminary engineering;
- 3) financial and business planning necessary to address sources of funding, financial security, liability, pricing structure, and related matters required for the development and proper operation of a facility or service;
- 4) environmental impact and site analysis, preparation of permit applications; and environmental and permit reviews;
- 5) analysis of methods to overcome identified technical, institutional, legal, regulatory, market, or other problems in developing or operating a facility or service; and
- 6) analysis of other factors affecting development, operation, and use of the proposed facility or service.

A detailed work program describing how the grant funds would be used will be required in the application. The Board reserves the right to further define or restrict the type of work eligible under the grants.

### Application Procedures and Deadlines

Potential applicants should contact the Board for further detailed information and to obtain application forms and instructions. Applications are due no later than October 1, 1985. Additional applications may be solicited later if funds are available.

Persons interested in this program are encouraged to contact Andrew Datko at the Board for further information.

Minnesota Waste Management Board  
7323 58th Avenue North  
Crystal, Minnesota 55428  
(612) 536-0816

## SUPREME COURT

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### Decisions Filed Friday, July 12, 1985

#### Compiled by Wayne O. Tschimperle, Clerk

**C8-84-966 Judith Lundgren and Gary Lundgren, Husband and Wife v. John Eustermann, M.D., Petitioner, Appellant. Court of Appeals.**

Plaintiffs' psychologist lacked the expert qualifications to give an opinion on the standard of care required of the defendant physician, and summary judgment by the trial court dismissing plaintiffs' claim of punitive damages in a medical malpractice case was appropriate.

Reversed. Simonett, J.

**C9-83-1680 State of Minnesota v. Timothy Lee McGath, Appellant. Court of Appeals.**

Nothing in the record of trial court's *ex parte* interview of a juror discloses any basis for believing that there was any actual bias on the part of the juror which would justify granting a motion for a mistrial. Therefore, if the presence of defendant and counsel at the trial court's examination of the juror was not, under the circumstances of the case, waived, the error did not prejudice the defendant.

Reversed and judgment of conviction reinstated. Coyne, J.

# ERRATA

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## Department of Education

### Correction to Adopted Rule Governing Required Elementary Curriculum Offerings

An error occurred in the July 1, 1985 issue of the *State Register* on page 17, line 15 (10 S.R. 17), under Rule 3500.1150, in the third paragraph, labeled "**Subp. 5. Balance among curriculum offerings: elementary grades 4 and above.**" "**Subp. 5**" should be struck out. The paragraph following "~~Subp. 5~~" should be read as a continuation of Subp. 4.

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