86, March 31

STATE REGISTER

STATE OF MINNESOTA

4

VOLUME 10, NUMBER 40

March 31, 1986

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STATE REGISTER

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		
41	Friday March 21	Monday March 31	Monday April 7
42	Monday March 31	Monday April 7	Monday April 14
43	Monday April 7	Monday April 14	Monday April 21
44	Monday April 14	Monday April 21	Monday April 28

*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, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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

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

Cover graphic: *Minnesota State Capitol*, Ink drawing by Ric James.

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NOTICE

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

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION** 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 April 8, 1985 are published in the *Minnesota Rules 1985*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after April 8, 1985 will be included in a supplement scheduled for publication in Spring, 1986. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the *State Register* but are generally not published in the *Minnesota Rules* due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

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

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issues 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

The listings are arranged in the same order as the table of contents of the *Minnesota Rules 1985*.

MINNESOTA RULES AMENDMENTS AND ADDITIONS

NOTE: This listing includes all proposed and adopted rules printed in this issue except emergency rules and errata for this issue. Please see those sections for the appropriate rule numbers.

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.

Department of Human Services

Adopted Rules Relating to Parental Fees for Children Placed in 24-Hour Out-of-Home Care

The rules proposed and published at *State Register*, Volume 10, Number 7, pages 378-383, August 12, 1985 (10 S.R. 378) are adopted with the following modifications:

Rules as Adopted

9550.6210 DEFINITIONS.

Subp. 8. **Emotional handicap.** "Emotional handicap" means a psychiatric or emotional disorder that is diagnosed by a licensed psychiatrist, licensed psychologist, or licensed consulting psychologist; and

A. substantially impairs the child's mental health;

B. requires 24-hour out-of-home treatment or supervision; and

~~B.~~ C. is listed in the International Classification of Diseases (I-CD-9-CM) Ninth Revision (1980), code range 290.0 to 299.0, or the corresponding code of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-III) Third Edition (1980), Axes I, II, or III. These publications are incorporated by reference. They are available through the Minitex interlibrary loan system. They are not subject to frequent change.

Subp. 11. **Mental retardation or a related condition.** "Mental retardation or a related condition" means a condition that is diagnosed in accordance with parts 9525.0015 to 9525.0145 [Emergency] and the definition of related condition in Minnesota Statutes, section 252.27, and requires 24-hour out-of-home ~~care~~ supervision and treatment.

Subp. 12. **Parent.** "Parent" means a father or mother, natural or adoptive, as specified in Minnesota Statutes, section 259.21, subdivision 3~~, or a stepparent domiciled in the same household in accordance with Minnesota Statutes, section 290A.03, subdivisions 4 and 5~~.

9550.6220 DETERMINATION OF PARENTAL FEE.

Subp. 2. **Determination of household size.** Parents and their dependents, as specified in Minnesota Statutes, section 290A.03, subdivision 7, shall be counted as members of the household when determining the fee, except that a stepparent and his or her natural or adopted children shall not be included.

Subp. 11. **Number of fees.** As specified in Minnesota Statutes, section 252.27, subdivision 2, parents who have more than one child in 24-hour out-of-home care shall not be required to pay a fee for more than one child. If more than one child is placed out of the home, the parent shall be responsible for a fee for the child with the highest cost of care.

Subp. 13. **Child support payments.** Child support payments that are established by the court in accordance with Minnesota Statutes, section 518.17, for a child in 24-hour out-of-home care, must be considered a resource of the child~~,~~ and be applied directly toward the cost of care~~, and satisfy the parental fee responsibility of the noncustodial parent~~.

A. If the child support payment equals or exceeds the fees required in part 9550.6220, subpart 6, for both the custodial and noncustodial parent, then the child support payment shall satisfy the parental fee responsibility of both.

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.

B. If the child support payment equals or exceeds the fee required of the noncustodial parent, but not that of the custodial parent in either whole or part, then the custodial parent must pay the difference between the amount that remains after the noncustodial parent's fee is deducted and the fee determined in part 9550.6220, subpart 6 for the noncustodial parent. If the child support payment does not exceed the fee required of the noncustodial parent, the custodial parent must pay the full fee as determined in part 9550.6220, subpart 6 and the noncustodial parent must pay the balance between the fee required under part 9550.6220, subpart 6, and the child support payment.

C. If the court decree ordering child support covers more than one child and the decree does not differentiate the amount provided to each child, the county shall use the amount derived by dividing the child support by the number of children covered in the decree as the amount used to determine whether the fee of the custodial or noncustodial parent has been satisfied in whole or in part.

9550.6225 HEALTH INSURANCE PREMIUMS AND BENEFITS.

If at the time of placement the child has health care insurance or other enrollment or subscriber benefits, the benefits must be considered a resource of the child and applied directly to the cost of care.

~~If the child is eligible for health care benefits or insurance under Minnesota Statutes, chapter 62A, 62C, 62E, or 64A, and the parent fails to complete the necessary application forms, refuses to allow the county of financial responsibility or department to bill the insurer or benefactor, or discontinues health premiums, enrollment or subscriber fees for a child who is otherwise eligible for those benefits, then the parent shall be responsible for any medical expenses incurred while the child is in care that are not routinely included in the facility's per diem or negotiated rate for the child and that would have been covered by the health care insurance or benefits.~~

Payment by the parent of any health care benefit, insurance, subscriber, or enrollment fee shall not nullify parental responsibility for the fee. The parental fee must be assessed in addition to any health care benefit, insurance, subscriber, or enrollment fee, unless the benefit directly reduces the facility's per diem or negotiated rate for medical care that would routinely be provided for the child. If the benefit directly reduces the facility's per diem or negotiated rate for medical care that would routinely be provided for the child, the premiums and fees must be deducted from the parental fee.

If the child is not eligible for medical assistance, the provisions of Minnesota Statutes, section 252.27, subdivision 2, clause (b) shall apply.

Payments of any health care, insurance, subscriber, or enrollment premiums by the parents of any child covered under parts 9550.6200 to 9550.6240 must be deducted from the parental fee if the commissioner determines that the benefit directly reduces the facility's per diem or the cost of medical care that would routinely be provided for the child. The amount of the premium payment must be that incremental portion attributable to dependent coverage for the child in out-of-home care.

9550.6228 REVIEW AND REDETERMINATION OF FEES.

Subpart 1. **Review.** Parental fees must be reviewed by the county board or the department:

A. ~~on an annual basis according to~~ at least once every 12 months in accordance with parts 9550.6220 to 9550.6240;

B. when there is a change in household size as specified in part 9550.6220, subpart 2;

C. when there is a change in the cost of care; or

D. when there is a ~~sudden~~ loss of or gain in income ~~due to unemployment for 30 consecutive days or due to the death, severe disability, or illness of a parent~~ from one month to another in excess of 15 percent.

Subp. 2. **Failure to cooperate.** Failure or refusal by the parent to provide the financial information needed to determine parental responsibility for a fee shall result in the determination that the parent is able to pay the full cost of care.

9550.6230 VARIANCE FOR HARDSHIP AND APPEALS.

Subpart 1. **Variance for hardship.** A variance of the parental fee determined according to parts 9550.6220 to 9550.6240 may be requested any time and the parental fee varied when the child is placed out of the home for a period exceeding three months and the total of items A, B, C, and D exceed two percent of parental income as defined in part 9550.6210, subpart 10. The parental fee shall be based on income as defined in part 9550.6210, subpart 10, less the total amount of items A, B, C, and D:

A. ~~There are medical expenditures by the parent for a member or members of the household that together represent more than 20 percent of a parent's income as defined in part 9550.6210, subpart 10, and are not covered by insurance or health care benefits.~~

~~B. There are sudden and unusual expenditures by the parent that are necessary to meet the basic needs of the family and are not covered by insurance or health care benefits. Such expenditures must not include education costs.~~ medical expenditures since the last review of the fee or within the last 12 months for the child in out-of-home placement which are not covered by medical

assistance or health insurance and are a type which would be allowable as a federal or state tax deduction;

B. expenditures since the last review of the fee or within the last 12 months for modifications to the parent's vehicle to accommodate the child's medical needs and are a type which would be allowable as a state or federal tax deduction;

C. expenditures since the last review of the fee or within the last 12 months for minor physical adaptions to the child's home which are necessary to accommodate the child's physical needs and comply with parts 9525.1800 to 9525.1930 [Emergency], or its successor; and

D. sudden and unusual expenditures by the parent that are necessary to meet the basic needs of the family and are not covered by insurance or health care benefits.

Subp. 2. **Variance for tax status.** A variance shall be granted, in the form of a deduction from income, as defined in part 9550.6210, subpart 9, if the parent can show that, as a result of the parent's peculiar tax status, there is a gross disparity between the amount of income, as defined in part 9550.6210, subpart 9, allocated to the parent and the amount of the cash distributions made to the parent.

A. The disparity must adversely affect the parent's actual ability to pay.

B. A variance shall not be granted in cases where the tax status was created in whole or in part for the purpose of avoiding liability under parts 9550.6200 to 9550.6240.

C. Income to be deducted under this subpart shall be deducted only if:

(1) the income has never been legally available to the parent as a cash distribution; and

(2) the parent has no authority to alter the amount of cash distributed during a given year, or the method whereby the cash is distributed.

D. If the parent's peculiar tax status resulted in a reduced fee under parts 9550.6200 to 9550.6240 in prior years due to losses reported under Minnesota Statutes, section 290A.03, the amount of income deducted in any variance shall be adjusted to recoup the prior years' reduced fees.

E. A variance granted under this subpart shall only be made on the recommendation of the county board, and approval of the commissioner, except that for children in state hospitals, authority to grant a variance shall lie directly with the commissioner.

F. A parent who is granted a variance under this subpart must sign a written agreement in which the parent agrees to report any change in the circumstances which gave rise to the tax status variance, such as an increased distribution, a sale, transfer, or any other transaction affecting the parent's ability to pay within 30 days of that change.

Subp. 3. **Exceptions.** The parental fee or income as defined in part 9550.6210, subpart 10, shall not be reduced for new home purchases, college education expenses, clothing and personal needs, or medical expenditures covered by medical assistance or health insurance.

Subp. ~~2.~~ 4. **Procedures.** A parent may request a variance from parts 9550.6200 to 9550.6240. The request must be submitted to the county board or department as specified in subpart 5, include the section of parts 9550.6200 to 9550.6240 with which the parent cannot comply, and state why compliance with the specified section would cause undue hardship.

Subp. ~~3.~~ 5. **County authority.** The commissioner shall delegate to the county board the authority to grant variances according to parts 9550.6200 to 9550.6240 for children in 24-hour out-of-home placement other than a state hospital.

A. When the county board receives a written request for a variance, the county board or its designated social or human service agency shall grant or deny the request and mail the written decision to the parent within 30 days after the request is received. If the county board denies the request for a variance, the parent shall be informed at the time of the denial of the reasons for the denial which address the specific hardships raised by the parent, and of the right to appeal the denial to the department.

Board of Pharmacy

Adopted Rules Relating to Pharmacy; Continuing Education

The rules proposed and published at *State Register*, Volume 10, Number 7, pages 383-390, August 12, 1985 (10 S.R. 383) are adopted with the following modifications:

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Rules as Adopted

6800.1600 CONTINUING EDUCATION ADVISORY ~~COMMITTEE~~ TASK FORCE.

The continuing education advisory ~~committee~~ task force shall consist of not more than ten members. Five members of the advisory ~~committee~~ task force shall be pharmacists designated by the Minnesota State Pharmaceutical Association, three members shall be pharmacists designated by the College of Pharmacy of the University of Minnesota, and two members shall be designated by the board. The continuing education advisory ~~committee~~ task force shall meet at least quarterly and shall annually elect a chairman and vice-chairman from its membership. The ~~secretary~~ executive director of the board of pharmacy shall act as secretary to the ~~committee~~ task force.

6800.2250 UNPROFESSIONAL CONDUCT.

Subpart 1. **Prohibited conduct.** Unprofessional conduct shall include, but is not limited to, the following acts of a pharmacist or pharmacy:

D. Participation in agreements or arrangements, with any person, corporation, partnership, association, firm, or others involving rebates, "kickbacks," fee-splitting, or special charges in exchange for professional pharmaceutical services, including but not limited to the giving, selling, donating, or otherwise furnishing or transferring, or the offer to give, sell, donate, or otherwise furnish or transfer money, goods, or services free or below cost to any licensed health care facility or the owner, operator, or administrator of a licensed health care facility as compensation or inducement for placement of business with that pharmacy or pharmacist. ~~Goods or services which may not be provided free or below cost include consultations required by state and federal regulatory bodies, drug reference texts, computer print outs of physicians' orders or the provision of other forms used in charting, drug carts, or anything else not directly related to the drug dispensing process.~~ Monetary rebates or discounts which are returned to the actual purchaser of drugs as a cost justified discount or to meet competition are permitted if the rebates or discounts conform with other existing state and federal rules and regulations.

6800.3110 PATIENT MEDICATION PROFILES.

Subpart 1. **System required.** A patient profile record system must be maintained in all pharmacies for persons for whom prescriptions are dispensed. The patient profile record system must be designed for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing. One profile ~~card~~ record may be maintained for all members of a family living at the same address and possessing the same family name.

Subp. 2. **Minimum information required.** The following information, at a minimum, must be recorded:

D. a list of all prescriptions obtained by the patient at the pharmacy maintaining the profile during the two years immediately preceding the most recent entry showing the prescription number, name and strength of the drug, the quantity and date received, and the name of the prescriber.

Subp. 3. **Recording allergies.** The pharmacist shall ~~attempt to ascertain~~ request from the patient or the patient's agent and shall record any allergies, idiosyncrasies, and chronic conditions of the patient and the identity of any other medications being taken by the patient which may relate to drug utilization. If there are none, this must be indicated on the profile.

Subp. 6. **Certain profiles not required.** Patient profiles are not required in the following circumstances:

A. If a patient does not want a patient profile established, the patient shall state it in writing to the pharmacist. The pharmacist shall not then be required to prepare a profile as otherwise would be required by this part.

B. Hospital pharmacies serving only inpatients of the hospital are not required to prepare patient profiles for those patients being discharged or receiving discharge prescriptions.

6800.3120 TRANSFER OF PRESCRIPTIONS BETWEEN PHARMACIES.

Subp. 3. **Duties of transferring pharmacist.** The transferring pharmacist shall:

C. record the date of the transfer.

For controlled substances in Schedules III-V, parts 6800.4230 to 6800.4250, the transferring pharmacist shall also record on the reverse side of the invalidated prescription the Drug Enforcement Administration registration number of the receiving pharmacy and the names of the receiving and transferring pharmacists.

Subp. 4. **Duties of receiving pharmacist.** The pharmacist receiving the transferred prescription information shall write the word "transfer," "copy," or a word of similar import on the face of the transferred prescription, and shall provide all information required by law to be on a prescription, including:

F. the transferring pharmacy's name and address and, in the case of a controlled substance in Schedules III-V, parts

6800.4230 to 6800.4250, the transferring pharmacy's Drug Enforcement Administration registration number and name of transferring pharmacist.

Subp. 7. **Computerized prescription recordkeeping system.** A computerized prescription recordkeeping system must satisfy all the requirements of subparts 2 to 6 including invalidation of the original prescription ~~even when the prescription is transferred between.~~ Pharmacies accessing ~~the same prescription records or between pharmacies of the same ownership~~ a common electronic file or data base used to maintain required dispensing information are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file; provided, however, that any such common file must contain complete records of each prescription and refill dispensed and further, that a hard copy record of each prescription transferred or accessed for purposes of refilling must be generated and maintained at the pharmacy refilling the prescription or to which the prescription has been transferred.

Subp. 8. **Transfer of prescription by presentation of container.** Except as provided in subpart 7, when the transfer of original prescription information is initiated by the receipt of a prescription container previously filled at another pharmacy, the receiving pharmacist shall notify the transferring pharmacist that the prescription is being transferred. All information required by subparts 2 to 6 must be exchanged.

Subp. 9. **Unprofessional conduct.** The board ~~may~~ shall consider it evidence of unprofessional conduct to reveal to others the nature of professional pharmaceutical services rendered to a patient without the express oral or written consent of the patient or without an order or direction of a court. A pharmacy may, however, provide informational copies of a prescription to another pharmacy or to the person to whom the prescription was issued as provided in this part. A pharmacist may also provide drug therapy information to a physician for the patient.

The board ~~may~~ shall consider it evidence of unprofessional conduct for a pharmacist to refuse to provide a transfer of original prescription information to another pharmacist who is acting on behalf of a patient and who is making a legal request for this information under this part.

EFFECTIVE DATE. Minnesota Rules, part 6800.3110 shall become effective July 1, 1986.

Pollution Control Agency

Adopted Rules Relating to Environment; Solid Waste Management Planning and Certificate of Need

The rules proposed and published at *State Register*, Volume 10, Number 3, pages 97-106, July 15, 1985 (10 S.R. 97) and Volume 10, Number 14, pages 750-752, September 30, 1985 (10 S.R. 750) are adopted with the following modifications:

Rules as Adopted

COMPREHENSIVE SOLID WASTE MANAGEMENT

PLANNING AND CERTIFICATE OF NEED

7035.1100 DEFINITIONS.

Subp. 17. **Recycling.** "Recycling" ~~means a technique or process utilized to separate, process, modify, convert, or otherwise prepare solid waste so that component materials or substances may be beneficially used or reused as raw materials~~ has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25b.

Subp. 18. **Solid waste management.** "Solid waste management" means a planned program for effectively controlling the generation, storage, collection, transportation, processing and reuse, conversion, or disposal of solid wastes ~~in a safe, sanitary, environmentally sound, and economical manner~~. It includes all administrative, financial, environmental, legal, and planning functions. Solid waste management also includes the operational aspects of solid waste handling and disposal and alternatives to land disposal necessary to achieve established objectives.

7035.1101 RESPONSIBILITY FOR DEVELOPMENT OF PLANS.

B. Solid waste management districts. A county that is seeking to be part of a solid waste management district formed under Minnesota Statutes, sections 115A.62 to 115A.72, ~~must be included in~~ shall obtain approval of a plan ~~prepared by a district. When~~

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~~it is formed,~~ ~~a~~ by the agency prior to formation of the district ~~shall submit a draft plan to the agency~~ as required by Minnesota Statutes, section 115A.63, subdivision 3~~, or, if applicable, under this subpart~~.

7035.1105 CONTENT OF PLAN.

Subp. 2. **Solid waste management system evaluation.** A plan must contain descriptions, estimates, or assessments of the solid waste management system, including the following:

A. An inventory and description of existing waste facilities and the collection, storage, transportation, and disposal systems used by the political subdivision being studied, including:

(3) The remaining permitted capacity of the mixed municipal solid waste land disposal facilities in cubic yards and years and the remaining useful life of solid waste facilities in years.

C. An identification of solid waste issues of regional concern, including an assessment of the feasibility of planning and implementing solid waste management systems on a regional basis. The plan must include a process for ensuring the ongoing involvement of and consultation with those who are concerned with solid waste management including regional authorities, adjacent counties or districts and local units of government and waste service companies within a county or district.

Subp. 3. **Assessment of alternatives to land disposal.** The following apply to a plan:

A. A plan must include an assessment of specific alternative functions and activities to reduce the need for land disposal through the use of waste reduction, recycling, composting, and energy recovery. This assessment must be structured into two waste management systems:

(2) an alternative system that could be used to meet abatement goals and objectives if proposed activities and functions are not undertaken for the ten-year planning period.

The plan must include a description and comparative cost analysis of the existing system, the proposed system and the alternative system. The description must address the potential environmental effects of those systems. The plan must also include a description of the timing of the specific functions and activities to be undertaken for the proposed system and a description of alternatives, including waste reduction and recycling, for collecting, processing, and disposing of waste tires and bulky items.

7035.1106 SUBMISSION OF PLAN OR REVISION.

Subpart 1. **Submission of draft plan or revision.** A board shall submit for agency review two copies of its draft plan or revision to the director according to the schedule established in part 7035.1101, subpart 2. ~~Upon receipt of the draft plan or revision, the director must notify the board by certified letter of the proposed schedule for review of the draft plan or revision~~ The director shall review the draft plan within 120 days. After reviewing the draft plan or revision, the director shall notify the board of any part of the draft plan or revision that requires redrafting and resubmission. The county or district shall redraft the plan or revision and submit it as the final plan or revision to the director within 90 days.

Subp. 5. **Approval.** The agency shall approve plans or revisions if the following conditions are satisfied:

A. The plan or revised plan contains each element of an acceptable plan as defined in part 7035.1100, subpart ~~3~~ 2.

B. The plan or revised plan has required the most feasible and prudent reduction of the need for and the practice of land disposal of mixed municipal solid waste. "Feasible" means a known method or technology that can be put successfully into practice ~~to accomplish the abatement~~ in a manner that addresses the potential environmental effects and abates the land disposal of solid waste. An alternative may not be considered feasible if it is experimental, theoretical, or not capable of commercial scale application. "Prudent" means the least costly solid waste management system as demonstrated by the cost analysis done under part 7035.1105, subpart 3.

Pollution Control Agency

Adopted Rules Relating to Water Quality Permit Fees

The rules proposed and published at *State Register*, Volume 10, Number 25, pages 1360-1364, December 16, 1985 (10 S.R. 1360) are adopted as proposed.

EMERGENCY RULES

Proposed Emergency Rules
According to Minn. Stat. of 1984, §§ 14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

1) that a free copy of the proposed emergency rule is available upon request from the agency;
2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules
Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§ 14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules
Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

MINNESOTA RULES AMENDMENTS AND ADDITIONS

Department of Health
Health Resources Division

Proposed Temporary Rules Relating to Review of Care and Classification of Residents in Facilities Participating in the Medical Assistance Program

Notice of Proposed Adoption of Temporary Rule Amendments

Notice is hereby given that the Minnesota Department of Health proposes to adopt the above entitled temporary rule amendments. The statutory authority to adopt temporary rules is contained in Minnesota Statutes, section 256B.431, subdivision 6 as amended by Laws of Minnesota 1986, Chapter 316.

All persons have 25 days (or until 4:30 p.m. on April 25, 1986) after publication to submit data and views on the proposed temporary rule amendments or any part or subpart of the rules in writing. Any comments must be submitted to Gary A. Goetzke, Minnesota Department of Health, 717 S.E. Delaware Street, P.O. Box 9441, Minneapolis, Minnesota 55440, (612) 623-5627.

Minnesota Rules, parts 4656.0010 to 4656.0100 [Temporary] require the Department of Health to conduct annual resident assessments in accordance with procedures established by 42 Code of Federal Regulations (C.F.R.), sections 456.600 to 456.614. The rules also incorporate by reference the March 17, 1986 versions of the *Facility Manual for Completing Case Mix Requests for Classification*, and the *Inspection of Care Instruction Manual: with Procedures for Completing Case Mix Requests for Classifications*, as well as the *Guideline for Isolation Precautions in Hospitals*. These documents are available for review at the Ford Law Library at 117 University Avenue, St. Paul, Minnesota 55155 and through the Minitex Interlibrary Loan System. In addition, the rules establish requirements for the assessment of mentally retarded residents; address the basis for making level of care recommendations; establish procedures for the classification of residents in nursing homes and boarding care homes participating in the Medical Assistance Program; provide a mechanism for reconsidering Department of Health classifications; and establish a process for auditing resident assessments completed by nursing homes or boarding care homes.

A free copy of the proposed temporary rules is available by contacting Gary A. Goetzke, Minnesota Department of Health, 717 S.E. Delaware Street, P.O. Box 9441, Minneapolis, Minnesota 55440, (612) 623-5627.

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

Upon adoption of the temporary rules by the agency, the rules as adopted and the required supporting documents will be delivered to the Attorney General for reviews as to legality and form to the extent 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 rules, must submit the written request to Gary Goetzke.

The temporary rules will take effect five working days after approval by the Attorney General and be effective until June 30, 1987 unless otherwise superceded by rule.

Temporary Rules as Proposed

4656.0010 [Temporary] SCOPE.

Parts 4656.0010 to ~~4656.0070~~ 4656.0100 [Temporary] establish procedures ~~for the assessment~~ to review the appropriateness of care and services furnished to residents of facilities participating in the medical assistance program, and for the classification of residents of nursing homes and boarding care homes ~~required~~ participating in the medical assistance program to determine the operating cost payment rates for all nursing homes and boarding care homes participating in the medical assistance program under Minnesota Statutes, sections 256B.41 to 256B.48 and parts 9549.0050 to 9549.0059 [Temporary].

4656.0020 [Temporary] DEFINITIONS.

Subpart 1. **Applicability.** As used in parts 4656.0010 to ~~4656.0070~~ 4656.0100 [Temporary] the following terms have the meanings given them.

Subp. 2. **Assessment form.** "Assessment form" means the form developed by the department's quality assurance and review program ~~in effect on March 1, 1984,~~ and used for performing resident assessments. ~~The assessment form is incorporated by reference. It is available at Ford Law Library, 117 University Avenue, Saint Paul, MN 55155. It is available through the minitex interlibrary loan system. This form is not subject to frequent change.~~

Subp. 3. **Department.** "Department" means the Minnesota Department of Health.

Subp. 3a. **Guideline for Isolation Precautions in Hospitals.** "Guideline for Isolation Precautions in Hospitals" means the guidelines written by Julia S. Garner, RN, MN and Bryan P. Simmons, MD, reprinted by the U.S. Department of Health and Human Services, Public Health Service, Center for Disease Control, from Infection Control July/August 1983 (Special Supplement); 4 (suppl): pp. 245-325. The guidelines are incorporated by reference. They are available at the Ford Law Library, 117 University Avenue, Saint Paul, MN 55155, and through the minitex interlibrary loan system. This material is not subject to frequent change.

Subp. 4. **Medical plan of care.** "Medical plan of care" means documentation signed by the resident's physician which includes the resident's primary diagnoses, secondary diagnoses, orders for treatments and medications, rehabilitation potential, rehabilitation procedures if ordered, clinical monitoring procedures and discharge potential.

Subp. 5. **Quality assurance and review or QA&R.** "Quality assurance and review" or "QA&R" means the program established under Minnesota Statutes, sections 144.072 and 144.0721.

Subp. 5a. **Resident.** "Resident" means an individual residing in a facility certified to participate in the medical assistance program.

Subp. 6. **Resident class.** "Resident class" means each of the 11 categories established in part 9549.0058 [Temporary].

Subp. 7. **Resident plan of care.** "Resident plan of care" for residents of nursing homes means the patient care plan specified in part 4655.6000. Resident plan of care for residents in boarding care homes means the overall plan of care as defined in Code of Federal Regulations, title 42, section 442.319 (as amended through December 31, 1984).

Subp. 7a. **Resident record.** "Resident record" means the entire record of a resident compiled by the nursing home or boarding care home. The resident record must include the following:

A. the admission record;

B. the medical plan of care;

C. the resident plan of care;

D. documentation from services providing care to the resident;

E. reports of any diagnostic testing, consultation, and other services;

F. a copy of any transfer data provided to another health care facility; and

G. a discharge summary.

Subp. 7b. **Review team.** "Review team" means the inspection team described by Code of Federal Regulations, title 42, section 456.602, as amended through December 31, 1984.

4656.0030 [Temporary] ANNUAL RESIDENT ASSESSMENT.

~~Subpart 1. **Annual assessment.** In accordance with Minnesota Statutes, sections 144.072 and 144.0721, the department shall conduct annual assessments of all residents in each nursing home and boarding care home participating in the medical assistance program.~~

~~Subp. 2. **Procedure for assessment.** A registered nurse and other appropriate health and social service personnel shall perform the assessment on each resident according to the QAR procedures of the department including physical observation of the resident, review of the medical plan of care, and review of the resident's plan of care and shall record the assessment on the assessment form defined in part 4656.0020 [Temporary], subpart 2.~~

~~Subp. 3. **Classification and notification.** Within 15 working days of receiving the completed assessment documents, the department must classify each resident into one of the resident classes prescribed by part 9549.0058 [Temporary], subpart 1, item F, and mail a written notice to the resident and the nursing home or boarding care home of the resident classification. The written notice must inform the resident and the nursing home or boarding care home of the opportunity to review the state's documents supporting the classification, and the right of the facility or the resident to request a reconsideration of the classification.~~

The department shall conduct annual assessments of all residents in each nursing home and boarding care home participating in the medical assistance program to determine the appropriateness and quality of care and services furnished to these residents. The assessments must be conducted in accordance with the inspection of care requirements established by Code of Federal Regulations, title 42, sections 456.600 to 456.614, as amended through December 31, 1984. However, those provisions regarding recommendations for changes in the level of care provided shall not apply to private paying residents.

4656.0040 [Temporary] ~~REVIEW AND CLASSIFICATION OF FACILITY AND PREADMISSION SCREENING~~ PROCEDURES FOR ASSESSMENTS.

~~Subpart 1. **Classification.** Within 15 working days of receiving each request for classification submitted in accordance with part 9549.0059 [Temporary], the department shall classify the resident into one of the resident classes established in accordance with part 9549.0058 [Temporary] or notify the individual completing the assessment or the nursing home or boarding care home furnishing the documentation of additional information necessary for determining the classification.~~

~~Subp. 2. **Notification of classification.** Within 15 days of receiving a complete and accurate request for classification, the department shall mail a written notice to the resident and the nursing home or boarding care home of the resident's classification. The written notice must inform the resident and the nursing home or boarding care home of the right to review the department of health's documents supporting the classification and the right of the facility or the resident to request a reconsideration of the classification.~~

When performing assessments in accordance with part 4656.0030 [Temporary], team reviewers shall follow the assessment procedures and requirements established in the Inspection of Care Instruction Manual: with Procedures for Completing Case Mix Requests for Classifications. The March 17, 1986, version of the manual is incorporated by reference. This manual is available at the Ford Law Library, 117 University Avenue, Saint Paul, Minnesota 55155 and through the minitex interlibrary loan system. This material is not subject to frequent change.

4656.0050 [Temporary] ~~AUDITS OF ASSESSMENTS OF NURSING HOME~~ ADDITIONAL REQUIREMENTS FOR ASSESSING MENTALLY RETARDED RESIDENTS.

~~Subpart 1. **Audits required.** The department shall audit the accuracy of resident assessments performed under parts 9549.0050 to 9549.0059 [Temporary] through desk audits and on-site reviews of residents and their records. The department shall reclassify a resident that it determines to have been incorrectly assessed.~~

~~Subp. 2. **Request for reconsideration.** Within five working days of a reclassification required by subpart 1, the department shall mail a written notice to the resident and the nursing home or boarding care home of the resident's classification, the opportunity to review the Department of Health's documents supporting the classification, and the right of the facility or the resident to request reconsideration of the classification.~~

Subpart 1. **Active treatment.** Residents of intermediate care facilities for the mentally retarded (ICF/MR) shall be provided active treatment in accordance with the requirements established by Code of Federal Regulations, title 42, section 435.1009, as amended through December 31, 1984.

Subp. 2. **Individualized program plan.** For the purpose of determining active treatment under this part, individual program plan means the individual written plan of care described under Code of Federal Regulations, title 42, section 435.1009, as amended through December 31, 1984.

Team reviewers shall use the Inspection of Care Instruction Manual: with Procedures for Completing Case Mix Requests for Classifications, to review the individual program plan for the purpose of determining the quality and adequacy of the facility's

in-house current individual program and the programs and services being provided to the resident outside the facility.

4656.0060 [Temporary] ~~REQUEST FOR RECONSIDERATION OF RESIDENT CLASSIFICATION~~ LEVELS OF CARE.

~~Subpart 1. **Reconsideration permitted.** A nursing home or a boarding care home or resident, or the resident's authorized representative who is dissatisfied with the classification into a resident class by the department, may request that the department reconsider the classification.~~

~~Subp. 2. **Request for reconsideration.** A nursing home or boarding care home or a resident, or the resident's authorized representative who requests reconsideration of the resident's classification, shall file the request in writing within ten working days of receiving the notice of the resident's classification. The facility or the resident shall support the request with documentation that the resident's needs at the time of the assessment were different from those identified in the assessment, or that the needs identified in the assessment require a different resident classification than that assigned by the department. The nursing home or boarding care home must provide a resident or the resident's authorized representative with a copy of the assessment form and any other documentation provided to the department in support of the resident's assessment. This documentation shall be provided within one working day of receipt of a written request from the resident or the resident's authorized representative. If a facility requests the reconsideration of a resident's classification, a written notice must be provided to the resident on the date the request is submitted to the department. The notice to the resident shall contain the information provided to the department that supports the request for reconsideration.~~

~~Subp. 3. **Review of requests and notification.** The department shall review the requests for reconsideration and shall affirm or modify the resident's classification, and notify the resident and the nursing home or boarding care home of the classification within 20 working days.~~

~~Subp. 4. **Status of initial classification.** The resident classification established by the department must be the classification that applies to the resident while the request for reconsideration is pending.~~

Team reviewers shall base level of care recommendations upon the following categories:

A. skilled nursing care facility services, as defined by Code of Federal Regulations, title 42, section 440.40(a), as amended through December 31, 1984;

B. intermediate care facility services, including ICF I, ICF II, and ICF/MR, as defined by Code of Federal Regulations, title 42, section 440.150, as amended through December 31, 1984;

C. inpatient hospital services, including services as defined by Code of Federal Regulations, title 42, sections 440.10 and 440.140, as amended through December 31, 1984, and services provided in specialty hospitals;

D. inpatient psychiatric services for individuals under 21 years of age, as defined by Code of Federal Regulations, title 42, section 440.160, as amended through December 31, 1984;

E. mental hospitals, including hospitals that are licensed in accordance with Minnesota Statutes, sections 144.50 to 144.56, and meet the requirements of parts 4640.3600 to 4640.4300;

F. home or community-based services as defined by Code of Federal Regulations, title 42, section 440.180, as amended through December 31, 1984; and

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

CASE MIX REIMBURSEMENT

4656.0070 [Temporary] ~~ASSESSMENT OF RESIDENTS ON JULY 1, 1985~~ CLASSIFICATION AND NOTIFICATION OF ANNUAL RESIDENT ASSESSMENTS.

~~The department shall mail a notice to each nursing home or boarding care home specifying the resident classes for all residents in the home for which the department has assessment information no later than one day after the effective date of parts 4656.0010 to 4656.0070 [Temporary]. Each nursing home or boarding care home shall assess each resident whose name does not appear on the department's classification list under the procedures prescribed by part 9549.0059 [Temporary], subpart 3, item B. The nursing home or boarding care home shall submit a request for classification for each resident assessed by the nursing home or boarding care home to the department no later than 15 days after receipt of the department's notice. The request for classification must include the completed assessment form and the resident's plan of care. The department shall classify each resident for whom a request for classification has been received by June 15, 1985, and notify the nursing home or boarding care home by June 20, 1985, of the~~

~~classification. For any facility in which an annual QAR assessment occurs between May 1, 1985, and June 30, 1985, the classifications established under part 4656.0030 [Temporary], subpart 3, shall apply.~~

Subpart 1. **Written notice.** Within 15 working days of receiving assessment documents submitted in accordance with part 4656.0030 [Temporary], the department shall classify each resident into one of the resident classes prescribed by part 9549.0058 [Temporary], subpart 1, item F, and mail a written notice of the classification to the resident and the nursing home or boarding care home in which the resident resides. The written notice must specify that the resident or the resident's authorized representative and the nursing home or boarding care home have the right to review the department's documents supporting the classification and request a reconsideration of the classification.

Subp. 2. **Classification letter.** The nursing home or boarding care home must provide each resident or the person responsible for payment with each classification letter within five days of the receipt of the classification letter by the nursing home or boarding care home. If the resident's classification has changed, the nursing home or boarding care home must include the current rate for the new classification with the classification letter.

4656.0080 [Temporary] REVIEW AND CLASSIFICATION OF FACILITY AND PREADMISSION SCREENING ASSESSMENTS.

Subpart 1. **Assessment procedures.** Assessments which are performed in accordance with part 9549.0059 [Temporary] must be completed by following the assessment procedures and requirements established in the March 17, 1986, version of the Facility Manual for Completing Case Mix Requests for Classification. This manual is incorporated by reference and is available at the Ford Law Library, 117 University Avenue, Saint Paul, Minnesota 55155 and through the minitex interlibrary loan system. This material is not subject to frequent change.

Subp. 2. **Classification.** Within 15 working days of receiving each request for classification submitted in accordance with part 9549.0059 [Temporary], the department shall classify the resident into one of the resident classes established in accordance with part 9549.0058 [Temporary] or notify the individual completing the assessment or the nursing home or boarding care home furnishing the documentation of the need to submit additional information necessary for determining the classification.

Subp. 3. **Notification of classification.** Within 15 days of receiving a complete and accurate request for classification, the department shall mail a written notice of the resident's classification to the resident and the resident's nursing home or boarding care home. The written notice must specify that the resident or the resident's authorized representative and the nursing home or boarding care home have the right to review the Department of Health's documents supporting the classification and the right to request a reconsideration of the classification.

Subp. 4. **Classification letter.** The nursing home must provide each nursing home resident or the person responsible for payment with each classification letter within five days of the receipt of the classification letter by the nursing home. If the resident's classification has changed, the nursing home must include the current rate for the new classification with the classification letter.

4656.0090 [Temporary] REQUEST FOR RECONSIDERATION OF RESIDENT CLASSIFICATION.

Subpart 1. **Reconsideration permitted.** A nursing home or a boarding care home, a resident, or the resident's authorized representative may request that the department reconsider the classification.

Subp. 2. **Request for reconsideration.** A reconsideration request must be in writing and submitted to the department within ten working days of receiving the notice of the resident's classification. Requests must be accompanied by written documentation to support the claim that the resident's needs at the time of the assessment were different from those needs identified in the assessment, or that the needs identified in the assessment require a different resident classification than the classification assigned by the department. The nursing home or boarding care home shall provide a resident or the resident's authorized representative with a copy of the assessment form and any other documentation provided to the department in support of the resident's assessment. This documentation must be provided within one working day of receipt of a written or verbal request from the resident or the resident's authorized representative. If a facility requests the reconsideration of a resident's classification, the facility must provide written notice to the resident or the person responsible for payment on the date the request is submitted to the department. The notice to the resident or the person responsible for payment must contain the information provided to the department that supports the request for reconsideration.

Subp. 3. **Review of requests and notification.** The department shall review the requests for reconsideration, affirm or modify the resident's classification, and notify the resident and the nursing home or boarding care home by letter of the classification within 20 working days.

Subp. 4. **Status of initial classification.** The resident classification established by the department must be the classification that applies to the resident while the request for reconsideration is pending.

Subp. 5. **Additional information.** The department reserves the right to request additional documentation regarding a reconsideration necessary to make an accurate reconsideration determination.

4656.0100 [Temporary] AUDITS OF ASSESSMENTS OF NURSING HOME RESIDENTS.

Subpart 1. **Audits required.** The department shall audit the accuracy of resident assessments performed under parts 9549.0050 to 9549.0059 [Temporary] through desk audits and on-site reviews of residents and their records. The department shall reclassify a resident it determines to have been incorrectly assessed.

Subp. 2. **Audit reclassification.** Within 15 working days of a reclassification required by subpart 1, the department shall mail a written notice to the resident and the nursing home or boarding care home of the resident's classification, the opportunity to review the Department of Health's documents supporting the classification, and the right of the resident, the resident's authorized representative, or the facility to request reconsideration of the classification.

Department of Human Services

Proposed Temporary Rules Relating to Nursing Home Payment Rate Determination

Notice of Proposed Adoption of Temporary Rule Amendments

Notice is hereby given that the State Department of Human Services proposes to adopt amendments to the above-entitled temporary rule. The statutory authority to adopt the temporary rule is contained in Minnesota Statutes, sections 256B.41, subdivision 1 and 256B.431, subdivision 6. The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

All persons have 25 days (or until 4:30 p.m. on April 25, 1986) after publication to submit data and views on the proposed temporary rule or any part or subpart of the rule in writing. Any comments must be submitted to:

Jane M. Delage
Department of Human Services
4th Floor, Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Minnesota Rules, parts 9549.0050 to 9549.0059 [Temporary] affect the operating cost payment rate for nursing homes licensed under Minnesota Statutes, chapter 144A or boarding care facilities under Minnesota Statutes, section 144.50 to 144.58 participating in the Medical Assistance Program. The effective period for these rules was extended until June 30, 1987, in Laws of Minnesota 1986, chapter 316. The proposed amendments are necessary to clarify the operating cost rate determination process to be used to determine rates for fiscal year 1987, to update the resident classification system used in determining operating cost payment rates, and to implement the one-time adjustment permitted in Minnesota Statutes, section 256B.431, subdivision 2. The following rule parts are to be amended:

1. Part 9549.0050 [Temporary] Scope
2. Part 9549.0051 [Temporary] Definitions
3. Part 9549.0052 [Temporary] Establishment of Geographic Groups (editing changes only)
4. Part 9549.0053 [Temporary] Determination and Allocation of Fringe Benefits and Payroll Taxes, Food Costs and Dietician Consulting Fees
5. Part 9549.0054 [Temporary] Determination of Allowable Historical Operating Cost Per Diems
6. Part 9549.0055 [Temporary] Determination of the Operating Cost Adjustment Factors and Limits
7. Part 9459.0056 [Temporary] Determination of the Operating Cost Payment Rate
8. Part 9549.0057 [Temporary] Determination of the Interim and Settle-up Operating Cost Payment Rates
9. Part 9549.0058 [Temporary] Resident Classes and Class Weights
10. Part 9549.0059 [Temporary] Resident Assessment

These amendments are being promulgated in conjunction with amendments to parts 4656.0010 to 4656.0100 [Temporary], which govern procedures for assessment and classification of residents by the Department of Health. All references to parts 4656.0010 to 4656.0100 [Temporary] found in these rule parts are references to rules as amended.

A free copy of the proposed temporary rule is available by contacting Mary Ann Bredeson, Department of Human Services, Space Center, 444 Lafayette Road, 6th Floor, St. Paul, Minnesota 55101.

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

Upon adoption of the temporary rule by the agency, the temporary rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent 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 this 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 M. Delage.

The temporary rule will take effect five working days after approval by the Attorney General and will be effective until June 30, 1987, according to the Laws of Minnesota 1986, chapter 316.

The system established under these rule amendments is approximately budget neutral. The rule amendments will not result in additional state or county spending beyond the amount appropriated by the Legislature.

March 21, 1986

Leonard W. Levine, Commissioner
Department of Human Services

Rules as Proposed [Temporary]

9549.0050 [Temporary] SCOPE.

Parts 9549.0050 to 9549.0059 [Temporary] establish procedures for determining the operating cost payment rates for all nursing homes participating in the medical assistance program. Parts 9549.0050 to 9549.0059 [Temporary] are effective for rate years beginning on or after July 1, 1985. Procedures for assessment and classification of residents by the Department of Health in accordance with parts 9549.0050 to 9549.0059 [Temporary] are found in parts 4656.0010 to ~~4656.0070~~ 4656.0100 [Temporary].

9549.0051 [Temporary] DEFINITIONS.

Subpart 1. **Applicability.** As used in parts 9549.0050 to 9549.0059 [Temporary], the following terms have the meanings given them.

Subp. 2. **Assessment form.** "Assessment form" means the form developed by the Department of Health Quality Assurance and Review Program ~~which was in effect on March 1, 1984,~~ under parts 4656.0010 to 4656.0100 [Temporary] and used for performing resident assessments. ~~The assessment form is incorporated by reference. It is available at Ford Law Library, 117 University Avenue, Saint Paul, Minnesota 55155. It is available through Minitex interlibrary loan system. This form is not subject to frequent change.~~

Subp. 3. **Base year.** "Base year" means the reporting year ending September 30, 1984.

Subp. 4. **Case mix index.** "Case mix index" means the sum of the results obtained by multiplying the number of residents in each resident class in each nursing home by the weights listed in part 9549.0058 [Temporary].

Subp. 5. **Case mix operating costs.** "Case mix operating costs" means the operating costs listed in part 9549.0040, subpart 5, and the portion of fringe benefits and payroll taxes allocated to the nursing services cost category in accordance with part 9549.0053 [Temporary].

Subp. 6. **Case mix score.** "Case mix score" means the case mix index divided by the total number of residents in ~~each~~ the nursing home.

Subp. 7. **Medical plan of care.** "Medical plan of care" means documentation signed by the resident's physician which includes the resident's primary diagnoses, secondary diagnoses, orders for treatment and medications, rehabilitation potential, rehabilitation procedures if ordered, clinical monitoring procedures, and discharge potential.

Subp. 8. **Other care-related operating costs.** "Other care-related operating costs" means the operating costs listed in part 9549.0040, subpart 6, and the portion of fringe benefits and payroll taxes allocated to the other care-related cost category, the cost of food, and the ~~required~~ dietician consulting fees ~~charged by a nonrelated organization~~ calculated in accordance with part 9549.0053 [Temporary].

Subp. 9. **Other operating costs.** "Other operating costs" means the operating costs listed in part 9549.0040, subparts 1, 2, 3, 4, and 7, excluding the cost of food and dietician consulting fees, and the portion of fringe benefits and payroll taxes allocated to each of these operating costs categories in accordance with part 9549.0053~~, excluding the cost of food~~ [Temporary].

Subp. 10. **Productive nursing hours.** "Productive nursing hours" means all on-duty hours of nurses, aides, orderlies, and attendants. This term does not include the on-duty hours of the medical records personnel or the director of nursing for facilities with more than 60 licensed beds. Vacation, holidays, sick leave, and classroom training, are not included in productive nursing hours.

Subp. ~~10.~~ 11. **Quality assurance and review or QA&R.** "Quality assurance and review" or "AQ&R" means the program established under Minnesota Statutes, sections 144.072 and 144.0721.

Subp. ~~11.~~ 12. **Resident class.** "Resident class" means each of the 11 categories established in part 9549.0058 [Temporary].

Subp. ~~12.~~ 13. **Resident plan of care.** "Resident plan of care" for residents of nursing homes not licensed as boarding care homes means the patient care plan specified in part 4655.6000. "Resident plan of care" for residents of nursing homes licensed as boarding care homes means the overall plan of care as defined in Code of Federal Regulations, title 42, section 442.319, as amended through December 31, 1984.

Subp. 14. **Short length of stay facility.** "Short length of stay facility" means a nursing home that is certified to provide a skilled level of care and has an average length of stay of 180 days or less in its skilled level of care. For the purpose of this definition the commissioner shall calculate average length of stay for the nursing home by dividing actual resident days in the skilled level of care for which the nursing home can bill, by the total number of discharges from the skilled level of care during the reporting year.

Subp. ~~13.~~ 15. **Standardized resident days.** "Standardized resident days" means the sum of the number of resident days in the nursing home in each resident class multiplied by the weight for that resident class listed in part 9549.0058 [Temporary]. For the rate years beginning on July 1, 1985, and July 1, 1986, standardized resident days must be determined in accordance with part 9549.0054 [Temporary], subparts ~~1 and~~ 2 and 3.

9549.0052 [Temporary] ESTABLISHMENT OF GEOGRAPHIC GROUPS.

Subpart 1. **Classification process.** The commissioner shall classify Minnesota nursing homes according to their geographic location as indicated in subparts ~~1 to 3~~ 2 to 4.

~~Subpart 1.~~ Subp. 2. **Group 1.** All nursing homes in Beltrami, Big Stone, Cass, Chippewa, Clearwater, Cottonwood, Crow Wing, Hubbard, Jackson, Kandiyohi, Lac Qui Parle, Lake of the Woods, Lincoln, Lyon, Mahnomen, Meeker, Morrison, Murray, Nobles, Pipestone, Redwood, Renville, Rock, Swift, Todd, Yellow Medicine, and Wadena counties must be placed in geographic group 1.

Subp. ~~2.~~ 3. **Group 2.** All nursing homes in counties other than the counties listed under subparts ~~1 and 3~~ 2 and 4 must be placed in geographic group 2.

Subp. ~~3.~~ 4. **Group 3.** All nursing homes in Aitkin, Anoka, Carlton, Carver, Cook, Dakota, Hennepin, Itasca, Koochiching, Lake, Ramsey, St. Louis, Scott, and Washington counties must be placed in geographic group 3.

9549.0053 [Temporary] DETERMINATION AND ALLOCATION OF FRINGE BENEFITS AND PAYROLL TAXES, FOOD COSTS, AND ~~REQUIRED~~ DIETICIAN CONSULTING FEES.

Subpart 1. **Fringe benefits and payroll taxes.** Fringe benefits and payroll taxes must be allocated to case mix, other care-related costs, and other operating costs according to items A to D.

A. Fringe benefits and payroll taxes must be allocated to case mix operating costs in the same proportion to salaries reported under part 9549.0040, subpart 5.

B. Fringe benefits and payroll taxes must be allocated to other care-related costs in the same proportion to salaries reported under part 9549.0040, subpart 6.

C. Fringe benefits and payroll taxes must be allocated to other operating costs in the same proportion to salaries reported under part 9549.0040, subparts 1, 2, 3, 4, and 7.

D. For any nursing home ~~which has not separately reported~~ that cannot separately report each salary component of an operating cost category, the commissioner shall determine the fringe benefits and payroll taxes to be allocated under this subpart according to subitems (1) ~~and (2)~~ to (3).

(1) The commissioner shall ~~determine the ratio of~~ sum the allowable salaries for all nursing homes separately reporting allowable salaries in each cost category ~~to total allowable salaries in all cost categories for all nursing homes separately reporting allowable salaries in each cost category~~ by cost category and in total.

(2) The commissioner shall determine the ratio of the total allowable salaries in each cost category to the total allowable salaries in all cost categories, based on the totals in subitem (1).

~~(2)~~ (3) The nursing home's total allowable fringe benefits and payroll taxes must be multiplied by each ratio determined in subitem ~~(1)~~ (2) to determine the amount of payroll taxes and fringe benefits allocated to each cost category for each nursing home under this item ~~D~~.

Subp. 2. **Determination of food costs.** ~~For any nursing home which has not separately reported the cost of food under part 9549.0040, subpart 1,~~ The commissioner shall determine the ~~food~~ costs of food to be included in other care-related costs according to items A and B.

A. ~~The commissioner shall, determine the average ratio of food costs to total dietary costs for all nursing homes that separately reported food costs.~~ For any nursing home separately reporting food costs, food costs shall be the allowable food costs reported under part 9549.0040, subpart 1.

B. For any nursing home that cannot separately report the cost of food under part 9549.0040, subpart 1, the commissioner

shall determine the average ratio of food costs to total dietary costs for all nursing homes that separately reported food costs. The nursing home's total allowable dietary costs must be multiplied by the average ratio ~~determined in item A~~ to determine the food costs for ~~that~~ the nursing home.

Subp. 3. **Determination of ~~required~~ dietician consulting fees.** ~~For any nursing home that has not separately reported required dietician consulting fees charged by a nonrelated organization,~~ The commissioner shall determine the ~~required~~ dietician consulting fees to be included in other care-related costs according to items A ~~to C~~ and B.

A. ~~The commissioner shall determine the average cost per licensed bed of dietician consulting fees charged by a nonrelated organization for all nursing homes that separately reported dietician consulting fees.~~ For any nursing home separately reporting dietician consulting fees, the dietician consulting fees shall be the allowable dietician consulting fees reported under part 9549.0040, subpart 1.

B. For any nursing home that has not separately reported dietician consulting fees, the commissioner shall determine the average cost per licensed bed of allowable dietician consulting fees for all nursing homes that separately reported dietician consulting fees. The nursing home's total number of licensed beds must be multiplied by the ~~amount determined in item A~~ average cost per bed to determine the ~~required~~ dietician consulting fees for ~~that~~ the nursing home.

~~C. The amount determined in item B must be subtracted from the total dietary salary cost.~~

9549.0054 [Temporary] DETERMINATION OF THE ALLOWABLE HISTORICAL OPERATING COSTS PER DIEMS.

Subpart 1. **Review and adjustment of costs.** The commissioner shall annually review and adjust the operating costs ~~incurred~~ reported by the nursing home during the reporting year preceding the rate year to determine the nursing home's actual allowable historical operating costs. The review and adjustment must comply with the provisions of parts 9549.0010 to 9549.0080.

~~Subpart 1.~~ Subp. 2. **Standardized resident days for rate year beginning July 1, 1985.** For the rate year beginning on July 1, 1985, each nursing home's standardized resident days must be determined according to items A to I.

A. The commissioner shall select the two most recent QA&R assessments completed prior to April 1, 1985. If only one QA&R assessment is available, the commissioner shall compute the standardized resident days in accordance with item I. Any nursing home whose most recent QA&R assessment completed before April 1, 1985, does not include assessments of nonmedical assistance residents may make a written request to the commissioner to consider a different QA&R assessment to be the most recent if that assessment:

(1) includes nonmedical assistance residents; and

(2) was completed by the Department of Health before July 1, 1985.

The request must be in writing. Written requests must be received by the commissioner by December 31, 1985.

B. For each of the two QA&R assessments selected in item A, the medical assistance case mix index must be the sum of the number of medical assistance residents in each resident class multiplied by the weight for that resident class listed in part 9549.0058 [Temporary].

C. The medical assistance case mix index for each QA& R assessment determined in item B must be divided by the total number of medical assistance residents in order to compute the medical assistance case mix score. If the total number of medical assistance residents is equal to zero in the most recent QA&R assessment, the medical assistance case mix score must be the private pay case mix score determined in item F, subitem (1).

D. The average monthly change in the medical assistance case mix score must be computed by subtracting the previous medical assistance case mix score from the most recent medical assistance case mix score and dividing the result by the number of months between the two QA&R assessment dates. For any partial calendar month, the commissioner shall count as a full month any period of more than 14 days and shall disregard periods of 14 days or less.

E. The average medical assistance case mix score must be determined by subtracting from the most recent medical assistance case mix score, the product of the average monthly change in the medical assistance case mix score times the number of months from April 1, 1984, to the date of the most recent QA& R assessment. For a partial calendar month, the commissioner shall count as a full month the period of more than 14 days, and shall disregard periods of 14 days or less.

F. The commissioner shall compute the private pay adjustment ratio in accordance with subitems (1) to (3).

(1) Using the method described in item C, compute the private pay case mix score for nonmedical assistance residents for each nursing home whose most recent QA&R assessment included assessments of nonmedical assistance residents.

(2) Compute a ratio by dividing the private pay case mix score in subitem (1) by the medical assistance case mix score in item C for that QA&R assessment.

(3) Compute the private pay adjustment ratio by determining the average of all ratios determined in subitem (2).

G. The commissioner shall determine the average private pay case mix score for each nursing home in item F, subitem (1), by multiplying the private pay adjustment ratio determined in item F, subitem (3) times the average medical assistance case mix score determined in item E.

H. The commissioner shall compute the standardized resident days in accordance with subitems (1) to (3).

(1) For each nursing home whose most recent QA&R assessment included assessments of nonmedical assistance residents, multiply the nonmedical assistance resident days during the reporting year by the nursing home's private pay case mix score as determined in item F, subitem (1). If the nursing home's QA&R assessment does not include assessments of nonmedical assistance residents, multiply the nonmedical assistance resident days during the reporting year by the average private pay case mix score determined in item G.

(2) Multiply the medical assistance resident days during the reporting year by the average medical assistance case mix score as determined in item E.

(3) The standardized resident days must be the sum of subitems (1) and (2).

I. If only one QA&R assessment is available, the commissioner shall compute the standardized resident days in accordance with subitems (1) to (3).

(1) The case mix index must be the sum of the number of residents in each class multiplied by the weight for that resident class listed in part 9549.0058 [Temporary].

(2) The case mix score must be computed by dividing the case mix index in subitem (1) by the total number of residents.

(3) The case mix score must be multiplied by the total number of resident days during the reporting year to determine the standardized resident days.

Subp. ~~2.~~ 3. **Standardized resident days for rate year beginning July 1, 1986.** For the rate year beginning on July 1, 1986, ~~each~~ the commissioner shall calculate the nursing home's standardized resident days ~~must be determined~~ in accordance with items A to ~~C~~ E.

~~A. The resident days in each resident class for the months of July, August, and September 1985, must be multiplied by 3.9674 to determine the annualized resident days.~~

~~B. For each resident class, the annualized resident days determined in item A, must be multiplied by the weight for that resident class listed in part 9549.0058 [Temporary].~~

~~C. The amounts determined in item B must be summed to determine the nursing home's standardized resident days for the reporting year.~~

A. The case mix score for a date prior to July 1, 1985, must be determined in accordance with subitems (1) to (4).

(1) Except as provided in subitem (2), the case mix score must be calculated using the most recent QA&R assessment completed prior to April 1, 1985.

(2) A QA&R assessment completed on or after April 1, 1985, may be used if the nursing home's most recent QA&R assessment completed before April 1, 1985, did not include assessments of nonmedical assistance residents and the nursing home has submitted a written request to the commissioner, requesting the use of a different QA&R assessment. The nursing home's request to the commissioner to use a different QA&R assessment must have been received by December 31, 1985. The commissioner shall use the requested QA&R assessment to compute standardized resident days if the requested QA&R assessment:

(a) was completed by the Minnesota Department of Health before July 1, 1985; and

(b) nonmedical assistance residents were included in the assessment.

(3) The case mix index for the QA&R assessment selected in subitem (1) or (2) must be the sum of the number of residents in each resident class multiplied by the weight for that resident class listed in part 9549.0058 [Temporary].

(4) The case mix index determined in subitem (3) must be divided by the total number of residents assessed to compute the case mix score for the QA&R assessment selected in subitem (1) or (2).

B. The case mix score for the period July 1, 1985, to September 30, 1985, must be determined according to subitems (1) to (3).

(1) The resident days in each resident class for the months of July, August, and September 1985 must be multiplied by the weight for that resident class listed in part 9549.0058 [Temporary].

(2) The amounts determined in subitem (1) must be summed to determine the nursing home's standardized resident days for the period July 1, 1985, to September 30, 1985.

(3) The standardized resident days determined in subitem (2) must be divided by actual resident days reported for the period July 1, 1985, to September 30, 1985, to determine the case mix score for that period.

C. The average monthly change in the case mix score must be computed by subtracting the case mix score determined in item A from the case mix score determined in item B, and dividing the result by the number of months between the date of the QA&R assessment selected in item A, subitem (1) or (2) and August 16, 1985. For the purposes of this item, the commissioner shall count as a full month any period of more than 14 days and shall disregard any period of 14 days or less.

D. The average case mix score must be determined by subtracting the product of the average monthly change in the case mix score times 4.5, from the case mix score determined in item B.

E. The standardized resident days for each nursing home must be computed by multiplying the average case mix score computed in item D by the total number of resident days during the reporting year.

Subp. 4. **Standardized resident days for rate years beginning on or after July 1, 1987.** For rate years beginning on or after July 1, 1987, each nursing home's standardized resident days must be determined in accordance with items A and B.

A. The nursing home's resident days for the reporting year in each resident class must be multiplied by the weight for that resident class listed in part 9549.0058 [Temporary].

B. The amounts determined in item A must be summed to determine the nursing home's standardized resident days for the reporting year.

Subp. ~~3.~~ 5. **Allowable historical case mix operating cost standardized per diem.** The allowable historical case mix operating cost standardized per diem must be computed by dividing the allowable historical case mix operating cost by the standardized resident days in the nursing home's reporting year as determined in subpart ~~1 or~~ 2, 3, or 4.

Subp. ~~4.~~ 6. **Allowable historical other care-related operating cost per diem.** The allowable historical other care-related operating cost per diem must be computed by dividing the allowable historical other care-related operating costs by the ~~actual~~ number of resident days in the nursing home's reporting year.

Subp. ~~5.~~ 7. **Allowable historical other operating cost per diem.** The allowable historical other operating cost per diem must be computed by dividing the allowable historical other operating costs by the ~~actual~~ number of resident days in the nursing home's reporting year.

9549.0055 [Temporary] DETERMINATION OF THE OPERATING COST ADJUSTMENT FACTORS AND LIMITS.

Subpart 1. **Annual adjustment factors.** The annual adjustment factors must be determined according to items A and B.

A. The annual adjustment factor for the case mix and other care-related operating costs must be established according to subitems (1) to ~~(4)~~ (7).

(1) The components and indices ~~for~~ specified in the following table must be used to establish the case mix and other care-related operating ~~costs~~ cost adjustment factor ~~must be as specified in the following table~~. These indices are incorporated by reference as specified in subpart 4.

CASE MIX AND CARE-RELATED COMPONENTS AND INDICES

Component	Weight	Index
Salaries	.7347	Average hourly earnings of employees in nursing and personal care facilities (SIC 805). ~~SIC 805 is incorporated by reference.~~
Benefits	.1107	Difference between movements in compensation and wages and salary index components of the Employment Cost Index for Service Workers. ~~This index is incorporated by reference.~~
Supplies and Drugs	.0363	Consumer Price Index for nonprescription medical equipment and supplies. ~~This index is incorporated by reference.~~
Food	.1183	Producer Price Index for consumer foods. ~~This index is incorporated by reference.~~
TOTAL	1.0000	

~~(2) The average price index for the reporting year must be computed by multiplying the weight for each component contained in subitem (1) by the average index for that component for the reporting year and adding the products.~~

~~(3) The average forecasted price index for the rate year immediately following the reporting year must be computed by multiplying the weight for each component contained in subitem (1) by the average forecasted index for that component for the rate year and adding the products.~~

~~(4) The adjustment factor for the case mix and other care related operating costs must be computed by dividing the amount computed in subitem (3) by the amount computed in subitem (2).~~

(2) The average index value for calendar year 1983 for each component in subitem (1) must be determined by summing the quarterly index values for the component and dividing the results by four.

(3) The average index value for the reporting year for each component in subitem (1) must be determined by summing the quarterly index values for the component and dividing the results by four.

(4) The composite price index for the reporting year must be determined by:

(a) dividing the amount in subitem (3) for each component by the corresponding amount in subitem (2) for that component;

(b) multiplying each amount determined in unit (a) by the corresponding weight for that component in subitem (1);

(c) summing the results of the calculations in unit (b); and

(d) multiplying the amount calculated in unit (c) by 100.

(5) The forecasted average index value for the rate year for each component in subitem (1) must be determined by summing the forecasted quarterly index values for that component and dividing the result by four.

(6) The forecasted composite price index for the rate year must be determined by:

(a) dividing the amount in subitem (5) for each component by the corresponding amount in subitem (2) for that component;

(b) multiplying each amount determined in unit (a) by the corresponding weight for that component in subitem (1);

(c) summing the results of the calculations in unit (b); and

(d) multiplying the amount calculated in unit (c) by 100.

(7) The forecasted adjustment factor is determined by dividing the forecasted composite price index for the rate year computed in subitem (6), unit (d) by the composite price index for the reporting year computed in subitem (4), unit (d).

B. The annual adjustment factor for the other operating costs must be established according to subitems (1) to ~~(4)~~ (7).

(1) The components and indices ~~for~~ specified in the following table must be used to establish the other operating cost adjustment factor ~~must be as specified in the following table~~. These indices are incorporated by reference as specified in subpart 4.

OTHER OPERATING COSTS COMPONENTS AND INDICES

Component	Weight	Index
Utilities	.1099	Producer Price Index for natural gas (80 percent); and Producer Price Index for commercial power in west north central state (20 percent). ~~This index is incorporated by reference.~~
Salaries	.5864	Average hourly earnings of employees in nursing and personal care facilities (SIC 805). ~~This index is incorporated by reference.~~
Benefits	.0799	Difference between movements in compensation and wages and salaries index components of the Employment Cost Index for Service Workers. ~~This index is incorporated by reference.~~
Additional Professional Services	.1107	Employment Cost Index for wages and salaries of professional and technical workers. ~~This index is incorporated by reference.~~
Additional Miscellaneous Service Purchases	.0322	Consumer Price Index for maintenance and repair services. ~~This index is incorporated by reference.~~
Miscellaneous Purchases (Commodities)	.0809	Consumer Price Index for maintenance and repair commodities. ~~This index is incorporated by reference.~~
TOTAL	1.0000	

~~(2) The average price index for the reporting year must be computed by multiplying the weight for each component contained in subitem (1) by the average index value for that component for the reporting year and adding the products.~~

~~(3) The average forecasted price index for the rate year immediately following the reporting year must be computed by multiplying the weight for each component contained in subitem (1) by the forecasted average index values for that component for the same rate year and adding the products.~~

~~(4) The adjustment factor for the other operating costs must be computed by dividing the amount computed in subitem (3) by the amount computed in subitem (2).~~

(2) The average index value for calendar year 1983 for each component in subitem (1) must be determined by summing the quarterly index values for the component and dividing the results by four.

(3) The average index value for the reporting year for each component in subitem (1) must be determined by summing the quarterly index values for the component and dividing the results by four.

(4) The composite price index for the reporting year must be determined by:

(a) dividing the amount in subitem (3) for each component by the corresponding amount in subitem (2) for that component, except that the utilities component must be 80 percent of the natural gas component plus 20 percent of the commercial power component;

(b) multiplying each amount determined in unit (a) by the corresponding weight for that component in subitem (1);

(c) summing the results of the calculations in unit (b); and

(d) multiplying the amount calculated in unit (c) by 100.

(5) The forecasted average index value for the rate year for each component in subitem (1) must be determined by summing the forecasted quarterly index values for that component and dividing the result by four.

(6) The forecasted composite price index for the rate year must be determined by:

(a) dividing the amount in subitem (5) for each component by the corresponding amount in subitem (2) for that component, except that the utilities component must be 80 percent of the natural gas component plus 20 percent of the commercial power component;

(b) multiplying each amount determined in unit (a) by the corresponding weight for that component in subitem (1);

(c) summing the results of the calculations in unit (b); and

(d) multiplying the amount calculated in unit (c) by 100.

(7) The forecasted adjustment factor is determined by dividing the forecasted composite price index for the rate year computed in subitem (6), unit (d) by the composite price index for the reporting year computed in subitem (4), unit (d).

Subp. 2. **Base year limits.** For each geographic group established in part 9549.0052 [Temporary] the base year operating costs limits must be determined according to items A to ~~F~~ E. No redetermination of the base year operating costs limits shall be made due to audit adjustments or appeal settlement.

A. The commissioner shall compute 115 percent of the median of the array of the allowable historical case mix related operating cost per diems for the base year.

B. The commissioner shall compute 115 percent of the median of the array of the allowable historical other care-related operating cost per diems for the base year. For the purpose of establishing operating cost limits, the commissioner shall compute the allowable historical other care-related per diems for the base year by dividing the allowable historical other care-related operating costs by the greater of resident days or 90 percent of the number of licensed beds multiplied by the number of days in the reporting period. An exception to this calculation is made for a ~~nursing home that is certified to provide a skilled level of care and has an average length of stay of 180 days or less in its skilled level of care. In that case~~ short length of stay facility. For a short length of stay facility, the allowable historical other care-related operating costs must be divided by the greater of resident days or 80 percent of its number of licensed beds multiplied by the number of days in the reporting period.

C. The total care-related operating cost limit for each resident class must be determined by multiplying the amount determined in item A by the weight for each resident class and adding the amount determined in item B. ~~For the rate year beginning July 1, 1985,~~ The total care-related operating cost limit for ~~nursing homes with an average length of stay of 180 days or less in their skilled nursing level of care~~ a short length of stay facility must be 125 percent of the total care-related operating cost limit. ~~For the rate year beginning July 1, 1985,~~ A nursing home licensed on May 1, 1983, by the commissioner to provide residential services for the physically handicapped under parts 9570.2000 to 9570.3600 ~~must be~~ is exempt from the total care-related operating cost limit.

D. The commissioner shall disallow any portion of the general and administrative cost category, exclusive of fringe benefits

and payroll taxes that exceeds 15 percent of the allowable expenditures in all operating cost categories except fringe benefits, payroll taxes, and general and administrative.

E. The other operating costs limits must be determined in accordance with subitems (1) to (5). For the purpose of establishing operating costs limits, the commissioner shall compute the allowable historical other operating costs per diems for the base year by dividing the allowable historical other operating costs by the greater of resident days or 90 percent of the number of licensed beds multiplied by the number of days in the reporting period. An exception to this calculation is made for a ~~nursing home that is certified to provide a skilled level of care and has an average length of stay of 180 days or less in its skilled level of care. In that case~~ short length of stay facility. For a short length of stay facility, the allowable historical other operating costs must be divided by the greater of resident days or 80 percent of the number of licensed beds multiplied by the number of days in the reporting period.

(1) For each geographic group in part 9549.0052 [Temporary], the commissioner shall group all hospital attached nursing homes, ~~all nursing homes with an average length of stay of 180 days or less in their skilled nursing level of care~~ short length of stay facilities, and nursing homes licensed on May 1, 1983, by the commissioner to provide residential services for the physically handicapped under parts 9570.2000 to 9570.3600.

(2) The other operating cost limit for hospital attached nursing homes in each geographic group in part 9549.0052 [Temporary] must be 105 percent of the median of the array of the allowable historical other operating cost per diem for each nursing home in the group established under subitem (1) in the base year.

(3) The other operating cost limit for all ~~nursing homes with an average length of stay of 180 days or less in their skilled nursing level of care~~ short length of stay facilities, and nursing homes licensed on May 1, 1983, by the commissioner to provide residential services for the physically handicapped under parts 9570.2000 to 9570.3600 in each geographic group in part 9549.0052 [Temporary] must be 105 percent of the limit established in subitem (2).

(4) For each geographic group in part 9549.0052 [Temporary], the commissioner shall group all nursing homes not included in subitem (1).

(5) The other operating cost limit for each group established in subitem (4) must be 105 percent of the median of the array of the allowable historical other operating cost per diems for each nursing home in the group for the base year.

~~F. The commissioner may establish a different base year once within a five-year period.~~

Subp. 3. **Indexed limits.** For a rate year beginning on or after July 1, 1986, the total care-related operating cost limits and the other operating cost limits must be determined in accordance with items A and B.

A. The total care-related operating cost limits must be determined in accordance with subitems (1) and (2).

(1) The composite price index for case mix and other care-related operating costs for the current reporting year as determined in subpart 1, item A, subitem (4), must be divided by the corresponding composite price index for the previous reporting year.

(2) The limit for each resident class in subpart 2, item C, must be multiplied by the amount determined in subitem (1) to establish the indexed total care-related operating cost limits.

B. Each total other operating costs limit must be determined in accordance with subitems (1) and (2).

(1) The composite price index for other operating costs for the current reporting year as determined in subpart 1, item B, subitem (4), must be divided by the corresponding composite price index for the previous reporting year.

(2) Each limit in subpart 2, item E must be multiplied by the amount determined in subitem (1) to establish the indexed other operating cost limits.

Subp. ~~3.~~ 4. **Incorporations by reference.** The references for the indices specified in this part are listed in items A to D, and are available through the Minitex interlibrary loan system. The references in items A to D are subject to frequent change.

A. The index for average hourly earnings of employees in nursing and personal care facilities is published monthly in "Employment and Earnings," Bureau of Labor Statistics, United States Department of Labor. (SIC 805) Standard Industrial Code 805 is the code used for employees in nursing and personal care facilities in this publication.

B. The Employment Cost Index for Service Workers and the Employment Cost Index for wages and salaries of professional and technical workers are published monthly in "Current Wage Developments," Bureau of Labor Statistics, United States Department of Labor.

C. The Consumer Price Index for nonprescription medical equipment and supplies and the Consumer Price Index for maintenance and repair commodities are published in the "Monthly Labor Review," Bureau of Labor Statistics, United States Department of Labor.

D. The Producer Price Index for consumer foods, the Producer Price Index for natural gas, and the Producer Price Index for

commercial power in west north central states are published monthly in "Producer Prices and Price Indices," Bureau of Labor Statistics, United States Department of Labor.

9549.0056 [Temporary] DETERMINATION OF THE OPERATING COST PAYMENT RATE.

Subpart 1. **Nonadjusted case mix and other care-related payment rate.** For each nursing home, the nonadjusted case mix and other care-related payment rate for each resident class must be determined according to items A to D.

A. The nursing home's allowable historical case mix operating cost standardized per diem established in part 9549.0054 [Temporary], subpart ~~3~~ 5, must be multiplied by the weight for each resident class listed in part 9549.0058 [Temporary].

B. The allowable historical other care-related operating cost per diem established in part 9549.0054 [Temporary], subpart 4 6, must be added to each weighted per diem established in item A.

C. If the amount determined in item B for each resident class is below the limit for that resident class and group established in part 9549.0055 [Temporary], subpart 2, item C, as indexed in part 9549.0055 [Temporary], subpart 3, the nursing home's nonadjusted case mix and other care-related payment rate must be the amount determined in item B for each resident class.

D. If the amount determined in item B for each resident class is at or above the limit for that resident class and group established in part 9549.0055 [Temporary], subpart 2, item C, as indexed in part 9549.0055 [Temporary], subpart 3, the nursing home's nonadjusted case mix and other care-related payment rate must be set at the limit.

Subp. 2. **Adjusted prospective case mix and other care-related payment rate.** For each nursing home, the adjusted prospective case mix and other care-related payment rate for each resident class must be the nonadjusted case mix and other care-related payment rate multiplied by the case mix and other care-related adjustment factor determined in part 9549.0055 [Temporary], subpart 1, item A. If the nursing home is eligible to receive the phase-in in subpart 7, the phase-in reduced by the amount of the efficiency incentive, if any, must be added to the adjusted prospective case mix and other care-related payment rate.

Subp. 3. **Nonadjusted other operating cost payment rate.** The nonadjusted other operating cost payment rate must be determined according to items A and B.

A. If the allowable historical other operating cost per diem determined in part 9549.0054 [Temporary], subpart ~~5~~ 7, is below the limit for that group established in part 9549.0055 [Temporary], subpart 2, item E, as indexed in part 9549.0055 [Temporary], subpart 3, the nursing home's nonadjusted other operating cost payment rate must be the allowable historical other operating cost per diem.

B. If the allowable historical other operating cost per diem determined in part 9549.0054 [Temporary], subpart ~~5~~ 7, is at or above the limit for that group established in part 9549.0055 [Temporary], subpart 2, item E, as indexed in part 9549.0055 [Temporary], subpart 3, the nursing home's nonadjusted other operating cost payment rate must be set at that limit.

Subp. 4. **Adjusted prospective other operating cost payment rate.** The adjusted prospective other operating cost payment rate must be determined according to items A to ~~C~~ E.

A. Except as provided in item B, if the nursing home's nonadjusted other operating cost payment rate is below the limit for that group established in part 9549.0055 [Temporary], subpart 2, item E, as indexed in part 9549.0055 [Temporary], subpart 3, the nursing home's adjusted prospective other operating cost payment rate must be the nonadjusted other operating cost payment rate determined in subpart 3, item A, multiplied by the other operating cost adjustment factor determined in part 9549.0055 [Temporary], subpart 1, item B, plus an efficiency incentive equal to the difference between the limit in part 9549.0055 [Temporary], subpart 2, item E, as indexed in part 9549.0055 [Temporary], subpart 3, and the nonadjusted other operating cost payment rate in subpart 3, item A, up to maximum of two dollars per resident day.

B. For any ~~nursing home with an average length of stay of 180 days or less in its skilled nursing level of care~~ short length of stay facility and any nursing home licensed on May 1, 1983, by the commissioner to provide residential services for the physically handicapped under parts 9570.2000 to 9570.3600 ~~which~~ that is under the limits established in part 9549.0055 [Temporary], subpart 2, item E, subitem (3), the nursing home's adjusted prospective other operating cost payment rate must be the nonadjusted other operating cost payment rate determined in subpart 3, item A, multiplied by the other operating cost adjustment factor determined in part 9549.0055 [Temporary], subpart 1, item B, plus an efficiency incentive equal to the difference between the limit in part 9549.0055 [Temporary], subpart 2, item E, subitem (2) as indexed in part 9549.0055 [Temporary], subpart 3, item A, and the nonadjusted other operating cost payment rate in subpart 3, up to a maximum of two dollars.

C. If the nursing home's nonadjusted other operating cost payment rate is at or above the limit for that group established in part 9549.0055 [Temporary], subpart 2, item E, as indexed in part 9549.0055 [Temporary], subpart 3, the nursing home's adjusted prospective other operating cost payment rate must be the nonadjusted other operating cost payment rate determined in subpart 3, item B, multiplied by the other operating cost adjustment factor determined in part 9549.0055 [Temporary], subpart 1, item B.

D. If the nursing home is eligible to receive the phase-in in subpart 7, the phase-in must be added to the adjusted prospective other operating cost payment rate.

~~D.~~ E. The nursing home's efficiency incentives as determined in item A or B must not be changed as a result of field audit adjustment.

Subp. 5. **Total operating cost payment rate.** The nursing home's total operating cost payment rate must be the sum of the adjusted prospective case mix and other care-related payment rate determined in subpart 2 and the adjusted other operating cost payment rate determined in subpart 4.

Subp. 6. **One-time adjustment.** Items A to F set forth the procedure to be applied to establish a one-time adjustment to the nursing home's case mix operating costs per diem for the period October 1, 1986, to September 30, 1987.

A. To qualify for a one-time adjustment to the case mix operating costs per diem, the nursing home or portion of the nursing home for which the adjustment is requested must be licensed under Minnesota Statutes, chapter 144A and the nursing home must not have received an interim or settle-up payment rate during the reporting year ending September 30, 1985.

B. To apply for the one-time adjustment to case mix operating costs per diem, the nursing home must submit a written request to the commissioner on or before July 31, 1986. The written request must include the information required in subitems (1) to (3).

(1) Documentation indicating that based on the productive nursing hours and standardized resident days for the reporting period, ending September 30, 1985, the nursing home cannot provide a minimum of 0.95 productive nursing hours per standardized resident day by reallocating existing staff and costs and that the nursing home cannot use other available resources, including any efficiency incentives effective July 1, 1986, to increase productive nursing hours to meet the minimum of 0.95 productive nursing hours per standardized resident day.

(2) A list of the number and type of staff positions including annual hours worked and related fringe benefits and payroll taxes, for the reporting years ending September 30, 1984 and September 30, 1985.

(3) A written nursing plan describing how the nursing home will meet the minimum of 0.95 productive nursing hours per standardized resident day if the nursing home receives a one-time adjustment. The plan must include the number and types of staff to be added to the current staff complement and the projected cost of the salary and related fringe benefits and payroll taxes for the additional staff. The plan must also specify any other increases in case mix operating costs.

C. The commissioner of human services and the commissioner of health shall review the documentation submitted by the nursing home under item B to determine if the nursing home meets the criteria in subitems (1) to (5).

(1) The nursing home meets the criteria in item A.

(2) The nursing home has submitted the documentation required in item B.

(3) The nursing home provided less than a minimum of 0.95 productive nursing hours per standardized resident day for the reporting period ending September 30, 1985.

(4) The nursing home cannot meet the minimum of 0.95 productive nursing hours per standardized resident day by reallocating staff and costs including efficiency incentives.

(5) The nursing home's allowable historical case mix and other care-related operating cost per diem plus the one-time adjustment is less than the case mix and other care-related operating cost limit.

D. If the request meets the criteria in item C, the commissioner shall make a one-time adjustment to the nursing home's payment rate. The one-time adjustment must be determined according to subitems (1) to (9) and must not exceed the amount computed in subitem (3).

(1) The nursing home's productive nursing hours per standardized day for the reporting period ending September 30, 1985, must be subtracted from 0.95 and the result must be multiplied by the nursing home's standardized resident days for the period beginning October 1, 1984, and ending September 30, 1985.

(2) The nursing home's nursing cost per hour must be determined by dividing the nursing home's total allowable historical case mix operating costs by the nursing home's total productive nursing hours for the reporting period ending September 30, 1985.

(3) The amount determined in subitem (1) must be multiplied by the amount determined in subitem (2) to determine the total maximum nursing costs required to meet the minimum of 0.95 productive nursing hours per standardized resident day.

(4) If the amount requested in the nursing hours plan submitted under item B is less than the amount in subitem (3) the difference must be subtracted from the amount in subitem (3).

(5) The amount determined in subitem (4) must be divided by the nursing home's standardized resident days for the reporting period ending September 30, 1985, to compute the maximum standardized case mix per diem costs to be allowed under this subpart.

(6) Any efficiency incentive included in the nursing home's total operating costs payment on July 1, 1986, must be subtracted from the amounts in subitem (5).

(7) Any further reduction that the commissioner determines would be possible by reallocating the nursing home's staff and costs must be subtracted from the amount computed in subitem (6).

(8) The amount computed in subitem (7) must be multiplied by the weight for each resident class contained in part 9549.0058 [Temporary], subpart 2.

(9) The amount computed in subitem (8) must be added to the adjusted prospective case mix and other care-related payment rates for each corresponding resident class.

E. The one-time adjustment determined in item D, subitem (9) shall be implemented beginning October 1, 1986. No portion of the adjustment may be used to provide services that are not case mix operating costs according to part 9549.0051 [Temporary], subpart 5. The commissioner shall perform a fiscal review of the nursing home's cost report submitted for the reporting period ending September 30, 1987, and of any additional documentation required by the commissioner to determine if the nursing home provided 0.95 productive nursing hours per standardized resident day and to determine whether the nursing home has implemented the provisions of the plan specified in item B. The commissioner shall consult with the commissioner of health to verify compliance with any applicable care-related licensing or certification standards. Based on the results of the fiscal review and the information provided by the commissioner of health the commissioner shall implement either subitem (1), (2), or (3).

(1) If the nursing home has failed to implement the plan required in item B, the commissioner shall recover the total amount paid under this subpart in accordance with part 9549.0070, subpart 4 and shall disallow any increases in costs incurred by the nursing home under this subpart in establishing the payment rate for the rate year beginning July 1, 1988.

(2) If the nursing home has implemented or partially implemented the plan specified in item B and the actual case mix operating costs incurred during the reporting year ending September 30, 1987, are below the payment made under this subpart, the commissioner shall reduce the adjustment to the nursing home's payment rate and recover any overpayments in accordance with part 9549.0070, subpart 4. The reduced adjustment to the nursing home's total payment rate shall continue to be paid to the nursing home until June 30, 1988.

(3) If the actual costs of implementing the plan specified in item B, subitem (3) incurred during the reporting period ending September 30, 1987, exceed the payments made under this subpart there shall be no retroactive cost settle-up. The adjustment to the nursing home's total payment rate shall continue to be paid to the nursing home at the same level until June 30, 1988.

F. The nursing home must record the costs associated with this subpart separately from other nursing home costs until the commissioner's fiscal and compliance review under item E establishes that the nursing home has implemented the plan required in item B and has provided at least 0.95 productive nursing hours per standardized resident day during the reporting period ending September 30, 1987. To prevent duplicate payments, the case mix operating costs associated with this subpart are nonallowable until after the commissioner has reviewed and approved the costs under item E. If the commissioner approves the costs, the additional case mix operating costs incurred under this subpart are allowable costs and must be included in the computation of the allowable historical case mix operating cost per diem for the rate year beginning July 1, 1988.

Subp. 7. **Phase-in of rates.** Nursing home rate limits shall be phased-in in accordance with Minnesota Statutes, section 256B.431, subdivision 2h.

9549.0057 [Temporary] DETERMINATION OF THE INTERIM AND SETTLE-UP OPERATING COST PAYMENT RATES.

Subpart 1. **Conditions.** To receive an interim payment rate, a nursing home must comply with the requirements and is subject to the conditions of part 9549.0060, subpart 14, items A to C. The commissioner shall determine interim and settle-up operating cost payment rates for a newly constructed nursing home, or one with a capacity increase of 50 percent or more according to subparts ~~1 and~~ 2 and 3.

~~Subpart 1.~~ Subp. 2. **Interim operating cost payment rate.** For the rate year or portion of an interim period beginning on or after July 1, 1985, the interim total operating cost payment rate must be determined according to parts 9549.0050 to 9549.0059 [Temporary], in effect on March 1, 1986. For the rate year or portion of an interim period beginning on or after July 1, 1986, the interim total operating cost payment rate must be determined according to parts 9549.0050 to 9549.0059 [Temporary], except that:

A. ~~Each~~ The nursing home must project its anticipated resident days for each resident class. The anticipated resident days for each resident class must be multiplied by the weight for that resident class as listed in part 9549.0058 [Temporary] to determine the anticipated standardized resident days for the reporting period.

B. The commissioner shall use anticipated standardized resident days in determining the allowable historical case mix operating cost standardized per diem.

C. The commissioner shall use the anticipated resident days in determining both the allowable historical other care-related operating cost per diem and the allowable historical other operating cost per diem.

D. The annual adjustment factors determined in part 9549.0055 [Temporary], subpart 1, must not be applied to the nursing home's allowable historical per diems as provided in part 9549.0056 [Temporary], subparts 2 and 4.

E. The limits established in part 9549.0055 [Temporary], subpart 2, items C and E, as indexed in part 9549.0055 [Temporary], subpart 3, and in effect at the beginning of the interim period must be increased by ten percent.

F. The efficiency incentive in part 9549.0056 [Temporary], subpart 4, item A or B, must not apply.

G. The phase-in provisions in part 9549.0056 [Temporary], subpart 7, must not apply.

Subp. ~~2.~~ 3. **Settle-up operating cost payment rate.** The settle-up total operating cost payment rate must be determined according to items A to C.

A. The settle-up operating cost payment rate for a nursing home which commenced construction before July 1, 1985, is determined under 12 MCAR S 2.05014 [Temporary] for the interim period before July 1, 1985.

B. The settle-up operating cost payment rate for a nursing home which commenced construction after June 30, 1985, and before July 1, 1986, or whose interim reporting period included a period of time ~~after that date~~ during that period must be determined for the portion of that interim period occurring after June 30, 1985, and before July 1, 1986, as in parts 9549.0050 to 9549.0059 [Temporary] in effect on March 1, 1986.

C. The settle-up operating cost payment rate for a nursing home which commenced construction after June 30, 1986, or whose interim period included a period of time after that date must be determined for the portion of that interim period occurring after June 30, 1986, as in parts 9549.0050 to 9549.0059 [Temporary] except that:

(1) The standardized resident days occurring after June 30, ~~1985~~ 1986, must be annualized for the interim reporting period.

(2) The commissioner shall use the annualized standardized resident days in determining the allowable historical case mix operating cost standardized per diem.

(3) The commissioner shall use the actual resident days in determining both the allowable historical other care-related operating cost per diem and the allowable historical other operating cost per diem.

(4) The annual adjustment factors determined in part 9549.0055 [Temporary], subpart 1, must not be applied to the nursing home's allowable historical per diems as provided in part 9549.0056 [Temporary], subparts 2 and 4.

(5) The limits established in subpart ~~1~~ 2, item E, must be the limits for the settle-up reporting period occurring after July 1, ~~1985~~ 1986.

(6) The efficiency incentive in part 9549.0056 [Temporary], subpart 4, item A or B, must not apply.

(7) The phase-in provisions in part 9549.0056 [Temporary], subpart 7, must not apply.

C. For the nine-month period following the settle-up reporting period, the total operating cost payment rate must be determined according to item B except that the efficiency incentive in part 9549.0056 [Temporary], subpart 4, item A or B, ~~shall apply~~ applies.

9549.0058 [Temporary] RESIDENT CLASSES AND CLASS WEIGHTS.

Subpart 1. **Resident classes.** Each resident or applicant must be classified according to items A to E based on the ~~assessments performed under~~ information on the assessment form completed in accordance with part 9549.0059 [Temporary] ~~on the assessment form~~.

A. ~~Each~~ A nursing home resident or applicant must be assessed as dependent in an activity of daily living or ADL according to the following table:

ADL	Dependent if Score At or Above
Dressing	2
Grooming	2
Bathing	4
Eating	2
Bed mobility	2
Transferring	2
Walking	2
Toileting	1

B. ~~Each~~ A nursing home resident or applicant assessed as dependent in fewer than four of the ADL's in item A must be defined as Low ADL. ~~Each~~ A resident or applicant assessed as dependent in four through six of the ADL's in item A must be defined as Medium ADL. Each resident or applicant assessed as dependent in seven or eight of the ADL's in item A must be defined as High ADL.

C. ~~Each~~ A resident or applicant must be defined as special nursing according to subitems (1) and (2).

(1) the resident or applicant is assessed to require tube feeding; or

(2) the resident or applicant is assessed to require clinical monitoring ~~including evening and night shifts plus~~ every day on each shift and the resident is assessed to require one or more of the following special treatments ~~on the assessment form~~:

(a) oxygen and respiratory therapy;

(b) ~~ostomy~~ ostomy/catheter care;

(c) ~~care of dressings~~ wound or decubitus care;

(d) skin care;

(e) ~~IV~~ intravenous therapy;

(f) drainage tubes;

(g) blood transfusions; ~~or~~

(h) hyperalimentation;

(i) symptom control for the terminally ill; or

(j) isolation precautions.

D. ~~Each~~ A resident or applicant must be defined as having a neuromuscular condition if the resident or applicant is assessed to have one or more of the diagnoses coded to the ~~following~~ categories in subitems (1) to (8) according to the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM), as published by the Commission on Professional and Hospital Activities, 1968 Green Road, Ann Arbor, Michigan (1978). This publication is incorporated by reference. ~~This~~ The publication is available through the Minitex interlibrary loan system~~.~~ ~~This~~ and is not subject to frequent change.

(1) diseases of nervous system excluding sense organs (320-359 excluding 331.0);

(2) cerebrovascular disease (430-438 excluding 437);

(3) fracture of skull (800-804), excluding cases without intracranial injury;

(4) intercranial injury, excluding those with skull fracture (850-854);

(5) fracture of vertebral column with spinal cord injury (806);

(6) spinal cord injury without evidence of spinal bone injury (952); ~~or~~

(7) injury to nerve roots and spinal plexus (953); or

(8) neoplasms of the brain and spine (170.2, 170.6, 191, 192, 198.3, 198.4, 213.2, 213.6, 225, 237.5, 237.6, and 239.6).

E. ~~Each~~ A resident or applicant must be defined as having a behavioral condition if the resident's or applicant's assessment score is two or more for behavior on the assessment form.

F. The commissioner shall establish resident classes ~~based on the definitions in items A to E and~~ according to subitems (1) to (11). The resident classes must be established based on the definitions in items A to E.

(1) Class A. Low ADL, and not defined behavioral condition, and not defined special nursing.

(2) Class B. Low ADL, and defined behavioral condition, and not defined special nursing.

(3) Class C. Low ADL, and defined special nursing.

(4) Class D. Medium ADL, and not defined behavioral condition, and not defined special nursing.

(5) Class E. Medium ADL, and defined behavioral condition, and not defined special nursing.

(6) Class F. Medium ADL, and defined special nursing.

(7) Class G. High ADL, and scoring less than three on the eating ADL in item A, and not defined special nursing, and not defined behavioral condition.

(8) Class H. High ADL, and scoring less than three on eating ADL in item A, and defined behavioral condition, and not defined special nursing.

(9) Class I. High ADL, and scoring three or four on eating ADL in item A, and not defined special nursing, and not defined neuromuscular condition.

(10) Class J. High ADL, and scoring three or four on the eating ADL in item A and not defined special nursing and defined neuromuscular condition~~, and scoring three or four on the eating ADL in item A, and not defined special nursing~~ or scoring three or four on behavior.

(11) Class K. High ADL, and defined special nursing.

Subp. 2. **Class weights.** The commissioner shall assign weights to each resident class established in subpart 1, item F, according to items A to K.

A. Class A, 1.00;

B. Class B, 1.30;

C. Class C, 1.64;

D. Class D, 1.95;

E. Class E, 2.27;

F. Class F, 2.29;

G. Class G, 2.56;

H. Class H, 3.07;

I. Class I, 3.25;

J. Class J, 3.53;

K. Class K, 4.12.

9549.0059 [Temporary] RESIDENT ASSESSMENT.

Subpart 1. **Assessment of nursing home applicants and newly admitted residents.** Each nursing home applicant or newly admitted resident shall be assessed for the purpose of determining the applicant's or newly admitted resident's class according to items A to I.

A. ~~Each~~ The county preadmission screening team or hospital screening team under contract with the county must assess all nursing home applicants for whom preadmission screening is required by Minnesota Statutes, section 256B.091, and any applicant for whom a preadmission screening is not required but who voluntarily requests such a screening in accordance with Minnesota Statutes, section 256B.091, except as provided in subitems (1) and (2).

(1) The public health nurse of the county preadmission screening team or the ~~RN~~ registered nurse case manager shall assess a nursing home applicant, if the applicant was previously screened by the county preadmission screening team and the applicant is receiving services under the Alternative Care Grants program defined in part 9505.2340 or under the medical assistance program.

(2) A nursing home applicant whose admission to the nursing home is for the purpose of receiving respite care services need not be reassessed more than once every six months for the purpose of computing resident days under part 9549.0054 [Temporary], subpart 2, if the applicant has been classified by the Department of Health within the prior six-month period. In this case, the resident class established by the Department of Health within the prior six-month period may be the resident class of the applicant. ~~However, in no case shall~~ A resident must not receive more than one assessment per respite care stay.

B. ~~Each~~ The nursing home must assess each applicant or newly admitted resident for whom a preadmission screening is not required by Minnesota Statutes, section 256B.091, or is not requested voluntarily in accordance with Minnesota Statutes, section 256B.091. For purposes of this item, ~~a~~ the term "newly admitted resident" includes a resident who moves to a section of the nursing home ~~which~~ that is licensed differently than the section from which the resident came or a resident who has been transferred from another nursing home. ~~Each assessment must be performed by the registered nurse who signs the assessment form.~~

C. The assessment required by this subpart must be performed within ten working days before or ten working days after the date the applicant is admitted to the nursing home.

D. The nursing home must perform the assessment for any resident who is required to be assessed by the preadmission screening team under item A or who has received a prior preadmission screening, and for whom the assessment required under this subpart has not been performed by the preadmission screening team within ten working days before or ten working days after the date the applicant is admitted to the nursing home. The nursing home must perform the assessment and submit the forms to the Department of Health within 15 working days after admission.

E. ~~A~~ Each assessment that the nursing home is required to perform must be completed by a registered nurse. The registered nurse performing the assessment must sign the assessment form.

F. The assessment of each applicant or newly admitted resident must be based on the QA&R procedures of the Department of Health, including physical observation of the applicant or newly admitted resident and review of available medical records, and must be recorded on the assessment form ~~defined in part 9549.0051 [Temporary], subpart 2~~.

G. The preadmission screening team or hospital screening team under contract with the county must ~~provide~~ send the completed assessment form to the Department of Health, and provide a copy to the nursing home, within five working days following the assessment.

H. Each assessment completed in accordance with items A to G and a completed medical plan of care must be submitted to the Department of Health by the nursing home as a request for classification within ten working days after admission or after the assessment, whichever is later.

I. The resident class for ~~nursing home~~ applicants or newly admitted residents must be effective on the date of the person's admission to the nursing home.

Subp. 2. **Assessment of residents for July 1, 1985, rate year.** For the July 1, 1985, rate year only, each nursing home must assess each resident whose name does not appear on the Department of Health's May 15, 1985, classification list under the procedures prescribed by subpart 3, item B. The nursing home must submit a request for classification for each resident assessed by the nursing home to the Department of Health by June 1, 1985. The request for classification must include the completed assessment form and the resident's plan of care. For any resident admitted after June 1, 1985, the procedure outlined in subpart 1 must be followed. For any nursing home whose annual QA&R assessment occurred between May 1, 1985, and June 30, 1985, the classification established under part 4656.0030, subpart 3, shall apply.

Subp. 3. **Semiannual assessment by nursing homes.** Semiannual assessments of residents by the nursing home must be completed in accordance with items A to E.

A. A nursing home must assess each of its residents no earlier than 170 days and no later than 190 days after the date of the most recent ~~QAR~~ annual assessment by the Department of Health's QA&R team.

B. A registered nurse shall perform the assessment on each resident according to QA&R procedures established by the Department of Health including physical observation of the resident, review of the medical plan of care, and review of the resident's care plan, and shall record the assessment on the assessment form ~~defined in part 9549.0051 [Temporary], subpart 2~~. The registered nurse performing the assessment shall sign the assessment form.

C. Within five working days of the completion of the nursing home's semiannual resident assessments, the nursing home must forward to the Department of Health requests for classification for all residents assessed for the semiannual assessment. These requests must include the assessment forms, the resident plans of care, and the nursing home's daily census for the date on which the assessments were completed including an explanation of any discrepancy between the daily census and the number of assessments submitted. The nursing home must provide further information to the Department of Health if the Department of Health requests ~~it~~ the information in order to determine a resident's classification.

D. Any change in resident class due to a semi-annual assessment must be effective as of the first day of the month following the date of the completion of the semiannual assessments.

E. For the rate year beginning July 1, 1985, only, a nursing home must assess residents according to subitems (1) to (4).

(1) In July 1985, the nursing home must assess all residents whose most recent QA&R assessments were performed in October or November 1984.

(2) In August 1985, the nursing home must assess all residents whose most recent QA&R assessments were performed in December 1984, or January 1985.

(3) In September 1985, the nursing home must assess all residents whose most recent QA&R assessments were performed in February or March 1985.

(4) For residents assessed according to subitems (1) to (3), the nursing home must submit a request for classification for each resident assessed including the assessment form and a copy of the resident's plan of care to the Department of Health no later than the end of the calendar month when the assessments are required. The nursing home must provide further information to the Department of Health if requested by the Department of Health in order to determine a resident's classification. For each assessment performed in subitems (1) to (3), the resident classification determined by the Department of Health shall remain in effect until an assessment is performed under subpart 4 or 5.

Subp. 4. **Change in classification due to annual assessment by Department of Health.** Any change in resident class due to an

annual assessment by the Department of Health's QA&R team will be effective as of the first day of the month following the date of completion of the Department of Health's assessments.

Subp. 5. **Assessment upon return to the nursing home from a hospital.** Residents returning to a nursing home after hospitalization must be assessed according to items A to C.

A. A nursing home must assess any resident who has returned to the same nursing home after a hospital admission. The assessment ~~shall~~ must occur no more than five working days after the resident returns to the same nursing home.

B. In addition to the assessment required in item A, residents who have returned to the same nursing home after hospital admission must be reassessed by the nursing home no less than 30 days and no more than 35 days after return from the hospital unless the nursing home's annual or semiannual reassessment occurs during the specified time period.

C. A registered nurse shall perform the assessment on each resident according to QA&R procedures established by the Department of Health, including physical observation of the resident, review of the medical plan of care, and review of the resident's plan of care, and shall record the assessment on the assessment form ~~defined in part 9549.0051 [Temporary], subpart 2~~. The registered nurse who performs the assessment shall sign the assessment form. Within five working days of the completion of the assesssment, the nursing home must forward to the Department of Health a request for a classification for any resident assessed upon return to a nursing home after a hospital admission. This request must include the assessment form and the resident's medical plan of care. Upon request, the nursing home must furnish the Department of Health with ~~further~~ additional information ~~when required in order~~ needed to determine a resident's classification.

~~C.~~ D. Any change in resident class due to an assessment provided under ~~this subpart~~ item A must be effective ~~as of~~ on the date the resident returns to the nursing home from the hospital. Any change in resident class due to a reassessment provided under item B must be effective as of the first day of the month following the assessment.

Subp. 6. **Change in resident class due to audits of assessments of nursing home residents.** Any change in resident class due to a reclassification required by part 4656.0050 [Temporary] that results in a payment increase for the resident must be effective as of the first day of the month following the date of the Department of Health's classification. Any change in resident class due to a reclassification required by part 4656.0050 [Temporary] that results in a payment decrease for the resident must be retroactive to the effective date of the assessment audited.

Subp. 7. **False information.** If the nursing home knowingly supplies inaccurate or false information in an assessment or a request for reconsideration, the commissioner shall apply the penalties in part 9549.0041, subpart 15.

Subp. ~~7.~~ 8. **Change in resident class due to request for reconsideration of resident classification.** Any change in a resident class due to a request for reconsideration of the classification must be made in accordance with items A and B.

A. The resident classification established by the Department of Health must be the classification that applies to the resident while any request for reconsideration under part 4656.0060 is pending.

B. Any change in a resident class due to a reclassification under part 4656.0060 must be effective as of the effective date of the classification established by the original assessment for which a reconsideration was requested.

Subp. ~~8.~~ 9. **Reconsideration of resident classification.** Any request for reconsideration of a resident classification must be made ~~pursuant to the procedures set forth in~~ under part 4656.0060.

Subp. ~~9.~~ 10. **Resident access to assessments and documentation.** The nursing home must provide ~~each nursing home resident or the resident's authorized representative with a copy of the assessment form and any other documentation provided to the Department of Health in support of the assessment within one working day of receipt of a written or verbal request from the resident or the resident's authorized representative~~ access to information regarding rates, assessments, and other documentation provided to the Minnesota Department of Health in support of the resident's assessments to each nursing home resident or the resident's authorized representative according to items A to D.

A. The nursing home must post a notice of its current rates for each resident class in a conspicuous place. The rates must be posted no later than five days after receipt by the nursing home. The nursing home may include a notice that the nursing home has chosen to appeal the rates under part 9549.0080.

B. The nursing home must provide written notice to each private paying resident or the person responsible for payment of any increase in the total payment rate established by the commissioner 30 days before the increase takes effect, as required by Minnesota Statutes, section 256B.47, subdivision 2. The notice must specify the current classification of the resident. This item does not apply to adjustments in rates due to a necessary change in the resident's classification as a result of an assessment required in this part.

C. The nursing home must provide each nursing home resident or the person responsible for payment with each classification letter received from the Minnesota Department of Health within five days of the receipt of the classification letter. If the resident's classification has changed, the nursing home must include the current rate for the new classification with the classification letter.

D. The nursing home must provide each nursing home resident or the resident's authorized representative with a copy of the assessment form and any other documentation provided to the Department of Health in support of the assessment within one working day of receipt of a written or verbal request from the resident or the resident's authorized representative.

OFFICIAL NOTICES

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

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

Agricultural Society Minnesota State Fair

Meeting Notice

The board of managers of the Minnesota State Agricultural Society, governing body of the Minnesota State Fair, will conduct a business meeting at 10:30 a.m., Thursday April 3 at the Administration Building on the fairgrounds, St. Paul.

Department of Energy and Economic Development Community Development Division

Final Statement for 1986 Minnesota Small Cities Development Program

Notice is hereby given that the Department of Energy and Economic Development has prepared and submitted to the U.S. Department of Housing and Urban Development a Final Statement for the 1986 Small Cities Community Development Block Grant Program (CDBG). Comments pertaining to the Final Statement were solicited in the *State Register* on February 3, 1986. A public hearing to receive comments was conducted on February 21, 1986.

10 MCAR § 1.500 Small Cities Community Block Grant Program: General Provisions.

A. Purpose of these rules. Rules 10 MCAR §§ 1.500-1.565 give procedures for evaluating applications for grants and awarding them to eligible applicants by the Department of Energy and Economic Development under United States Code, title 42, sections 5301-5136 (1981), and regulations adopted in Code of Federal Regulations, title 24, part 570.

B. Objective of the program. The primary objective of this program is to develop viable urban communities by providing decent housing and a suitable living environment and by expanding economic opportunities, principally for persons of low and moderate income. Activities funded under this program shall not benefit moderate income persons to the exclusion of low-income persons. All funded activities must be designed to:

1. Benefit low and moderate income persons;

2. Prevent or eliminate slums and blight; or

3. Alleviate urgent community development needs caused by existing conditions which pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet those needs.

C. Definitions. As used in 10 MCAR §§ 1.500-1.565, the following terms have the meanings given them.

1. "Application year" means the federal fiscal year beginning October 1st and ending September 31st.

2. "Community development need" means a demonstrated deficiency in housing stock, public facilities, economic opportunities, or other services which are necessary for developing or maintaining viable communities.

3. "Competitive grant" means a grant application that is evaluated and ranked in comparison to other applications in the same grant category and includes housing, public facilities and comprehensive applications.

4. "Comprehensive program" means a combination of at least two interrelated projects which are designed to address community development needs which by their nature require a coordination of housing, public facilities, or economic development activities. A comprehensive program must be designed to benefit a defined geographic area, otherwise known as a program area.

5. "Economic development project" means one or more activities designed to create new employment, maintain existing employment, increase the local tax base, or otherwise increase economic activity in a community.

6. "Eligible activities" means those activities so designated in United States Code, title 42, section 5305 (1981) and as described in Code of Federal Regulations, title 24, sections 570.200-570.207 (1981).

7. "General purpose local government" means townships as described in Minnesota Statutes, chapter 365; cities as described in Minnesota Statutes, chapters 410 and 412; and counties.

8. "Grant" means an agreement between the state and an eligible recipient through which the state provides funds to carry out specified programs, services, or activities.

9. "Grant close-out" means the process by which the office determines that all applicable administrative actions and all required work have been completed by the grant recipient and the department.

10. "Grant year" means any period of time during which the United States Department of Housing and Urban Development makes funds from any federal fiscal year available to the state for distribution to local governments under United States Code, title 42, sections 5301-5316 (1981), and includes the period of time during which the office solicits applications and makes grant awards.

11. "Infrastructure" means the basic physical systems, structures, and facilities, such as roads, bridges, water, and sewer, which are necessary to support a community.

12. "Low and moderate income" means income which does not exceed 80 percent of the median income for the area, with adjustments for smaller and larger families.

13. "Metropolitan city" means a city over 50,000 population or a central city of a standard metropolitan statistical area that receives entitlement grants under United States Code, title 42, section 5306 (1981) directly from the United States Department of Housing and Urban Development.

14. "Nonentitlement area" means an area that is not a metropolitan city or part of an urban county.

15. "Office" means the office or division in the Department of Energy and Economic Development to which the program is assigned.

16. "Per capita assessed valuation" means the adjusted assessed valuation divided by population.

17. "Population" means the number of persons who are residents in a county, city, or township as established by the last federal census, by a census taken pursuant to Minn. Stat. § 275.53, subd. 2, by a population estimate made by the Metropolitan Council, or by the population estimate made by the Metropolitan Council, or by the population estimate of the state demographer made under Minn. Stat. § 4.12, subd. 7, clause (10), whichever is most recent as to the stated date of count or estimate, up to and including the most recent July 1.

18. "Poverty persons" means individuals or families whose incomes are below the poverty level as determined by the most current data available from the United States Department of Commerce, taking into account variations in cost of living for the area affected.

19. "Program" means the community development block grant program for nonentitlement areas.

20. "Program area" means a defined geographic area within which an applicant has determined that, based on community plans or other studies, there exists a need for community development activities. A program area may be a neighborhood in a community or an entire community.

21. "Program income" means gross income earned by the grant recipient from grant-supported activities, excluding interest earned on advances.

22. "Project" means one or more activities designed to meet a specific community development need.

23. "Regional or community development plans" means written documents, resolutions, or statements which describe goals, policies, or strategies for the physical, social, or economic development of a neighborhood, community, or substate area. Regional or community development plans include comprehensive plans and elements of comprehensive plans, including land use plans, which have been approved by the governing boards of townships, counties, or cities, and also include regional development plans adopted under Minn. Stat. § 462.281, where applicable.

24. "Slums and blight" means areas or neighborhoods which are characterized by conditions used to describe deteriorated areas in Minn. Stat. § 462.421 or which are characterized by the conditions used to describe redevelopment districts in Minn. Stat. § 273.73, subd. 10.

25. "Single purpose project" means one or more activities designed to meet a specific housing or public facilities community development need.

26. "Urban county" means a county which is located in a metropolitan area and is entitled to receive grants under United States Code, title 42, section 5306 (1981), directly from the United States Department of Housing and Urban Development.

10 MCAR § 1.505 Types of Competitive Grants Available.

A. Single purpose grants. The office shall approve single purpose grants for funding from a single grant year for single purpose projects. The office shall place single purpose grant applications in one of the following categories for purposes of evaluation:

1. housing projects which include one or more activities designed to increase the supply or quality of dwellings suited to the occupancy of individuals or families; or

2. public facilities projects which include one or more activities designed to acquire, construct, reconstruct, or install buildings or infrastructure which serve a neighborhood area or community.

B. Comprehensive grants. The office shall approve comprehensive grants for two or more projects which constitute a comprehensive program. Comprehensive grants shall be approved for funding for one, two, or three grant years. In the case of grants approved for funding from more than one grant year, the office shall make funds available to the grant recipient in the second or third year only after the recipient submits an approved application. Approval shall be subject to a finding by the office that the grant recipient has made normal progress and is in compliance with 10 MCAR §§ 1.500-1.565.

C. Previous grant commitments. The provisions of B. apply to three year comprehensive grant commitments made by the United States Department of Housing and Urban Development in 1981 under United States Code, title 42, section 5306 (1980).

10 MCAR § 1.506 Economic Development Grants; Noncompetitive.

The office shall approve grants for economic development projects for funding throughout a single application year, or until the funds reserved have been exhausted.

10 MCAR § 1.510 Application Process and Requirements.

A. Grant application manual. The office shall prepare a manual for distribution to eligible applicants no later than 120 days before the application closing date. The manual must instruct applicants in the preparation of applications and describe the method by which the office will evaluate and rank applications. If 10 MCAR §§ 1.500-1.565 are not adopted before September 15, 1982, the 120-day period is waived for the 1983 grant year but the office shall make the manual available no later than 60 days before the application closing date.

B. Eligibility requirements. Any unit of general purpose local government, including cities, counties, and townships located in a nonentitlement area or electing exclusion from an urban county under United States Code, title 42, section 5302 (1981), may apply for a grant. An eligible applicant may apply on behalf of other eligible applicants. Applications submitted on behalf of other applicants must be approved by the governing body of all local governments party to the application. An eligible applicant may apply for only one competitive grant per grant year and no eligible applicant shall be included in more than one competitive application. An eligible applicant may apply for one economic development grant in addition to a competitive grant each application year.

C. Disqualification of applicants. Applications from otherwise eligible applicants shall be disqualified where for previously awarded grants under these rules or awarded by the Department of Housing and Urban Development under United States Code, title 42, section 5306 (1981), it is determined by the office that any of the following conditions exist:

1. There are outstanding audit findings on previous community development grants and the grantee has not objected on a reasonable basis to the findings or demonstrated a willingness to resolve the findings;

2. Previously approved projects have passed scheduled dates for grant closeout and the grantee's ability to complete the project in an expeditious manner is in question; or

3. The applicant has not made scheduled progress on previously approved projects and the grantee's ability to complete the project in an expeditious manner is in question.

D. Contents of application. The contents of the application must be consistent with the informational requirements of 10 MCAR §§ 1.500-1.565 and must be on a form prescribed by the office. The application must be accompanied by:

1. An assurance, signed by the chief elected offical, that the applicant will comply with all applicable state and federal requirements;

2. An assurance signed by the chief elected official certifying that at least one public hearing was held at least ten days but not more than 60 days before submitting the application; and

3. A copy of a resolution passed by the governing body approving the application and authorizing execution of the grant agreement if funds are made available.

The office may request additional information from the applicant if it is necessary to clarify and evaluate the application.

E. Time limit for submitting applications. Competitive applications must be received in the office or postmarked by the closing date. The office shall give notice of the period during which applications will be accepted. The notice must be published in the *State Register* at least 120 days before the closing date. Economic development project applications may be submitted at any time during the grant year.

F. Regional review. The applicant must submit a complete copy of the application to the Regional Development Commission, where such a commission exists, or the Metropolitan Council, where it has jurisdiction, for review and comment in accordance with Minn. Stat. § 462.391, subd. 3, or Minn. Stat. § 473.171, respectively.

10 MCAR § 1.515 Evaluation of applications; in general.

All applications shall be evaluated by the office. A fixed amount of points shall be established as the maximum score attainable by any application. Points shall be made available within each class of rating criteria in accordance with the percentages and fractions indicated in 10 MCAR §§ 1.520-1.545. Economic development project applications must meet threshold criteria in order to be evaluated.

10 MCAR § 1.520 Comparison of all Competitive Applications; General Competition.

A. Points available. Thirty percent of the total available points shall be awarded by the office based on a general competition involving a comparison of all applications.

B. Evaluation of community need. Two-thirds of the points in the general competition shall be awarded based on evaluation of community need, which shall include:

1. The number of poverty persons in the area under the applicant's jurisdiction;
2. The percentage of persons resident in the area under the applicant's jurisdiction who are poverty persons; and
3. The per capita assessed valuation of the area under the jurisdiction of the applicant, such that points are awarded in inverse relationship to applicants' per capita assessed valuation.

C. Evaluation of other factors. One-third of the points in the general competition shall be awarded based on evaluation of:

1. The extent to which the proposed activities are compatible with regional or community development plans; and
2. Adequacy of the applicant's management and financial plan.

10 MCAR § 1.525 Comparison of Competitive Applications Within Categories.

After completing the general competition described in 10 MCAR § 1.520, the office shall place each application in the appropriate grant category in accordance with 10 MCAR § 1.505. The categories are housing projects, public facilities projects, economic development projects, and comprehensive programs. Seventy percent of the total points available for each application shall be awarded based on a comparison of the applications within each of the categories as further described in 10 MCAR §§ 1.530-1.545.

10 MCAR § 1.546 Evaluation of Economic Development Projects.

A. In general. Evaluation of economic development applications consists of eligibility threshold screening and project review. Applications must meet the eligibility thresholds in order to be referred for project review. Applications that fail to meet eligibility thresholds may be revised and resubmitted.

B. Federal and state eligibility thresholds. Applicants shall provide a description of the ways that activities address one of the federal objectives described in 10 MCAR § 1.500 B. Each activity proposed for funding must be eligible under current federal regulations.

Applicants shall describe how they will meet two of the three following thresholds based on state economic development objectives:

1. Creation or retention of permanent private sector jobs;
2. Stimulation or leverage of private investment; or
3. Increase in local tax base.

C. Project review. Applications that meet eligibility thresholds will be awarded points by the office based on evaluation of the two rating categories: project design and financial feasibility. Applications must attain at least two-thirds of the total available points for economic development to be recommended for funding. Applications must score at least half of the points available in each of the two rating categories.

Two-thirds of the available points will be awarded based on an evaluation of project quality including an assessment of need, impact, and the capacity of the applicant to complete the project in a timely manner. Consideration of need for an economic development project must be based on deficiencies in employment opportunities and circumstances contributing to economic

vulnerability and distress. Consideration of impact must be based on the extent to which the project reduces or eliminates the need. Consideration of capacity must be based on demonstration of administrative capability, realistic implementation schedules, and the ability to conform to state and federal requirements.

One-third of the available points will be awarded based on an evaluation of the effective use of program funds to induce economic development. Consideration of financial feasibility must include investment analysis, commitment of other funds, and other factors relating to the type of program assistance requested.

D. Funding recommendations. Applications that attain at least two-thirds of the available points will be recommended to the commissioner for funding. Applications not recommended for funding may be revised and resubmitted.

10 MCAR § 1.550 Determination of Grant Awards.

A. Funds available for grants. The amount of funds available for grants shall be equal to the total allocation of federal funds made available to the State under United States Code, title 42, section 5306 (1981), after subtracting an amount for costs incurred by the office for administration of the program, as allowed by that law. The office is not liable for any grants under 10 MCAR §§ 1.500-1.565 until funds are received from the United States Department of Housing and Urban Development.

B. Division of funds.

1. Of the funds available for grants in each grant year, 30 percent shall be reserved by the office to fund single purpose grants, 15 percent shall be reserved for economic development grants, and 55 percent shall be reserved by the office to fund comprehensive grants, including the second and third years of comprehensive grants approved for funding under 10 MCAR § 1.505 and 10 MCAR § 1.545. However, the office may modify the proportions of funds available for single purpose and comprehensive grants if, after review of all applications, it determines that there is a shortage of fundable applications in either category.

2. At least 30 percent of the funds made available for single purpose grants shall be awarded for applications in each of the two categories: housing and public facilities. However, no application with a rating below the median score for its category shall be funded by the office solely for the purpose of meeting this requirement.

3. If there are unawarded economic development funds available at the end of the application year, two-thirds of the remaining funds will be available for competitive single purpose projects and one-third will be available for economic development projects during the next application year.

C. Funding list. Within each grant category, a list of applications shall be prepared in rank order of the scores received after evaluation pursuant to 10 MCAR §§ 1.515-1.545. Based on these lists, and subject to the availability of funds within each category, applications with the highest rank shall be recommended to the commissioner for funding. In the case of a tie between any two applications within any category, the application with the higher score in the general competition shall receive the higher ranking on the list.

D. Approval by commissioner. The list of applications recommended for funding, including recommended grant awards, shall be submitted by the office to the commissioner for approval. A decision by the commissioner not to approve any application recommended for funding must be made in writing to the applicant, giving reasons for disapproval.

E. Reduction in amount requested. The office may recommend an application for funding in an amount less than requested if, in the opinion of the office, the amount requested is more than is necessary to meet the applicant's need. If the amount of the grant is reduced, the reasons for the reduction shall be given to the applicant.

F. Grant ceilings. No competitive single purpose grant may be approved for an amount over $600,000. No comprehensive grant may be approved for an amount over $700,000 from any single grant year or for more than a total of $1,400,000 over three grant years. No economic development grant may be approved for over $500,000.

Recaptured and Reallocated Funds

If grant funds are returned to the Minnesota Department of Energy and Economic Development, Community Development Division, following audit resolution or project closeout, the funds will be retained by the Department and made available for FY86 grant applications. Recaptured Economic Development Set-Aside funds will be reserved for FY86 Economic Development projects. Recaptured Small Cities Competitive funds will be reserved for FY86 Small Cities projects.

Distribution of Program Income

Any program income which is derived from the use of federal CDBG funds, is retained by the recipient communities. Thus, the state will not have the use of program income for distribution in FY86.

Description of the Use of Funds in the 1985 Small Cities Community Development Block Grant Program

During the 1985 grant program $21,269,880 in federal funds as available for grants to eligible applicants for the Small Cities Development Program. Under the administrative rules for the SCDP, 10 MCAR 1.500-1.565, economic development applications are accepted on a year-round basis and competitive single-purpose and comprehensive applications had an application deadline of

February 1, 1985. The rules for the program established the availability of 15 percent of the funds for economic development, 30 percent of the funds for single-purpose projects, and 55 percent of the funds for comprehensive programs.

Upon completion of the competitive review and ranking process, 41 awards were made of the awards made on June 3, 1985, 12 were for new comprehensive programs ($6,027,726) and 11 for continuation awards ($5,971,372). In the single-purpose category, 9 public facilities projects ($3,083,576) and 9 housing projects ($3,453,100) were funded. Fourteen economic development projects, totaling $2,526,927, have been funded, to date, out of fiscal year 1985 federal funds, with $663,553 remaining.

An amount totaling $18,535,774 was awarded to eligible applications in the competitive process; of that amount, $456,376 were awarded contingent upon recapture funds awarded in fiscal years 1983 and 1984. Of all funds available in Fiscal Year 1985, $11,999,098 (55%) were awarded for comprehensive programs and $6,536,676 (30%) were awarded for single-purpose projects. The Department of Energy and Economic Development, Community Development Division, concludes that funds were awarded in accordance with the State's administrative rules for the program.

Assessment of the Relationship of 1985 Funds to State and Federal Objectives

As in 1983 and 1984, for the 1985 grant program the Minnesota Department of Energy and Economic Development, Community Development Division, adopted the national objectives for the Community Development Block Grant program. Under these objectives, all funded activities must be designed to:

1. Benefit low and moderate income persons;

2. Prevent or eliminate slums or blight; or

3. Alleviate urgent community development needs caused by existing conditions, which pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet those needs.

The U. S. Housing and Urban Rural Recovery Act of 1983 amended the federal legislation so that in order to meet the test of principally benefit persons of low and moderate income not less than 51 percent of the funds must be spent on activities designed to benefit low and moderate income persons. With a total block grant of $21,806,000 in 1985, the State of Minnesota is required to spend not less than $11,121,060 on activities designed to meet the first national objective. The state adopted a goal of awarding 70 percent of the allocation for activities benefitting low and moderate income persons.

As with the earlier assessments, this assessment distinguishes between planning and administration activities and project-specific activities. The funds budgeted for planning and administration include both the funds retained by the Minnesota Department of Energy and Economic Development for administration of the program and funds awarded to units of general local government for planning and administration of their grants. No more than 20 percent of the block grant can be used for planning and administration.

For the 1985 grant program, the Minnesota Department of Energy and Economic Development, Community Development Division, and the 1985 grant recipients budgeted $1,393,632 for planning and administration. These funds amount to 6 percent of the block grant, well below the 20.0 percent limit.

Under the grants awarded in the 1985 program, $20,412,368 were budgeted for project-specific activities. Of these funds, $18,527,715 (89 percent) were awarded for activities designed to benefit persons of low and moderate income, $2,008,202 (10 percent) were awarded for activities designed to prevent or eliminate slums or blight, and $294,000 (1 percent) were awarded for activities designed to alleviate urgent community development needs. With respect to the total block grant, 85 percent of the funds were awarded for activities designed to benefit persons of low and moderate income. Thus, the 1985 grant awards exceeded the national goal of at least 51 percent benefit and the state objective of 70 percent benefit to persons of low and moderate income. State objectives for the Small Cities Development Program apply to the economic development set aside only. Each grant awarded must meet two of the three state objectives listed below:

1. Creation or retention of permanent private sector jobs, with a minimum threshold of one job created or retained for each $20,000 of grant funds;

2. Leverage of private investment, with a minimum threshold of one dollar private funds for each grant dollar requested; and

3. Increase the local tax base, with a minimum threshold of an estimated 50 percent increase in the value of the parcel involved.

Of the federal economic development set aside funds awarded to date, all met the job creation or retention objective and also the private leverage threshold. Fourteen grants will leverage a total private investment of $6,827,206 (1:2.7 ratio) and create or retain 920 jobs at an average grant cost of $2,747 per job. Four grants met the tax base threshold. To meet the federal objective benefit to low and moderate income persons, at least 51 percent of the jobs proposed for each project had to be available to low and moderate income persons.

Based upon analysis of the 1985 Small Cities Development Program, the Minnesota Department of Energy and Economic Development, Community Development Division, concludes that the 1985 grant program fully meets state and national objectives for award of funds.

Metropolitan Council of the Twin Cities

Preliminary Review Schedule of an Amendment to the Metropolitan Development Guide Transportation Policy Plan: Addition of Shepard Road and ECBD Bypass to the Metropolitan Highway System

The Metropolitan Council proposes to amend its Transportation Policy Plan by adding Shepard Rd. and the East Central Business District Bypass to the Metropolitan Highway System as major arterials. In accordance with Council procedures for amending regional system plans, the following tentative schedule is proposed:

June 3, 1986	Metropolitan Systems Committee approves the draft amendment for public hearing and recommends public hearing date
June 12, 1986	Metropolitan Council adopts public hearing draft amendment and sets public hearing date
July 22, 1986	Public hearing
Aug. 1, 1986	Hearing record closes
Aug. 12, 1986	Systems Committee considers amendment for adoption
Aug. 28, 1986	Council adopts the policy plan amendment

A notice of public hearing will be published. If you have questions regarding the schedule or the draft amendment, call Ann Braden of the Council's Transportation Division at 291-6525.

Public Utilities Commission

Outside Opinion Sought Regarding Amendments to the Minnesota Public Utilities Commission's Rules of General Practice and Procedure

Notice is hereby given that the Minnesota Public Utilities Commission (the Commission) is seeking information or opinions from sources outside the agency in preparing to propose the amendment of the rules governing the Commission's general practice and procedure. The amendment of the rules is authorized by Minnesota Statutes § 14.06 (1984) which requires the agency to adopt rules covering practices and procedures that apply to or affect persons outside the agency and Minnesota Statutes §§ 216A.05, subd. 1, 216B.08, and 237.10 (1984) which authorize it to adopt rules for the regulation of utilities and telephone companies.

The Commission desires to amend its rules of practice and procedure to incorporate existing practices and procedures used for the regulation of utilities and telephone companies under the Commission's jurisdiction into the rules and to state clearly and completely the procedural stages of a case as it progresses before the Commission. In order to begin the process of amending the rules, the Commission has prepared an outline of new rules. It invites interested persons to submit comments on whether this outline adequately covers the scope of procedural rules as well as on possible descriptive language for specific rules.

The Commission is considering the following topics for inclusion in its rules of practice and procedure:

- Definitions
- Scope and Construction
- Filing and Notice Requirements
  - Service
  - Filing with Commission
  - Public notice of filings
  - Public access to filings
  - Time
- Commencement of Proceedings
  - Petitions (general rate, miscellaneous rate, advisory, etc.)
  - Informal complaints
  - Formal complaints
  - Investigation on Commission's own motion
- Pleadings
  - Protests or objections to petitions
  - Answers to complaints
  - Amendments
  - Motions
  - Briefs, comments, and replies

Form of Pleadings, Briefs, Complaints, and Petitions
Accept or Reject Filing
Informal investigation procedures
  Settlements and Stipulations
  Non-contested cases
  Consumer complaint cases
Contested Case Hearings
Commission Deliberations
Written Decisions
Petitions for Rehearing or Reconsideration
Compliance Filings
Variances

Where appropriate, the existing rules of practice and procedure may be incorporated into this outline. No other draft of rule language has yet been prepared.

The Commission may negotiate the language for specific rules under this outline following the deadline for submitting comments in response to this notice. If any person wishes to be notified of negotiations in order to participate, please notify the Executive Secretary.

Written statements should be referenced to Docket No. U-999/R-86-147 and addressed to:

Mary Ellen Hennen, Executive Secretary
Minnesota Public Utilities Commission
780 American Center Building
160 East Kellogg Boulevard
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone by Rosellen Condon at (612) 296-2357 and in person at the above address.

All statements of information and opinion shall be accepted until May 15, 1986. Any written material received by the Commission shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law Judge in the event that the rules are adopted.

March 31, 1986

Mary Ellen Hennen
Executive Secretary

Department of Transportation

Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under Minnesota Statutes § 169.825

Whereas, the Commissioner of Transportation has made his Order No. 68884 as amended by Orders Nos. 69226, 69269, 69270, 69344, 69353, 69595, 69770, 69796, 70006, 70031, 70152, 70455, 70520, 70580, 70652, 70698, 70747, 70749, and 70765 designating and permitting certain street and highway routes, or segments of those routes, to carry the gross weights allowed under Minnesota Statutes § 169.825, and

Whereas, the Commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under Minnesota Statutes § 169.825.

IT IS HEREBY ORDERED that Commissioner of Transportation Order No. 68884 is amended this date by adding the following designated streets and highway routes, or segment of routes, as follows:

COUNTY ROADS

Nobles—C.S.A.H. 33 from South Jct. T.H. 60 to North Jct. T.H. 60 (12 month).
[Note: The effective date of 5/15 established by Order 69344 has been removed.]

March 17, 1986

Richard P. Braun
Commissioner

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. Certain quasi-state agencies are exempted from some of the provisions of this statute.

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 Currently Open for Bidding

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
29-003-09869	Laminated Rulers—Rebid	Natural Resources	Brainerd	Contact buyer
79-000-52219	Transformer Bases	Transportation	St. Paul	Contact buyer
02-310-14547	Misc. Room Furn. Decorator Lamps	MN Correctional Facility	Shakopee	Contact buyer
79-000-52217	Ballasts	Transportation	St. Paul	Contact buyer
02-310-14632	Industrial Open Space Panel Modular Office System	MN Correctional Facility	Shakopee	Contact buyer
Price-Contract	Aluminum Sheeting—Rebid	Transportation	Various	$28,000-32,000
79-050-17892	Traffic Signal Pedestal Bases	Transportation	St. Paul	Contact buyer
B-07-700-36601	Lobby Traffic Management System—Rebid	Public Safety	St. Paul	Contact buyer
27-150-48459-01	Teral Minn Draft/PC Software	Mesabi Community College	Virginia	Contact buyer
78-770-02110-Price-Contract	Rubbish Disposal	MN Correctional Facility	Sauk Centre	Contact buyer
02-430-47194	Telephone System	North Hennepin Community College	Minneapolis	Contact buyer
Price-Contract-Sch. 168-Fence	Fence Material for Freeway (Maintenance and Repair only)	Transportation	Various	$25,000-40,000
Sch. 160-B	Steel Chain and Accessories	Transportation	Various	Contact buyer
Various-Various	Toothpaste, Toothbrushes, Dental Care Kits & Admission Kits	Various	Various	Contact buyer
79-000-52212	H.P. Programmable Calculators	Transportation	St. Paul	Contact buyer
79-000-17891	Traffic Signal Pedestal Shafts	Transportation—Electrical	St. Paul	Contact buyer
78-620-25859	Security Equip.—Rebid	MN Correctional Facility	Stillwater	Contact buyer
43-000-06422	Stage Screens	Iron Range Resources & Rehabilitation Board	Chisholm	Contact buyer
67-330-11339	Repainting Office Furn.—Rebid	Revenue	St. Paul	Contact buyer
02-310-14632	Open Space Panel Modular Office System	MN Correctional Facility	Shakopee	Contact buyer
02-511-47363-6769	Dept. Purchase Order	Administration—Central Stores	St. Paul	Contact buyer
29-000-43583-6847	1986 Summer State Park Maps	Natural Resources	St. Paul	Contact buyer
29-007-40944	Sugar Pine Lumber	Natural Resources—Northern Service Center	St. Paul	Contact buyer

Contact 296-6152 for referral to specific buyers.

Department of Energy and Economic Development Energy Division

Request for Proposals for Multi-Family Audit Upgrade and Curriculum Revision

The Energy Division of DEED is seeking qualified individuals and/or organizations with experience in energy auditing of multi-family housing and workshop curriculum development and presentation to complete the following tasks:

1) Upgrade the existing Solar Bank Multifamily Energy audit forms, factsheets and technical manual.

2) To revise the curriculum used in training multifamily auditors.

3) To arrange for and provide multifamily auditor training.

The person(s) or organization(s) chosen must be able to organize and deliver the revised curriculum for the purpose of training energy auditors in multi-family auditing techniques. The audit forms, curriculum and training shall include identification and analysis of energy efficient building modifications, efficiency testing of mechanical equipment, and effective methods of presenting information to owners and operators of multifamily housing.

The contractor will be required to coordinate and arrange for qualified instructors to present the curriculum, provide facilities for the training, handle registrations, and other workshop implementation details.

Funding for this project will be determined following an examination of the cost recovery potential stated in the applications. If direct funding from DEED is provided, it will not exceed $5,000.00. The Energy Division reserves the option to not select any proposal or to limit the funding to support the project. The Energy Division also reserves the option to alter the specific deliverables through negotiations with the contractor or to divide the project between contractors. Joint proposals from individuals or organizations experienced in this field are encouraged.

Proposals are to be postmarked no later than 4:30 p.m., May 1, 1986. Selection of a contractor will be made by May 9th. Revision of the audit forms and curriculum is to be completed by September 1st and the first workshop presented during the fall of 1986.

Proposals and inquiries should be directed to:
Dan Flaherty
Audit Program Coordinator
D.E.E.D.—Energy Division
900 American Center Building
150 E. Kellogg Blvd.
St. Paul, Minnesota 55101
Telephone #: (612) 297-3293

Department of Human Services Income Maintenance Bureau

Request for Proposals for Refugee Social Services

Notice is hereby given that the Income Maintenance Bureau, Minnesota Department of Human Services, is seeking proposals concerning the delivery of social services to refugee persons.

Social services consist of employment services, language instruction, and other support services.

Funding is from the federal Refugee Assistance Program, and includes the Social Services, the Mutual Assistance Association Incentive and the Comprehensive Discretionary Social Services (applied for and pending).

The estimated total amount of federal funds is currently unknown. The minimum anticipated amount is $800,000. We must receive all proposals by 4:20 p.m., CDT, Thursday May 1, 1986. We reserve the right to not act on this RFP.

We anticipate issuing renewable contracts subject to the availability of federal funds.

Please direct requests for the complete information package, questions, and proposals to:
Refugee Program Office
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55101
612/296-1383

Pollution Control Agency
Division of Water Quality

Request for Proposal for Contractual Services to Perform Recovery, Removal or Remedial Actions Regarding Spills and Small Scale Hazardous Substances Removal or Remedial Actions

The Minnesota Pollution Control Agency (MPCA) is seeking proposals from contractors qualified in various specialized areas of pollutant response and cleanup of hazardous substances, pollutants or contaminants that may cause pollution of the waters of the state or present potential health or safety concerns for the public. The MPCA desires to contract with these qualified parties for services during fiscal year 1987. No actual work or payment is guaranteed pursuant to the contract, but services such as the removal, storage, sampling and analysis, transportation and disposal of hazardous substances, pollutants or contaminants are anticipated to be needed as a result of pollutant releases or threatened releases that may cause pollution of the waters of the state or present potential health or safety concerns for the public.

The duration of the contract with qualified parties is twelve (12) months with an execution date anticipated for July 1, 1986. Funding for this contract will be provided by Federal funds obtained by the State through Title I, Section 106, Federal Water Pollution Control Act, as amended and the Minnesota Environmental Response and Liability Act, Minn. Stat. § 115B (1984 Supp.). The contract, in an amount up to $100,000, may include more than one responsive qualified party and the Agency reserves the right to limit the number of parties to the contract. If necessary, this contract may be amended to provide additional funds.

Request for the RFP document, which describes the requirements necessary for the contract, and inquiries should be directed to:

Mr. Pat Mader
Enforcement Section
Division of Water Quality
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

The deadline for receipt of completed proposals is 4:00 p.m. on Monday, May 5, 1986. Proposals should be submitted to the attention of the above MPCA contact person. Late submittals will not be accepted.

March 21, 1986

Thomas J. Kalitowski
Executive Director

Board of Teaching

Request for Proposals for Researching and Recommending Models for Evaluating the Teaching Skills of Beginning Teachers

The Minnesota Board of Teaching is seeking individuals or organizations qualified to develop a report outlining various models designed to evaluate the teaching skills of beginning teachers.

The specific services which will be provided under contract are outlined in the objective statement of the Request for Proposal (RFP).

The formal RFP may be requested and inquiries shall be directed to:

Mr. Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
(612) 296-2415

The cost of services to be provided during the contract period from the date of the contract award through June 30, 1987, will not exceed $30,000. This is the maximum price to be paid and the Board of Teaching does not commit itself to spend this entire amount.

STATE CONTRACTS

The deadlines for submission are as follows:

Notice of Intent to Bid—4:00 p.m. on Monday, April 21, 1986
Completed Proposals—4:00 p.m. on Friday, May 9, 1986.

March 24, 1986

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching

STATE GRANTS

In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grant funds available through any agency or branch of state government. Although some grant programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself.

Agencies are encouraged to publish grant notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

Department of Energy and Economic Development

Pilot Community Development Corporation Program 1986 Capital Venture Grants

Applications are now being accepted from Community Development Corporations for Capital Venture Grants for the calendar year 1986 (March 31, 1986-December 31, 1986). Eligible applicants must be certified as a Minnesota Community Development Corporation.

This appropriation is available for expenditure only to the extent that it is matched by a community development corporation with $2 of private money for each $3 of state money. (This amounts to a private match equal to 40% of the total project cost.)

The Minnesota Department of Energy and Economic Development has authority over the Project Grants as authorized in Minnesota Statutes 116J.65 subdivision 5, and has made application packages available.

The applicant may apply for Capital Venture Grants.

Capital Venture Grants shall be available for two categories of projects:

A. Business ventures: projects in this category involve the community development corporation's establishment of, assistance to existing, or purchase of a partial or full ownership interest in a business venture to be carried on for profit within the designated community.

B. Infrastructure development: projects in the category involve the community development corporation's development of resources or facilities within its designated community that are necessary preconditions to the development of business ventures. Such projects shall be approved only where it can be shown that they will, in fact, lead to immediate business development and employment opportunities.

Anyone interested in obtaining the grant application may do so by contacting Patrick Connoy at the Minnesota Department of Energy and Economic Development. 900 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota 55101 Phone: (612) 297-1304

SUPREME COURT DECISIONS

Decisions Filed Friday, March 21, 1986

Compiled by Wayne O. Tschimperle, Clerk

C6-83-1121 State of Minnesota v. Stuart Willis Knowlton, Appellant. Ramsey County.

Evidence was sufficient to sustain defendant's conviction for murder in the first degree.

Defendant was not denied his fundamental right of due process of law under the fifth amendment when acquaintances, having

conferred with police, continued to question defendant concerning the crime after defendant's lawyer instructed police not to question defendant in the absence of counsel.

Defendant was not denied a fair trial where he failed to renew his pretrial motion for a change of venue, having been granted the right when the motion was initially denied.

To the extent uncertainty exists as to defendant's conviction, the record should reflect he was convicted upon the trial court's finding of guilt of a homicide committed during the commission or attempt of criminal sexual conduct in the second degree.

Affirmed as modified. Amdahl, C.J.

C5-84-1007 Henning Nelson Construction Company v. Fireman's Fund American Life Insurance Company, petitioner, Appellant. Court of Appeals.

Absent a specific statute to the contrary, the parties to an insurance contract may limit the time within which an action may be brought to a period less than that fixed by the general statutes of limitation, provided the limitation is not unreasonably short. The 1-year limitation provision on legal actions contained in appellant's insurance policy, however, was unreasonably short in this case.

Respondent's loss is not excluded under the provisions in the insurance policy concerning ground water, earth movement, or design defects.

Respondent established a prime facie case of damages under the facts of this case.

The trial court did not err by holding respondent's mistakes in calculating damages did not amount to willful or intentional fraud.

Affirmed. Amdahl, C.J.

Took no part, Kelley, J.

C4-85-1199 Donna Mae Gonsior, Relator v. Alternative Staffing, Inc., and Department of Economic Security. Court of Appeals.

Petition granted; reversed and remanded. Amdahl, C.J.

C7-84-277 State of Minnesota v. Larry Gene Race, Appellant. St. Louis County.

The circumstantial evidence is consistent with the jury's finding that the defendant was guilty of the first-degree murder of his wife, and is inconsistent with any other rational hypothesis.

Criminal defendant was not deprived of his constitutional right to effective representation by counsel.

Comments made by the prosecutor in the course of his final summation did not deprive criminal defendant of a fair trial, and were not prejudicial beyond a reasonable doubt.

Affirmed. Kelley, J.

C2-84-1661 State of Minnesota v. Orville Berndt, Jr., Appellant. Hennepin County.

State failed to meet its burden to establish the guilt of an accused, convicted of eight counts of first-degree murder, when the convictions rested on circumstantial evidence which was consistent with a rational hypothesis other than guilt.

Reversed. Kelley, J.

C3-85-1355 Fred Meyering, Relator v. Marvin K. Wessels, uninsured, and State Treasurer, Custodian of the Special Compensation Fund. Workers' Compensation Court of Appeals.

The facts in this case mandate that cash wages paid to farm laborers working on separate farms operated by the same family be aggregated to determine whether the owner-operator is entitled to be excluded from the obligations imposed upon employers by the Minnesota Workers' Compensation Law.

Reversed and remanded. Kelley, J.

C6-85-233 Harry S. Norman, et al., v. Greg Allen Refsland, etc., et al., and Carver County, applicant in intervention, petitioner, Appellant. Court of Appeals.

An order denying intervention as of right is appealable under Minn. R. Civ. App. P. 103.03.

This court is not held to a clear abuse of discretion standard in reviewing motions for intervention as of right.

The district court erred in denying appellant employer's motion to intervene as of right in employee's cause of action against third parties. This court favors intervention in such situations in order to protect the employer's interests and foster judicial economy.

Reversed. Yetka, J.

Took no part, Coyne, J.

CX-84-77 In re the Marriage of: Wilbern Philip Tell, Appellant, v. Patricia Elizabeth Tell. Court of Appeals.

There was no abuse of discretion regarding the trial court's computation of child support arrearages.

The trial court properly held the appellant in contempt of court for his failure to pay child support.

The trial court correctly considered respondent's monthly property settlement payments a financial resource available to her in determining her ability to pay child support.

Affirmed in part; reversed in part. Scott, J.

C7-83-1080 In the Matter of the Application for the Discipline of Dixon E. Jones, an Attorney at Law of the State of Minnesota. Supreme Court.

Suspended. Per Curiam.

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