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STATE OF MINNESOTA

STATE REGISTER

DEPARTMENT OF ADMINISTRATION—DOCUMENTS DIVISION

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STATE REGISTER

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*.

Volume 11 Printing Schedule and Submission Deadlines

Vol. 11 Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
2	Friday 27 June	Monday 7 July	Monday 14 July
3	Monday 7 July	Monday 14 July	Monday 21 July
4	Monday 14 July	Monday 21 July	Monday 28 July
5	Monday 21 July	Monday 28 July	Monday 4 August

*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 editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

SENATE

Briefly-Preview—Senate news and committee calendar; published weekly during legislative sessions.

Perspectives—Publication about the Senate.

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Contact: Senate Public Information Office
Room 111 State Capitol, St. Paul, MN 55155
(612) 296-0504

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Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
(612) 296-2146

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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:

- 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 requested by an agency.)
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 are included in a supplement published 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:

Table with 2 columns: Issue range and Issue number. Includes: 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.

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.

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PROPOSED RULES

Pursuant to Minn. Stat. of 1984, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

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

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

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

Department of Commerce

Proposed Permanent Rules Relating to Medical Joint Underwriting Association

Notice of Hearing

Notice is given that a public hearing will be held pursuant to Minnesota Statute Section 14.14, subdivision 1 (1984), in the above-entitled matter in Room 500 North, State Office Building, 435 Park Street, St. Paul, MN 55155, on August 19, 1986 at 9:00 A.M. and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of these proposed rules by submitting either oral or written data, statements, or arguments. Statements, briefs or written material may be submitted within the comment period described in this notice without appearing at the hearing by sending them to Administrative Law Judge, Jon Lunde, 4th Floor, Summit Bank Building, 310 4th Avenue South, Minneapolis, MN 55415, telephone (612) 341-7645. The rule hearing procedure is governed by Minnesota Statute Section 14.14-14.20 and by Minnesota Rules Parts 1400.0200-1400.1200, as amended (Amended rules published at 9 S.R. 2276). Questions regarding procedure may be directed to the Administrative Law Judge at the above-listed address.

The Commissioner is seeking to determine if there is medical malpractice insurance available in the voluntary market for either physicians, hospitals or other types of health care providers. Availability of coverage for home health aid programs will be dealt with at the hearing. If it is determined that such insurance is not available, the Commissioner will issue a rule authorizing the Joint Underwriting Association, established by Minnesota Statutes Chapter 62F, to issue medical malpractice insurance on a primary basis to home health aid programs which are unable to obtain the coverage.

The Department has elected to consider the authorization to issue medical malpractice insurance by the Joint Underwriting Association to be a rule and is accordingly proceeding pursuant to Chapter 14 of Minnesota Statutes in regard to the rule.

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Department of Commerce and is available at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all of the evidence and arguments which the Department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Department of Commerce or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Pursuant to Minnesota Statute Section 14.155, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in greater detail in the Statement of Need and Reasonableness.

All interested or affected persons will have an opportunity to participate by presenting oral and/or written evidence at the hearing. Questioning of agency representatives or witnesses, and of interested persons making oral statements will be allowed in order

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PROPOSED RULES

to explain the purpose or intended operation of the proposed rules, or a suggested modification, or for other purposes material to the evaluation or formulation of the proposed rules. As a result of the hearing process, the proposed rule may be modified.

Written material may be submitted to the Administrative Law Judge and recorded in the hearing record for five working days after the public hearing ends. The comment period may be extended for a longer period not to extend 20 calendar days if ordered by the Administrative Law Judge at the hearing. Comments received during the comment period will be available for review at the Office of Administrative Hearings. Following the five to twenty day comment period, there will be a three day period in which the Commissioner and interested persons may respond in writing to any new information submitted. During the three day period, the agency may indicate in writing whether there are any amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during the three day period. The written responses will be added to the record of the proceedings.

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

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

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

(b) Who spends more than \$250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155 telephone (612) 296-5615.

One free copy of this Notice and the proposed rules may be obtained by contacting Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 296-5689. Additional copies will be available at the door on the date of the hearing.

Dated: 1 July 1986

Michael A. Hatch
Commissioner of Commerce

Rule as Proposed

2791.0100 AUTHORIZATION TO ISSUE MEDICAL MALPRACTICE INSURANCE.

Pursuant to Minnesota Statutes, section 62F.04, the joint underwriting association is hereby authorized to issue medical malpractice insurance on a primary basis to physicians, hospitals, and other health care providers who are unable to obtain medical malpractice insurance coverage in the voluntary market. Those classes of physicians, hospitals, and other health care providers who are unable to obtain medical malpractice insurance and whom the joint underwriting association is authorized to issue medical malpractice insurance are:

- A. to E. [Unchanged.]
- F. nursing homes; ~~and~~
- G. perfusionists; and
- H. home health aid programs.

Environmental Quality Board

Proposed Permanent Rules Relating to Environmental Review Programs

Notice of Intent to Adopt Amendments without a Public Hearing

Notice is hereby given that the State Environmental Quality Board proposes to adopt amendments to the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, section 116D.04, subd. 5(a).

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

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

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

Michael Sullivan, Executive Director
Minnesota Environmental Quality Board
110 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
(612) 296-9027

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

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

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

The impact that the amendments will have on small businesses has been considered by the board pursuant to Minnesota Statutes, section 14.115. The board's position is contained in the Statement of Need and Reasonableness. Any person wishing to comment on the impact of the proposed amendments on small businesses may do so by contacting Mr. Sullivan.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be delivered to the Attorney General for review as to legality and form to the extent that the form relates to legality. 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 amendments, must submit a written request to the board at the above address.

Dated: 27 June 1986

John C. Ditmore, Chair
Environmental Quality Board

Rules as Proposed

4410.0200 DEFINITIONS AND ABBREVIATIONS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Attached units.** "Attached units" means in groups of four or more units each of which shares one or more common walls with another unit. ~~Developments consisting of both attached and unattached units shall be considered as an unattached unit development.~~

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PROPOSED RULES

Subp. 6. to 29. [Unchanged.]

Subp. 30. **Flood plain.** "Flood plain" has the meaning given in part ~~6120.5000~~ of the Department of Natural Resources Minnesota Statutes, section 104.02.

Subp. 31. to 81. [Unchanged.]

Subp. 82. **Shoreland.** "Shoreland" has the meaning given in parts ~~6120.0200 to 6120.0500~~ 6120.0100 to 6120.3900 of the Department of Natural Resources.

Subp. 83. to 96. [Unchanged.]

4410.0500 RGU SELECTION PROCEDURES.

Subpart 1. **RGU for mandatory categories.** For any project listed in part 4410.4300 or 4410.4400, the governmental unit specified in those rules shall be the RGU unless the project will be carried out by a state agency, in which case that state agency shall be the RGU. For any project listed in both parts 4410.4300 and 4410.4400, the RGU shall be the unit specified in part 4410.4400. For any project listed in two or more subparts of part 4410.4300 or two or more subparts of part 4410.4400, the RGU shall be determined as specified in subpart 5.

Subp. 2. [Unchanged.]

Subp. 3. **RGU for petition EAW's.** If an EAW is ordered in response to a petition, the RGU that was designated by the EQB to act on the petition shall be responsible for the preparation of the EAW. The EQB chair or designee shall determine an RGU to act on the petition as follows:

A. if a state agency proposes to carry out the project, it shall be the RGU;

B. for any project of a type for which a mandatory category is listed in part 4410.4300, the RGU shall be the governmental unit specified by the mandatory category for projects of that type, unless the project will be carried out by a state agency; or

C. for any project of a type for which there is no mandatory category listed in part 4410.4300 and which will not be carried out by a state agency, the RGU shall be selected in accordance with subpart 5.

Subp. 4. and 5. [Unchanged.]

Subp. 6. **Exception.** Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the preparation of an EAW project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

4410.3100 PROHIBITION ON FINAL GOVERNMENTAL DECISIONS.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Granting variance.** At its first meeting more than ten days after the comment period expires, the EQB shall grant or deny the variance. A variance shall be granted if:

A. the RGU consents to a variance; ~~and~~

B. on the basis of the variance application and the comments, construction is necessary in order to avoid excessive and unusual economic hardship, or avoid a serious threat to public health or safety. Unusual economic hardship ~~means that the is~~ hardship is caused by unique conditions and circumstances which are peculiar to the project and are not characteristic of other similar projects or general economic conditions of the area or state ~~and that the hardship is.~~ It does not include hardship caused by the proposer's own action, or inaction, if the hardship was reasonably foreseeable;

C. on the basis of the variance application and the comments, the construction for which the variance is sought will not have a serious adverse effect on the environment; and

D. on the basis of the variance application and the comments, the construction for which the variance is sought is separable from the remainder of the project and would not have the effect of eliminating from consideration any feasible and prudent alternatives or mitigation measures likely to be presented in an EIS.

Subp. 7. to 9. [Unchanged.]

4410.3600 ALTERNATIVE REVIEW.

Subpart 1. **Implementation.** Governmental units may request EQB approval of an alternative form of environmental review for categories of projects which undergo environmental review under other governmental processes. The governmental processes must address substantially the same issues as the EAW and EIS process and use procedures similar in effect to those of the EAW and EIS process. The EQB shall approve the governmental process as an alternative form of environmental review if the governmental unit demonstrates the process meets the following conditions:

- A. the process identifies the potential environmental impacts of each proposed project;
- B. the aspects of the process addresses that are intended to substitute for an EIS process address substantially the same issues as an EIS and uses procedures similar to those used in preparing an EIS but in a more timely or more efficient manner;
- C. alternatives to the proposed project are considered in light of their potential environmental impacts in those aspects of the process that are intended to substitute for an EIS process;
- D. measures to mitigate the potential environmental impacts are identified and discussed;
- E. a description of the proposed project and analysis of potential impacts, alternatives (in those aspects of the process intended to substitute for an EIS), and mitigating measures are provided to other affected or interested governmental units and the general public;
- F. to H. [Unchanged.]
- Subp. 2. [Unchanged.]

4410.4300 MANDATORY EAW CATEGORIES.

Subpart 1. **Threshold test.** An EAW must be prepared for projects that meet or exceed the threshold of any of subparts 2 to 31, unless the project meets or exceeds any thresholds of part 4410.4400, in which case an EIS must be prepared.

Subp. 2. to 13. [Unchanged.]

Subp. 14. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. and B. [Unchanged.]

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, or part 4410.4400, subparts 2 to 10, 12, 13, 15, or 17, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 15. **Air pollution.** Items A and B designate the RGU for the type of project listed:

A. For construction of a stationary source facility that generates 100 tons or more per year of any single air pollutant after installation of air pollution control equipment, the PCA shall be the RGU.

B. For construction of a new parking facility for 1,000 or more vehicles, the PCA shall be the RGU, except that this category does not apply to any parking facility which is part of a project reviewed pursuant to part 4410.4300, subpart 14 or 19, or part 4410.4400, subpart 11 or 14.

Subp. 16. and 17. [Unchanged.]

Subp. 18. **Sewage systems.** Items A and B designate the RGU for the type of project listed:

A. For construction of a new municipal or domestic wastewater treatment facility or sewer system with a capacity of 30,000 gallons per day or more, the PCA shall be the RGU expansion, modification, or replacement of a municipal or domestic sewer system resulting in an increase in hydraulic capacity of any part of that system by:

(1) 500,000 gallons per day or more in a first or second class city and in any city served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System;

(2) 100,000 gallons per day or more in a third class city not served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System;

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PROPOSED RULES

(3) 50,000 gallons per day or more in a fourth class city not served by the Metropolitan Waste Control Commission System or the Western Lake Superior Sanitary Sewer District System; or

(4) 50,000 gallons per day or more in an unincorporated sewer area, the PCA shall be the RGU.

B. For expansion or reconstruction of an existing municipal or domestic wastewater treatment facility or sewer system by which results in an increase in capacity of 50 percent or more over existing capacity or by 50,000 of its average wet weather design flow capacity, or construction of a new municipal or domestic wastewater treatment facility with an average wet weather design flow capacity of 30,000 gallons per day or more, the PCA shall be the RGU.

Subp. 19. **Residential development.** Items A and B designate the RGU for the type of project listed. If a development consists of both attached and unattached units, each individual unit in a group of attached units shall be considered as an unattached unit.

A. and B. [Unchanged.]

Subp. 20. to 31. [Unchanged.]

4410.4400 MANDATORY EIS CATEGORIES.

Subpart 1. to 10. [Unchanged.]

Subp. 11. **Industrial, commercial, and institutional facilities.** Items A and B designate the RGU for the type of project listed, except as provided in items C and D:

A. and B. [Unchanged.]

C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components, if there are mandatory categories specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29 for two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EIS. If the project meets or exceeds the thresholds specified in any other subparts as well as those in item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.

D. This subpart does not apply to projects for which there is a single mandatory category specified in subparts 2 to 10, 12, 13, 15, or 17, or part 4410.4300, subparts 2 to 13, 16, 17, 20, 21, 23, 25, or 29, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EIS or an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.

Subp. 12. and 13. [Unchanged.]

Subp. 14. **Residential development.** Items A and B designate the RGU for the type of project listed. If a development consists of both attached and unattached units, each individual unit in a group of attached units must be considered as an unattached unit.

A. and B. [Unchanged.]

Subp. 15. to 20. [Unchanged.]

4410.4600 EXEMPTIONS.

Subpart 1. **Scope of exemption.** Projects within subparts subpart 2 to 26 are exempt from parts 4410.0200 to 4410.7800. Projects within subparts 3 to 26 are exempt from parts 4410.0200 to 4410.7800, unless they have characteristics which meet or exceed any of the thresholds specified in part 4410.4300 or 4410.4400.

Subp. 2. to 26. [Unchanged.]

4410.7500 ENVIRONMENTAL REPORT AT CERTIFICATE OF NEED STAGE.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Alternative review.** The PUC may request EQB approval of an alternative form of environmental review on a HVTL subject to parts 4410.7400 to 4410.7800. The EQB shall approve the governmental process as an alternative form of environmental review if the PUC demonstrates the process meets the following conditions:

A. the process must satisfy the content requirements of part 4410.7500, subpart 3, but in a more timely or more efficient manner;

B. the process must provide that the information required to satisfy the content requirements of part 4410.7500, subpart 3, is prepared for and included in the record of the Certificate of Need hearing conducted on the HVTL under Minnesota Statutes, section 216B.243; and

C. the process must provide that the information required to satisfy the content requirements of part 4410.7500, subpart 3, is reviewed in the manner provided in part 4410.7100, subparts 5 to 12.

Subp. 5. Exemption. If the EQB accepts the PUC's process as an adequate alternative environmental review procedure, the PUC is exempt from the requirements under part 4410.7500, subparts 1 to 3, for preparing an environmental report on an HVTL. On approval of the alternative review procedure, the EQB shall provide for periodic review of the procedure to ensure continuing compliance with the requirements and intent of the environmental report requirement. The EQB shall withdraw its approval if review indicates that the procedure no longer fulfills the intent and requirements of the Minnesota Environmental Policy Act and parts 4410.7400 to 4410.7800. A project in the process of undergoing review under an approved alternative review process shall not be affected by the EQB's withdrawal of approval.

Department of Human Services

Proposed Rules Relating to Administration of the Medical Assistance Prepaid Demonstration Project in Minnesota

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

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in the State Office Building, Room 500 North, 435 Park, St. Paul, Minnesota, 55155 on August 22, 1986 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A PUBLIC HEARING PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between August 14, 1986 and August 21, 1986 at 612/297-1489.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Howard Kaibel, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone 612/341-7608, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge, may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, section 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Rules, parts 9500.1450 to 9500.1465 govern operation of the Medical Assistance Demonstration Project. The purpose of the project is to determine whether prepayment of medical assistance can be a cost-effective alternative to the current system of paying for medical assistance. The project affects medical assistance recipients in Hennepin, Dakota, and Itasca counties.

Parts 9500.1450 to 9500.1465 are proposed for adoption as permanent rules to replace parts 9500.1450 to 9500.74 (Emergency). The proposed permanent rules implement recommendations of the Medical Assistance Prepaid Administration Project advisory committees and the requirements of the Minnesota Legislature. The proposed permanent rules are substantially the same as the emergency rules.

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

PROPOSED RULES

Parts 9500.1450 to 9500.1465 include policies regarding eligibility to enroll in a Medicaid Health Plan; mandatory participation; services covered by the project; capitation policies; quality assurance; grievance procedures; and surveillance and utilization review.

The agency's authority to adopt the proposed rules is contained in Minnesota Statutes, section 256B.69. The Department estimates that no additional spending will be required by local public bodies as a result of adoption of these rules. A fiscal note is not required for these rules according to Minnesota Statutes, section 3.983, subdivision 3(e).

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Kathy Heuer, Department of Human Services, 6th Floor, Space Center, 444 Lafayette Road, St. Paul, Minnesota, 55101, 612/297-4668.

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the state of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Kathy Heuer.

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

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

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

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

(b) who spends more than \$250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, telephone 612/296-5615.

Dated: 20 June 1986

Leonard W. Levine, Commissioner
Department of Human Services

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

Notice is hereby given that the State Department of Human Services proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The specific statutory authority to adopt the rule is Minnesota Statutes, section 256B.69.

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

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20. **PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON**

AUGUST 22, 1986, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF HUMAN SERVICES. To verify whether a hearing will be held, please call the Department of Human Services between August 14, 1986 and August 21, 1986 at 612/297-4668.

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

Kathy Heuer
Department of Human Services
6th Floor, Space Center Building
444 Lafayette Road
St. Paul, MN 55101
Telephone: 612/297-4668

Comments or requests for a public hearing must be received by the Department by 4:30 p.m. on August 13, 1986.

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

Minnesota Rules, parts 9500.1450 to 9500.1465 govern operation of the Medical Assistance Demonstration Project. The purpose of the project is to determine whether prepayment of medical assistance can be a cost-effective alternative to the current system of paying for medical assistance. The project affects medical assistance recipients in Hennepin, Dakota, and Itasca counties.

Parts 9500.1450 to 9500.1465 are proposed for adoption as permanent rules to replace parts 9500.1450 to 9500.1474 (Emergency). The proposed permanent rules implement recommendations of the Medical Assistance Prepaid Demonstration Project advisory committees and the requirements of Minnesota Legislature. The proposed permanent rules are substantially the same as the emergency rules.

Parts 9500.1450 to 9500.1465 include policies regarding eligibility to enroll in a Medicaid Health Plan; mandatory participation; services covered by the project; capitation policies; quality assurance; grievance procedures; and surveillance and utilization review.

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

Kathy Heuer
Department of Human Services
6th Floor, Space Center
444 Lafayette Road
St. Paul, Mn 55101
Telephone: 612/297-4668

A copy of the proposed rule may be viewed at any of the county welfare or human service agencies in the state of Minnesota.

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

The Department estimates that no additional spending will be required by local public bodies as a result of adoption of these rules. A fiscal note is not required for these rules according to Minnesota Statutes, section 3.983, subdivision 3(e).

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

Dated: 20 June 1986

Leonard W. Levine, Commissioner
Department of Human Services

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PROPOSED RULES

Rules as Proposed (all new material)

9500.1450 INTRODUCTION.

Subpart 1. **Scope.** Parts 9500.1450 to 9500.1464 govern administration of the medical assistance prepaid demonstration project (MAPDP) in Minnesota. Parts 9500.1450 to 9500.1464 shall be read in conjunction with title XIX of the Social Security Act, Code of Federal Regulations, title 42, and waivers approved by the Health Care Financing Administration, Minnesota Statutes, chapters 256 and 256B, and rules promulgated under them, governing the administration of the title XIX program and MAPDP in Minnesota.

Subp. 2. **References.** Parts 9500.1450 to 9500.1464 shall be interpreted as necessary to comply with federal laws and regulations and state laws applicable to the medical assistance prepaid demonstration project.

Subp. 3. **Geographic area.** MAPDP shall be operated in the counties of Dakota, Hennepin, and Itasca.

9500.1451 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9500.1450 to 9500.1464, the following terms have the meanings given them in this part.

Subp. 2. **Actual costs.** "Actual costs" means the total cost to the medicaid health plan for providing services to MAPDP enrollees during a contract year.

Subp. 3. **Broker.** "Broker" means an organization under contract with the state to develop and present to consumers educational material on the MAPDP so that consumers understand the medicaid health plan choices available to them.

Subp. 4. **Capitation.** "Capitation" means a method of payment for health care services that involves a monthly per person rate paid on a prospective basis to a medicaid health plan.

Subp. 5. **Case management.** "Case management" means a method of providing health care in which one individual or organization or an interdisciplinary team coordinates the provision of health care services to a consumer.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of human services or the commissioner's designated representative.

Subp. 7. **Consumer.** "Consumer" means a medical assistance recipient who is participating in MAPDP.

Subp. 8. **Department.** "Department" means the Department of Human Services.

Subp. 9. **Enrollee.** "Enrollee" means a consumer who has enrolled in a medicaid health plan.

Subp. 10. **Health maintenance organization or HMO.** "Health maintenance organization" or "HMO" means a nonprofit corporation or local government unit controlled and operated under Minnesota Statutes, chapter 62D.

Subp. 11. **Health services.** "Health services" means the services and supplies given to a recipient by a provider for a health related purpose under Minnesota Statutes, section 256B.02, subdivision 8.

Subp. 12. **Insolvency.** "Insolvency" means the condition in which a medicaid health plan is financially unable to meet the financial and health care service delivery obligations in the contract between the department and the medicaid health plan.

Subp. 13. **Local agency.** "Local agency" means a county or multicounty agency that is authorized under Minnesota Statutes, sections 393.01, subdivision 7 and 393.07, subdivision 2, as the agency responsible for determining recipient eligibility for the medical assistance program.

Subp. 14. **Medical Assistance Prepaid Demonstration Project or MAPDP.** "Medical Assistance Prepaid Demonstration Project" or "MAPDP" means the medical assistance prepaid demonstration project established by Minnesota Statutes, section 256B.69.

Subp. 15. **Medicaid health plan or MHP.** "Medicaid health plan" or "MHP" means the organization contracting with the department to provide to enrollees the medical assistance services in parts 9500.1450 to 9500.1464 in exchange for a prepaid capitation payment.

Subp. 16. **Medical assistance or MA.** "Medical assistance" or "MA" means the program established under title XIX of the Social Security Act and Minnesota Statutes, chapter 256B.

Subp. 17. **Medical assistance population or MA population.** "Medical assistance population" or "MA population" means an aged, blind, disabled, or Aid to Families with Dependent Children (AFDC) category of eligibility for the medical assistance program, the eligibility standards for which are in parts 9500.0780 to 9500.0860.

Subp. 18. **Personal care attendant.** "Personal care attendant" means a provider of personal care services prescribed by a physician and supervised by a registered nurse and provided to a medical assistance recipient. A personal care attendant must not be a relative or family member of the medical assistance recipient.

Subp. 19. **Provider.** "Provider" means a person or entity providing health care services.

Subp. 20. **Rate cell.** "Rate cell" means a grouping of recipients by demographic characteristics, established by the department for use in determining capitation rates. Demographic characteristics include the recipient's age, sex, medicare status, basis of medical assistance eligibility, and county of residence, and whether the recipient is a resident of a long-term care facility.

Subp. 21. **Recipient.** "Recipient" means a person who has been determined by the local agency to be eligible for the medical assistance program.

Subp. 22. **Title XIX state plan.** "Title XIX state plan" refers to the document submitted for approval to the United States Department of Health and Human Services, Health Care Financing Administration defining the conditions of medical assistance program eligibility and services authorized by title XIX of the Social Security Act of 1965 and Minnesota Statutes, chapter 256B.

Subp. 23. **Total capitation payments.** "Total capitation payments" means the sum of all capitation payments made to the medicaid health plan by the department during a contract year.

9500.1452 ELIGIBILITY TO ENROLL IN MEDICAID HEALTH PLAN.

Only persons who have been determined eligible for medical assistance under parts 9500.0750 to 9500.1060 shall be eligible to participate in the medical assistance prepaid demonstration project.

A person who belongs to a category listed in items A to E is ineligible to enroll in a medicaid health plan under the medical assistance prepaid demonstration project:

- A. a person who is eligible for medical assistance with a six-month spend-down under part 9500.0810;
- B. a person who is currently receiving the services of a personal care attendant;
- C. a person who is a resident of a state institution;
- D. a person who is a refugee and is receiving benefits under the Refugee Assistance Program, established at United States Code, title 8, section 1522(e); or
- E. other persons whose participation has been determined by the department to be administratively difficult or not cost effective.

9500.1453 MANDATORY PARTICIPATION; FREE CHOICE OF MEDICAID HEALTH PLAN.

The department shall select recipients to participate as consumers in the medical assistance demonstration project and notify the recipients, in writing, of the medicaid health plan choices available to them. A recipient who is selected as a consumer must participate in a medicaid health plan to receive medically necessary health services, but the recipient shall have the right to select the medicaid health plan of his or her choice. However, if the department is not notified of the recipient's choice within 30 days after the date of the department's written notice, the department shall assign the recipient to a medicaid health plan.

A consumer shall be enrolled in a medicaid health plan for one year from the date of enrollment but shall have the right to change to another medicaid health plan once within the first 60 days of enrollment with the medicaid health plan. A consumer shall have the right to change to another medicaid health plan during the annual 30-day period of open enrollment. The department shall notify consumers of the opportunity to change medicaid health plans annually, at least 30 days before the start of the annual open enrollment period.

9500.1454 RECORDS.

A medicaid health plan shall maintain fiscal and medical records as required in part 9500.0930. A local agency shall comply with parts 9500.0920 and 9500.0930 and maintain a list showing the enrollment choices of recipients who participate in the medical assistance prepaid demonstration project.

9500.1455 THIRD-PARTY LIABILITY.

A local agency and a medicaid health plan shall comply with part 9505.0211 [Emergency] in regard to third party payer liability.

9500.1456 IDENTIFICATION OF ENROLLEES.

A medicaid health plan shall identify enrollees in a way convenient to its normal operational procedures.

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PROPOSED RULES

9500.1457 SERVICES COVERED BY MAPDP.

Subpart 1. **In general.** Services currently available under the medical assistance program in Minnesota Statutes, chapter 256B and parts 9500.0750 to 9500.1080 are covered under MAPDP.

Subp. 2. **Additional services.** A medicaid health plan may provide services in addition to those available under the medical assistance program.

Subp. 3. **Prior authorization of services.** A medicaid health plan shall be exempt from the requirements of Minnesota Statutes, chapter 256B, parts 9500.0750 to 9500.1080 and 9505.5000 to 9505.5030, that require prior authorization before providing health services to an enrollee.

9500.1458 DATA PRIVACY.

Under Minnesota Statutes, section 13.46, subdivisions 1 and 2, a medicaid health plan under contract with the department is considered an agent of the department and shall have access to information on enrollees to the extent necessary to carry out its responsibilities under the contract. The medicaid health plan must comply with Minnesota Statutes, chapter 13, the Minnesota Government Data Practices Act.

9500.1459 CAPITATION POLICIES.

Subpart 1. **Rates.** In demonstration counties designated by the department under Minnesota Statutes, section 256B.69, medical assistance payments for services included in the MAPDP will be made according to the contract between the medicaid health plan and the department. Capitation rates must be developed on an historical cost basis. Base rates must be determined by calculating an average per capita cost for each rate cell by county of participation. If rate cell population in a county is insufficient to support a statistically valid sample size, the average per capita cost for that rate cell shall be determined from statistics from the metropolitan area, consisting of Hennepin, Ramsey, Anoka, Scott, Carver, Dakota, and Washington counties. The actual rate offered under the contract must be a specified percentage of the county average per capita cost.

The historical cost basis of the rates must be from a specified fiscal year adjusted forward to the implementation year. This adjustment must not exceed the per capita cost increase based on department projections, taking into account changes in legislation, title XIX state plan, and rules affecting the medical assistance program.

Rates must be adjusted on a state fiscal year basis, July 1 to June 30. The adjusted rates shall be effective on January 1 of the next state fiscal year.

Subp. 2. **Risk sharing arrangements.** In addition to the capitation rate, the department shall provide the two types of risk-sharing in subparts 3 and 4.

Subp. 3. **Aggregate loss-sharing.** Under aggregate loss-sharing, the department and the medicaid health plan shall share the loss if the allowable costs of serving enrollees exceed the aggregate payment provided through the capitation.

Loss-sharing expenses are expenses incurred by the medicaid health plan for services rendered directly to enrollees. The medicaid health plan shall submit claim data as specified by the department for these services. This data shall be used to calculate the medicaid health plan's aggregate cost of serving its enrollees. If the medicaid health plan's aggregate cost of serving its enrollees exceeds the aggregate amount received by the medicaid health plan in capitation rates, the medicaid health plan is eligible for aggregate loss-sharing.

Aggregate loss-sharing shall be implemented as specified in items A and B, unless otherwise specified in the contract between the department and the medicaid health plan.

A. The following provisions apply only to the total capitation payments made to the medicaid health plan for AFDC enrollees:

(1) For the contract period ending December 31, 1986, the department shall pay to the medicaid health plan 50 percent of the actual costs of the medicaid health plan that exceed the total capitation payments to the medicaid health plan but that are equal to or less than 110 percent of the costs on which the department based the capitation rates.

(2) For the contract period ending December 31, 1987, the department shall pay to the medicaid health plan 50 percent of the actual costs of the medicaid health plan that exceed the total capitation payments to the medicaid health plan but that are equal to or less than 100 percent of the costs on which the department based the capitation rates.

B. The following provisions apply only to the total capitation payments made to the medicaid health plan for aged, blind, and disabled enrollees:

(1) For the contract period ending December 31, 1986, the department shall pay to the medicaid health plan 50 percent of the actual costs of the medicaid health plan that exceed the total capitation payments to the medicaid health plan but that are equal to or less than 115 percent of the costs on which the department based the capitation rates.

(2) For the contract period ending December 31, 1987, the department shall pay to the medicaid health plan 50 percent of the actual costs of the medicaid health plan that exceed the total capitation payments to the medicaid health plan but that are equal to or less than 105 percent of the costs on which the department based the capitation rates.

C. There shall be no loss-sharing available after December 31, 1987.

Subp. 4. **Individual stop-loss coverage.** Individual stop-loss coverage must be available for the duration of MAPDP. Stop-loss coverage is the amount the department will pay in excess of capitation rates described in items A and B.

A. Individual stop-loss coverage must be provided for 80 percent of the following costs unless otherwise specified in the contract between the department and the medicaid health plan:

(1) inpatient hospital claims exceeding \$15,000 for an AFDC enrollee and \$30,000 for an aged, blind, or disabled enrollee; and

(2) over 90 days of long-term care facility services, as defined in part 9500.1070, subpart 3, or in-home care provided as an alternative to long-term care facility services.

Only charges that would be allowable medical assistance charges are eligible for individual stop-loss coverage.

B. Medicaid health plans may choose not to take part in the department's individual stop-loss coverage. Medicaid health plans not participating in the individual stop-loss coverage must submit to the department evidence that:

(1) the plan has an adequate financial reserve separate from operating funds to cover catastrophic liabilities;

(2) not more than 30 percent of the organization's operating budget is medical assistance related; and

(3) the medicaid health plan waives the right of 90-day termination of contract and instead agrees to a 180-day termination notice period.

The capitation rate must be adjusted to include the cost of the department's individual stop-loss. Additional costs of buying private reinsurance must not be covered in the capitation nor be eligible expenses for aggregate loss-sharing as described in subpart 3.

9500.1460 ADDITIONAL REQUIREMENTS.

Subpart 1. **Medicaid health plan requirements.** An organization that seeks to participate as a medicaid health plan under the medical assistance prepaid demonstration project shall meet the criteria in subparts 2 to 19.

Subp. 2. **Medical assistance populations covered.** A medicaid health plan may choose to serve all medical assistance populations or a single medical assistance population. If the medicaid health plan chooses to serve a medical assistance population of AFDC or blind recipients, the medicaid health plan must serve at least one other medical assistance population.

Subp. 3. **Services provided.** A medicaid health plan shall provide or ensure its enrollees access to all health services eligible for medical assistance payment under part 9500.1070.

Subp. 4. **Prohibition against co-payments.** A medicaid health plan shall not charge its enrollees for any health service eligible for medical assistance payment under part 9500.1070 or for a medically necessary health service that is provided as a substitute for a health service eligible for medical assistance payment.

Subp. 5. **Plan organization.** A medicaid health plan may choose to organize itself as either a profit or not-for-profit organization.

Subp. 6. **Contractual arrangements.** A medicaid health plan shall contract with providers as necessary to meet the health service needs of its enrollees. The medicaid health plan shall verify these contracts to the department by providing written summary information before a contract can be entered into between the medicaid health plan and the department.

Subp. 7. **Service capacity.** A medicaid health plan shall accept, up to the limit of its enrollment capacity, all consumers who choose the medicaid health plan, regardless of the consumers' health conditions, if the consumers are from the medical assistance category or categories and the geographic area or areas specified in the contract between the medicaid health plan and the department.

Subp. 8. **Financial capacity.** A medicaid health plan shall demonstrate its financial risk capacity through a reserve fund or other mechanism agreed upon by the providers within the medical health plan in the contract with the department. A medicaid health plan that is licensed as a health maintenance organization is not required to demonstrate a financial risk capacity beyond the financial risk capacity required for health maintenance organization licensure.

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PROPOSED RULES

Subp. 9. **Insolvency.** A medicaid health plan must have a plan approved by the department for transferring its enrollees to other sources of health services if the medicaid health plan becomes insolvent.

Subp. 10. **Limited number of contracts.** The department may limit the number of medicaid health plan contracts in effect under MAPDP.

Subp. 11. **Liability for payment for unauthorized services.** Except for emergency health services under Minnesota Statutes, section 256B.02, subdivision 8, clause (4), a medicaid health plan shall not be liable for payment for unauthorized health services rendered by a provider who is not part of the medicaid health plan. The department is not liable for payment for health services rendered by a provider who is not part of the medicaid health plan.

Subp. 12. **Termination of participation as a medicaid health plan.** The department or a medicaid health plan may terminate a contract upon 90 days' written notice to the other party unless the department and the medicaid health plan have agreed to a different notice requirement in the contract and except as set forth at part 9500.1459, subpart 4, item C. If a contract between the department and a medicaid health plan is going to be terminated, the entity terminating the contract must notify the medicaid health plan's enrollees in writing at least 30 days before the termination.

Subp. 13. **Financial requirements placed on medicaid health plan.** The medicaid health plan shall accept the capitation rate and risk-sharing adjustments derived under part 9500.1459 as full payment for health services provided under the contract to enrollees. A medicaid health plan under contract with the department shall be accountable to the department for the fiscal management of the health services it provides enrollees. The department shall be held harmless for the payment of obligations incurred by a medicaid health plan if the medicaid health plan or a provider contracted by the plan to provide health services to enrollees becomes insolvent and if the department has made the payments due the medicaid health plan under part 9500.1459.

Subp. 14. **Required educational materials.** When contracting with the department, a medicaid health plan must provide to the department educational materials to be given to the medical assistance population specified in the contract. The material should explain the services to be furnished to enrollees. No educational materials designed to solicit the enrollment of consumers shall be disseminated without the department's prior approval. A medicaid health plan and the department may agree, as a term of the contract, that a broker shall have the responsibility for developing and distributing the educational materials required in this subpart. If the contract specifies the use of a broker to develop and disseminate educational materials designed specifically for consumers, the broker must get the department's written approval of the educational materials before distributing them.

Subp. 15. **Required case management system.** A medicaid health plan shall implement a system of case management providing the enrollee an individual needs assessment, development and implementation of an individual plan of care for the enrollee, and evaluation, monitoring, and revision of an individual plan of care.

Subp. 16. **Required submission of information.** The contract between the department and the medicaid health plan shall specify the information the medicaid health plan shall submit to the department and the Health Care Financing Administration, and the form in which the information shall be submitted. The information submitted must enable the department to make the calculations required under part 9500.1459 and to carry out the requirements of parts 9505.1750 to 9505.2150 and the Health Care Financing Administration. The medicaid health plan shall record complaints from enrollees and consumers applying for enrollment, actions taken to resolve the complaints, and results of the actions. A medicaid health plan shall make the required information available to the department annually, or at other times specified in the contract or, if the department requires additional information for the purposes in this subpart, within ten days of the date of the department's written request for the additional information.

9500.1461 REQUIRED QUALITY ASSURANCE SYSTEM.

A medicaid health plan shall develop and implement a quality assurance system for the appropriate delivery of health services to the medicaid health plan's enrollees. The quality assurance system must include the elements specified in the contract between the medicaid health plan and the department. The medicaid health plan must be using the quality assurance system when contracting with the department.

9500.1462 SECOND MEDICAL OPINION.

A medicaid health plan must provide, at its expense, a second medical opinion within the medicaid health plan when the department or the enrollee requests a second medical opinion.

9500.1463 GRIEVANCE PROCEDURES.

Subpart 1. **Internal grievance procedure.** A medicaid health plan shall have, in writing, a grievance procedure for receiving and reviewing the complaints of consumers and enrollees. The procedure must be approved by the department. The grievance procedure must include an informal review in which a determination is made within ten calendar days after the medicaid health plan receives a verbal complaint and a formal procedure to hear written grievances. The formal procedure shall provide a hearing and a decision about the grievance within the time specified in the contract between the department and the medicaid health plan.

The medicaid health plan shall give an enrollee a copy of the grievance procedure, written in a language that can be understood by the enrollee.

A medicaid health plan that revises its grievance procedures must notify its enrollees of the revised procedure, in writing, at least two weeks before the revision is effective. A revision of a medicaid health plan's grievance procedure must be submitted to and approved in writing by the department before its implementation.

Subp. 2. **State grievance procedure; appeal of provider's delay or refusal to provide services.** An enrollee may appeal to the commissioner if the medicaid health plan delays or refuses to provide medically necessary services and if the grievance procedures in subpart 1 have been exhausted. The appeal shall be heard by a panel that includes health practitioners as specified in Minnesota Statutes, section 256B.69, subdivision 11. The panel's decision is a final agency action that may be appealed by the enrollee or the medicaid health plan under the contested case provisions of Minnesota Statutes, chapter 14.

9500.1464 SURVEILLANCE AND UTILIZATION REVIEW.

The provisions of parts 9505.1750 to 9505.2150 apply to MAPDP.

REPEALER. Minnesota Rule Parts 9500.1450; 9500.1451; 9500.1452; 9500.1453; 9500.1454; 9500.1455; 9500.1456; 9500.1457; 9500.1458; 9500.1459; 9500.1460; 9500.1461; 9500.1462; 9500.1463; 9500.1464 are repealed effective December 31, 1988, unless otherwise extended by the legislature.

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.

Pollution Control Agency—Air Quality Division

Adopted Rules Relating to Noise Control

The rules proposed and published at *State Register*, Volume 10, Number 16, pages 891-895, October 14, 1985 (10 S.R. 891) are adopted with the following modifications:

Rules as Adopted

7010.0010 INCORPORATION BY REFERENCE.

For the purpose of chapter 7010, American National ~~Standard Standards~~ Institute, ~~Acoustical Terminology, S1.1-1960 (R1976)~~ and Specification for Sound Level Meters, S1.4-1983 ~~are is~~ incorporated by reference. ~~These publications are~~ This publication is available from the American National ~~Standard Standards~~ Institute, 1430 Broadway, New York, N.Y. 10018 and can be found at: the offices of the Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113; the Government Documents Section, Room 409, Wilson Library, University of Minnesota, 309 19th Avenue South, Minneapolis, Minnesota 55454; and the State of Minnesota Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155. ~~These documents are~~ This document is not subject to frequent change.

The Federal Highway Administration publication, Sound Procedures for Measuring Highway Noise: Final Report, FHWA-DP-45-IR FHWA-DP-45-1R (August 1981) is incorporated by reference. This publication is available from the United States Depart-

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ADOPTED RULES

ment of Transportation, Federal Highway Administration, 1000 North Globe Road, Arlington, Virginia 22201 and can be found at: the offices of the Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113; the Government Documents Section, Room 409, Wilson Library, University of Minnesota, 309 19th Avenue South, Minneapolis, Minnesota 55454; and the State of Minnesota Law Library, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155. This document is not subject to frequent change.

7010.0020 DEFINITIONS.

Subp. 5. **Decibel.** "Decibel" has the meaning given it in American National Standard Institute S1.1-1960 (R-1976), section 2-3 means a unit of sound pressure level, abbreviated as dB.

Subp. 7. ~~L_{dn}~~ **L_{dn}** (day, night sound level) means the equivalent A-weighted sound level during a 24-hour time period with a ten decibel weighting applied to the equivalent sound level during nighttime L_{10} . " L_{10} " means the sound level, expressed in dB(A), which is exceeded ten percent of the time for a one hour survey, as measured by test procedures approved by the director.

Subp. 8. ~~L_{eq}~~ **L_{eq}** (equivalent sound level) means the constant sound level that, in 60 consecutive minutes, would convey the same sound energy as the actual time-varying A-weighted sound level L_{50} . " L_{50} " means the sound level, expressed in dB(A), which is exceeded 50 percent of the time for a one hour survey, as measured by test procedures approved by the director.

Subp. 11. **Person.** "Person" means a person as defined in part 7000.0100, subpart 9 any human being, any municipality or other governmental or political subdivision or other public department or agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agency, legal entity, other than a court of law, or any legal representative of any of the foregoing, but does not include the agency.

Subp. 12. **Sound pressure level.** "Sound pressure level" has the meaning given it in American National Standard Institute S1.1-1960 (R-1976), section 2-6, in decibels, means 20 times the logarithm to the base 10 of the ratio of the pressure to the reference pressure. The reference pressure shall be 20 micronewtons per square meter.

7010.0030 NOISE CONTROL REQUIREMENT.

No person may violate the standards established in part 7010.0040, unless exempted by Minnesota Statutes, section 116.07, subdivision 2a. Any municipality having authority to regulate land use shall take all reasonable measures within its jurisdiction to prevent the establishment of land use activities listed in noise area classification (NAC) 1, 2, or 3 in any location where the standards established in part 7010.0040 are being or will be exceeded violated immediately upon establishment of the land use.

7010.0040 NOISE STANDARDS.

Subpart 1. **Scope.** These standards describe the limiting levels of sound established on the basis of present knowledge for the preservation of public health and welfare. These standards are consistent with speech, sleep, annoyance, and hearing conservation requirements for receivers within areas grouped according to land activities by the noise area classification (NAC) system established in part 7010.0050. However, these standards do not, by themselves, identify the limiting levels of impulsive noise needed for the preservation of public health and welfare. Noise standards in subpart 2 apply to all sources. For airports, the additional noise standards in subpart 3 also apply.

Subp. 2. Noise standards.

Noise Area Classification	Daytime		Nighttime	
1	63 L_{eq}		53 L_{eq}	
2	68 L_{eq}		68 L_{eq}	
3	78 L_{eq}		78 L_{eq}	
	L_{50}	L_{10}	L_{50}	L_{10}
1	60	65	50	55
2	65	70	65	70
3	75	80	75	80

Subp. 3. **Additional airport noise standards.** An L_{dn} of 63, 74, and 84 for NAC 1,2,3, respectively, also applies to airports.

7010.0050 NOISE AREA CLASSIFICATION.

Subp. 2. **Noise area classifications.** The noise area classifications and the activities included in each classification are listed below:

Noise Area Classification	Land Use Activities
1	<p>Residential, educational, medical, and dedicated nature areas; includes all types of nontransient housing, schools, churches, medical facilities providing nighttime care, such as hospitals and nursing homes, and nature preserves <u>Household units (includes farm houses)</u></p> <p><u>Group quarters</u></p> <p><u>Residential hotels</u></p> <p><u>Mobile home parks or courts</u></p> <p><u>Transient lodging</u></p> <p><u>Other residential</u></p> <p><u>Motion picture production</u></p> <p><u>Medical and other health services</u></p> <p><u>Correctional institutions</u></p> <p><u>Educational services</u></p> <p><u>Religious activities</u></p> <p><u>Cultural activities and nature exhibitions</u></p> <p><u>Entertainment assembly</u></p> <p><u>Camping and picnicking areas (designated)</u></p> <p><u>Resorts and group camps</u></p> <p><u>Other cultural, entertainment, and recreational activities.</u></p>
2	<p>Commercial, entertainment, and recreational; includes office buildings, retail stores and services, transient lodging, medical facilities not providing nighttime care, parks, and athletic fields <u>Railroad terminals (passenger)</u></p> <p><u>Railroad terminals (passenger and freight)</u></p> <p><u>Rapid rail transit and street railway passenger terminals</u></p> <p><u>Bus passenger terminals (intercity)</u></p> <p><u>Bus passenger terminals (local)</u></p> <p><u>Bus passenger terminals (intercity and local)</u></p> <p><u>Other motor vehicle transportation</u></p> <p><u>Airport and flying field terminal (passenger)</u> <u>Airport and flying field terminals (passenger and freight)</u></p> <p><u>Marine terminals (passenger)</u></p> <p><u>Marine terminals (passenger and freight)</u></p> <p><u>Automobile parking</u></p> <p><u>Telegraph message centers</u></p> <p><u>Transportation services and arrangements</u></p> <p><u>Wholesale trade</u></p> <p><u>Retail trade—building materials, hardware, and farm equipment</u></p> <p><u>Retail trade—general merchandise</u></p> <p><u>Retail trade—food</u></p> <p><u>Retail trade—automotive, marine craft, aircraft, and accessories</u></p> <p><u>Retail trade—apparel and accessories</u></p> <p><u>Retail trade — furniture, home furnishings, and equipment</u></p> <p><u>Retail trade—eating and drinking</u></p> <p><u>Other retail trade</u></p> <p><u>Finance, insurance, and real estate services</u></p> <p><u>Personal services</u></p> <p><u>Business services</u></p>

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ADOPTED RULES

Repair services
Legal services
Other professional services
Contract construction services
Governmental services (except correctional institutions)
Miscellaneous services (except religious activities)
Public assembly (except entertainment assembly and race tracks)
Amusements (except fairgrounds and amusement parks)
Recreational activities (except designated camping and picnicking areas)
Parks.

3

Industrial; includes manufacturing, utilities, transportation, and agriculture Food and kindred products—manufacturing
Textile mill products—manufacturing
Apparel and other finished products made from fabrics, leather, and similar materials—manufacturing
Lumber and wood products (except furniture)—manufacturing
Furniture and fixtures—manufacturing
Paper and allied products—manufacturing
Printing, publishing, and allied industries
Chemicals and allied products—manufacturing
Petroleum refining and related industries
Rubber and miscellaneous plastic products—manufacturing
Stone, clay, and glass products—manufacturing
Primary metal industries
Fabricated metal products—manufacturing
Professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks—manufacturing
Miscellaneous manufacturing (except motion picture production)
Railroad, rapid transit, and street railway transportation (except passenger terminals)
Motor vehicle transportation (except passenger terminals)
Aircraft transportation (except passenger terminals)
Marine craft transportation (except passenger and freight terminals)
Highway and street right-of-way
Communication (except telegraph message centers)
Utilities
Other transportation, communication, and utilities (except transportation services and arrangements)
Race tracks
Fairgrounds and amusement parks
Agricultural
Agricultural and related activities
Forestry activities and related services (including commercial forest land, timber production, and other related activities)
Fishing activities and related services
Mining activities and related services
Other resource production and extraction
All other activities not otherwise listed.

4

Undeveloped and unused land area (excluding noncommercial forest development)
Noncommercial forest development
Water areas
Vacant floor area
Under construction
Other undeveloped land and water areas.

Subp. 3. **Exceptions.** The noise area classification for a land use may be changed in the following ways if the applicable conditions are met.

B. The standards for a building in a noise area classification 2 shall be applied to a building in a noise area classification 1 if the following conditions are met:

(3) the building has no areas or accommodations ~~contiguous to it~~ that are intended for outdoor activities.

C. The standards for a building in a noise area classification 3 shall be applied to a building in a noise area classification 1 if the following conditions are met:

(3) the building has no areas or accommodations ~~contiguous to it~~ that are intended for outdoor activities.

D. The standards for a building in a noise area classification 3 shall be applied to a building in a noise area classification 2 if the following conditions are met:

(3) the building has no areas or accommodations ~~contiguous to it~~ that are intended for outdoor activities.

7010.0060 MEASUREMENT METHODOLOGY.

Subpart 1. **Measurement location.** Measurement of sound must be made at or within the applicable NAC at the point of human activity which is nearest to the noise source. All measurements shall be made outdoors.

Subp. 2. **Equipment specifications.** All sound level measuring devices must be ~~certified to meet Type O, I, II, or S specifications under American National Standard~~ Standards Institute S1.4-1983.

Subp. 3. **Calibration.** All sound level measuring devices must, at a minimum, be ~~recertified or cross-referenced according to American National Standard Institute S1.4-1983 annually.~~ The equipment must be externally field calibrated before and after monitoring using a calibration device of known frequency and sound pressure level.

Subp. 4. **Measurement procedures.** The following procedures must be used to obtain representative sound level measurements:

A. Measurements must be made ~~between at least three and five feet off the ground or surface and away from natural or manmade structures which would diminish the sound level~~ prevent an accurate measurement.

B. Measurements must be made using the A-weighting and fast response characteristics of the sound measuring device as specified in American National ~~Standard~~ Standards Institute S1.4-1983.

C. Measurements must not be made in sustained winds ~~greater than 12 miles per hour~~ or in precipitation which results in a difference of less than ten decibels between the background noise level and the noise source being measured.

D. Measurements must be made using a ~~windscreen~~ microphone which is protected from ambient conditions which would prevent an accurate measurement.

Subp. 5. ~~Methods for determination of hourly L_{eq} .~~ For the determination of an hourly L_{eq} , ~~measurements must be made using the measuring devices as required under subpart 2 and used according to the manufacturer's recommendations.~~

A. ~~Hand held measuring devices must use the checkoff method described in FHWA DP-45-1R, section 3.6 (August 1981) for determination of hourly L_{eq} .~~

B. ~~Automated or integrating measuring devices may use the checkoff method described in FHWA DP-45-1R, section 3.6 (August 1981) or be operated in accordance with the manufacturer's recommendations for determination of hourly L_{eq} .~~

C. ~~Methods equivalent to those described in subpart 5, items A and B may be used provided they are approved by the director of the Minnesota Pollution Control Agency.~~

Subp. 6. **Calculation of L_{dn} .** L_{dn} shall be calculated using the following formula:

$$L_{dn} = 10 \log_{10} 1/24 \{ (15 \times 10L_d/10 + 9 \times 10L_n + 10/10) \}$$

where

L_d = Ten times the \log_{10} of the average energy for the hours from 7:00 a.m. to 10:00 p.m.

L_n = Ten times the \log_{10} of the average energy for the hours from 10:00 p.m. to 7:00 a.m.

Subp. 7. **Data documentation.** A summary sheet for all sound level measurements shall be completed and signed by the person making the measurements. At a minimum, the summary sheet shall include:

H. make ~~and~~, model, and serial number of measuring equipment;

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ADOPTED RULES

7010.0070 SOUND ATTENUATION MEASUREMENT METHODOLOGY.

Subp. 5. **Equivalent methods.** Methods equivalent to those described in subpart 4 may be used provided they are approved by the director of the Minnesota Pollution Control Agency. The director shall approve an alternative method if the director finds that the method will produce representative data and results which are as reliable as the methods specified in subpart 4.

Board of Teaching

Adopted Permanent Rules Relating to Education; Teaching Licensure

The rules proposed and published at *State Register*, Volume 10, Number 16, pages 896-920, October 14, 1985 (10 S.R. 896) are adopted with the following modifications:

Rules as Adopted

~~8700.7500 CODE OF ETHICS FOR MINNESOTA TEACHERS.~~

~~Subpart 1. [Unchanged.]~~

~~Subp. 2. **Standards of professional conduct.** The standards of professional conduct are as follows:~~

~~A. to I. [Unchanged.]~~

~~J. A teacher shall accept a contract or assignment for a teaching position that requires licensing only if properly or provisionally licensed for that position and must not apply for or accept the assignment of a teacher currently under contract to a school district engaged in an employer/employee dispute.~~

~~Subp. 3. to 5. [Unchanged.]~~

~~8700.0310 USE OF LICENSES DURING EMPLOYER/EMPLOYEE DISPUTES.~~

~~A school board must not employ a person to teach during an employer/employee dispute unless that person holds a currently valid Minnesota entrance, continuing, or life license in the subject or field and grade level for which the teacher is assigned. A school board must not employ a person to teach during an employer/employee dispute who holds a limited permit, a provisional license, or a short call substitute teaching license, or is a licensed teacher under a personnel variance, except when such a teacher was employed for at least ten consecutive school days in a school district immediately preceding the beginning of an employer/employee dispute in that school district.~~

~~8700.5504 SPECIAL EDUCATION: HEARING IMPAIRED.~~

~~Subp. 3. **Program requirements; hearing impaired.** Each program leading to the licensure of teachers of hearing impaired students (prekindergarten to grade 12) shall provide candidates recommended for licensure with preparation in the following special education areas, consisting of a minimum of 30 quarter hours, or the equivalent.~~

~~C. Instructional management:~~

~~(1) ability to use proficiency in the expressive and receptive use of alternative communication systems, such as including sign language, finger spelling, and speech reading, and manage their use;~~

~~8700.5505 SPECIAL EDUCATION: COMMUNICATION DISORDERS.~~

~~Subp. 4. **Program approval for institutions.** An institution applying to the Board of Teaching for approval of its preparation program for teachers of students with communication disorders shall comply with part 8700.7700. Preparation programs submitted for approval that require as a minimum an advanced degree must not be approved by the Board of Teaching.~~

~~8700.5507 SPECIAL EDUCATION: PHYSICALLY HANDICAPPED.~~

~~Subp. 2. **Program requirements; physically handicapped.** Each program leading to the licensure of teachers of physically handicapped students (kindergarten to grade 12) shall provide candidates recommended for licensure with preparation in the following special education areas consisting of a minimum of 15 quarter hours, or the equivalent:~~

~~C. Instructional management:~~

~~(1) Attitudes toward the physically handicapped students:~~

~~(a) understanding of the psychological implications of physical disability and its implications for individuals, family, and society;~~

~~(b) understanding roles of parents and siblings in supporting growth and development of the physically handicapped students;~~

8700.5511 SPECIAL EDUCATION: MILDLY HANDICAPPED.

Subpart 1. Applicability. Mildly handicapped students are those students with mental handicaps, specific learning disabilities, or emotional/behavioral disorders who receive services in accordance with part 3525.2340, subpart 2, items B and C as in effect on the effective date of these rules.

Subpart 1 Subp. 2. Licensure requirements. A candidate recommended for licensure to teach mildly handicapped students with mental handicaps, specific learning disabilities, or emotional/behavioral disorders (kindergarten to grade 12) shall:

A. hold a master's degree or the equivalent;

B. hold a valid Minnesota elementary, secondary, or K-12 classroom teaching license, or satisfactorily complete the requirements enumerated in part 8700.5512;

C. hold a valid Minnesota special education teaching license as a teacher of special education: mild to moderate mentally handicapped, special education: specific learning disabilities, or special education: emotionally/behaviorally disordered;

Subp. 2 3. Program requirements; regular education. Each program leading to the licensure of teachers of mildly handicapped students (kindergarten to grade 12) shall provide candidates recommended for licensure with preparation in regular education areas as set forth in item A or B:

Subp. 3 4. Program requirements; mildly handicapped. Each program leading to the licensure of teachers of mildly handicapped students (kindergarten to grade 12) shall provide candidates recommended for licensure with preparation in the following special education areas, consisting of a minimum of 45 quarter hours, or the equivalent:

Subp. 4 5. Program approval for institutions. An institution applying to the Board of Teaching for approval of its preparation program for teachers of mildly handicapped students shall comply with part 8700.7700.

Subp. 5 6. Continuing licensure. A continuing license shall be issued and renewed according to rules of the Board of Teaching governing continuing licenses.

OFFICIAL NOTICES

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

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

**Department of Human Services—Long Term Care Management
Division****Outside Opinion Sought Concerning Rules for Determining Welfare Per Diem Payment
Rates for Nursing Home Providers Participating in the Medical Assistance Program**

Notice is hereby given that the Minnesota Department of Human Services is seeking information or opinions from sources outside the agency in preparing to draft amendments to rules for determining welfare per diem payment rates for nursing home providers participating in the Medical Assistance program, Minnesota Rules, parts 9549.0010 to 9549.0080 (Permanent Rule 50). The purpose of the amendments is to correct or clarify various parts of the rules. Authorization for the rules is found in Minnesota Statutes, section 256B.502.

The Minnesota Department of Human Services requests information and comments concerning the subject matter of this pro-

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OFFICIAL NOTICES

posed rule. Interested or affected persons may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Chuck Osell, Supervisor
Rule Administration and Policy Development Unit
Long Term Care Management Division
Minnesota Department of Human Services
6th Floor, Space Center
444 Lafayette Road
St. Paul, MN 55101

Oral statements and comments will be received during regular business hours over the telephone at 612/297-3463.

All statements of information and comment shall be accepted until further notice. Any written material received by the Minnesota Department of Human Services shall become part of the record in the event the rule is promulgated.

Department of Human Services—Long Term Care Management Division

Outside Opinion Sought Concerning Rules Governing the Funding and Administration of Home and Community-Based Services for Disabled Adults Under the Age of 65

Notice is hereby given that the Minnesota Department of Human Services is seeking information or opinions from sources outside the agency in preparing to draft a rule governing the funding and administration of home and community-based services for disabled adults under the age of 65 as provided for in the Federal Omnibus Budget Reconciliation Act, Title XIX, Section 2176. Among the services the Department is considering providing under the proposed rules are: respite care, case management, adaptive aids, adult day care, homemaker services, personal care attendants and home health services. Authorization for the rule is found in Minnesota Statutes, section 256B.49, subdivision 2.

The Minnesota Department of Human Services requests information and comments concerning the subject matter of this proposed rule. Interested or affected persons may submit statements of information or comment orally or in writing. Written statements should be addressed to:

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

Oral statements and comments will be received during regular business hours over the telephone at 612/297-4302.

All statements of information and comment shall be accepted until further notice. Any written material received by the Minnesota Department of Human Services shall become part of the record in the event the rule is promulgated.

Department of Human Services

Notice of Interstate Compact on Adoption and Medical Assistance

When children became eligible through the Social Security Act, Title IV-E, for federal participation in their adoption subsidies, they also were eligible for Medicaid. However, when their residence involved another state, children experienced difficulties in finding medical vendors willing to use out-of-state medical assistance cards. To resolve these problems, states decided to pass enabling legislation in order to enter into an interstate agreement on adoption and medical assistance.

The 1984 Minnesota Legislature passed Chapter 422 under which the Department of Human Services could enter into the interstate agreement with other states. The following agreement has been entered into by eleven states to date, including Minnesota.

Interstate Compact on Adoption and Medical Assistance

ARTICLE I. FINDINGS

The states which are parties to this Compact find that:

(a) In order to obtain adoptive families for children with special needs, states must assure prospective adoptive parents of sub-

stantial assistance (usually on a continuing basis) in meeting the high costs of supporting and providing for the special needs and the services required by such children.

(b) The states have a fundamental interest in promoting adoption for children with special needs because the care, emotional stability, and general support and encouragement required by such children can be best, and often only, obtained in family homes with a normal parent-child relationship.

(c) The states obtain fiscal advantages from providing adoption assistance because the alternative is for the states to bear the higher cost of meeting all the needs of children while in foster care.

(d) The necessary assurance of adoption assistance for children with special needs, in those instances where children and adoptive parents live in states other than the one undertaking to provide the assistance, include the establishment and maintenance of suitable substantive guarantees and workable procedures for interstate cooperation and payments to assist with the necessary costs of child maintenance, the procurement of services, and the provision of medical assistance.

ARTICLE II. PURPOSES

The purposes of this Compact are to:

(a) Strengthen protections for the interests of children with special needs on behalf of whom adoption assistance is committed to be paid, when such children are in or move to states other than the one committed to provide adoption assistance.

(b) Provide substantive assurances and operating procedures which will promote the delivery of medical and other services to children on an interstate basis through programs of adoption assistance established by the laws of the states which are parties to this Compact.

ARTICLE III. DEFINITIONS

As used in this Compact, unless the context clearly requires a different construction:

(a) "Child with special needs" means a minor who has not yet attained the age at which the state normally discontinues children's services, or a child who has not yet reached the age of 21 where the state determines that the child's mental or physical handicaps warrant the continuation of assistance beyond the age of majority, for whom the state has determined the following:

(a) That the child cannot or should not be returned to the home of his or her parents;

(2) That there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical condition or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance;

(3) That, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in their care as a foster child, a reasonable but unsuccessful effort has been made to place the child with appropriate adoptive parents without providing adoption assistance.

(b) "Adoption assistance" means the payment or payments for the maintenance of a child which are made or committed to be made pursuant to the adoption assistance program established by the laws of a party state.

(c) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a Territory or Possession of the United States.

(d) "Adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(e) "Residence state" means the state in which the child is a resident by virtue of the residence of the adoptive parents.

(f) "Parents" means either the singular or plural of the word "parent".

ARTICLE IV. ADOPTION ASSISTANCE

(a) Each state shall determine the amounts of adoption assistance and other aid which it will give to children with special needs and their adoptive parents in accordance with its own laws and programs. The adoption assistance and other aid may be made subject to periodic reevaluation of eligibility by the adoption assistance state in accordance with its laws.

(b) The adoption assistance, medical assistance, and other services and benefits to which this Compact applies are those provided to children with special needs and their adoptive parents from the effective date of the adoption assistance agreement.

(c) Every case of adoption assistance shall include a written adoption assistance agreement between the adoptive parents and the appropriate agency of the state undertaking to provide the adoption assistance. Every such agreement shall contain provisions for the fixing of actual or potential interstate aspects of the assistance so provided as follows:

(1) An express commitment that the assistance so provided shall be payable without regard for the state of residence of the adoptive parents, both at the outset of the agreement period and at all times during its continuance;

OFFICIAL NOTICES

(2) A provision setting forth with particularity the types of care and services toward which the adoption assistance state will make payments;

(3) A commitment to make medical assistance available to the child in accordance with Article V of this Compact;

(4) An express declaration that the agreement is for the benefit of the child, the adoptive parents and the state and that it is enforceable by any or all of them; and

(5) The date or dates upon which each payment or other benefit provided thereunder is to commence, but in no event prior to the effective date of the adoption assistance agreement.

(d) Any services or benefits provided for a child by the residence state and the adoption assistance state may be facilitated by the party states on each other's behalf. To this end, the personnel of the child welfare agencies of the party states will assist each other, as well as the beneficiaries of adoption assistance agreements, in assuring prompt and full access to all benefits expressly included in such agreements. It is further recognized and agreed that, in general, all children to whom adoption assistance agreements apply will be eligible for benefits under the child welfare, education, rehabilitation, mental health, and other programs of their state of residence on the same basis as other resident children.

(e) Adoption assistance payments on behalf of a child in another state shall be made on the same basis and in the same amounts as they would be made if the child were living in the state making the payments, except that the laws of the adoption assistance state may provide for the payment of higher amounts.

ARTICLE V. MEDICAL ASSISTANCE

(a) Children for whom a party state is committed, in accordance with the terms of an adoption assistance agreement to provide federally aided medical assistance under Title XIX of the Social Security Act, are eligible for such medical assistance during the entire period for which the agreement is in effect. Upon application therefor, the adoptive parents of a child who is the subject of such an adoption assistance agreement shall receive a medical assistance identification document made out in the child's name. The identification shall be issued by the medical assistance program of the residence state and shall entitle the child to the same benefits, pursuant to the same procedures, as any other child who is covered by the medical assistance program in that state, whether or not the adoptive parents are themselves eligible for medical assistance.

(b) The identification document shall bear no indication that an adoption assistance agreement with another state is the basis for its issuance. However, if the identification is issued pursuant to such an adoption assistance agreement, the records of the issuing state and the adoption assistance state shall show the fact, and shall contain a copy of the adoption assistance agreement and any amendment or replacement thereof, as well as all other pertinent information. The adoption assistance and medical assistance programs of the adoption assistance state shall be notified of the issuance of such identification.

(c) A state which has issued a medical assistance identification document pursuant to this Compact, which identification is valid and currently in force, shall accept, process and pay medical assistance claims thereon as it would with any other medical assistance claims by eligible residents.

(d) The federally aided medical assistance provided by a party state pursuant to this Compact shall be in accordance with paragraphs (a) through (c) of this Article. In addition, when a child who is covered by an adoption assistance agreement is living in another party state, payment or reimbursement for any medical services and benefits specified under the terms of the adoption assistance agreement, which are not available to the child under the Title XIX medical assistance program of the residence state, shall be made by the adoption assistance state as required by its law. Any payments so provided shall be of the same kind and at the same rates as provided for children who are living in the adoption assistance state. However, where the payment rate authorized for a covered service under the medical assistance program of the adoption assistance state exceeds the rate authorized by the residence state for that service, the adoption assistance state shall not be required to pay the additional amounts for the services or benefits covered by the residence state.

(e) A child referred to in paragraph (a) of this Article, whose residence is changed from one party state to another party state shall be eligible for federally aided medical assistance under the medical assistance program of the new state of residence.

ARTICLE VI. COMPACT ADMINISTRATION

(a) In accordance with its own laws and procedures, each state which is a party to this Compact shall designate a Compact Administrator and such Deputy Compact Administrators as it deems necessary. The Compact Administrator shall coordinate all activities under this Compact within his or her state. The Compact Administrator shall also be the principal contact for officials and agencies within and without the state for the facilitation of interstate relations involving this Compact and the protection of benefits and services provided pursuant thereto. In this capacity, the Compact Administrator will be responsible for assisting child welfare agency personnel from other party states and adoptive families receiving adoption and medical assistance on an interstate basis.

(b) Acting jointly, the Compact Administrators shall develop uniform forms and administrative procedures for the interstate

monitoring and delivery of adoption and medical assistance benefits and services pursuant to this Compact. The forms and procedures so developed may deal with such matters as:

- (1) Documentation of continuing adoption assistance eligibility;
- (2) Interstate payments and reimbursements; and
- (3) Any and all other matters arising pursuant to this Compact.

(c) (1) Some or all of the parties to this Compact may enter into supplementary agreements for the provision of or payment for additional medical benefits and services, as provided in Article V(d); for interstate service delivery, pursuant to Article IV(d); or for matters related thereto. Such agreements shall not be inconsistent with this Compact, nor shall they relieve the party states of any obligation to provide adoption and medical assistance in accordance with applicable state and federal law and the terms of this Compact.

(2) Administrative procedures or forms implementing the supplementary agreements referred to in paragraph (c) (1) of this Article may be developed by joint action of the Compact Administrators of those states which are party to such supplementary agreements.

(d) It shall be the responsibility of the Compact Administrator to ascertain whether and to what extent additional legislation may be necessary in his or her own state to carry out the provisions of this Article or Article IV or any supplementary agreements pursuant to this Compact.

ARTICLE VII. JOINDER AND WITHDRAWAL

(a) This Compact shall be open to joinder by any state. It shall enter into force as to a state when its duly constituted and empowered authority has executed it.

(b) In order that the provisions of this Compact may be accessible to and known by the general public, and so that they may be implemented as law in each of the party states, the authority which has executed the Compact in each party state shall cause the full text of the Compact and a notice of its execution to be published in his or her state. The executing authority in any party state shall also provide copies of the Compact upon request.

(c) Withdrawal from this Compact shall be by written notice, sent by the authority which executed it, to the appropriate officials of all other party states, but no such notice shall take effect until one year after it is given in accordance with the requirements of this paragraph.

(d) All adoption assistance agreements outstanding and to which a party state is a signatory at the time when its withdrawal from this Compact takes effect shall continue to have the effects given to them pursuant to this Compact until they expire or are terminated in accordance with their provisions. Until such expiration or termination, all beneficiaries of the agreements involved shall continue to have all rights and obligations conferred or imposed by this Compact, and the withdrawing state shall continue to administer the Compact to the extent necessary to accord and implement fully the rights and protections preserved hereby.

ARTICLE VIII. CONSTRUCTION AND SEVERABILITY

The provisions of this Compact shall be liberally construed to effectuate the purposes thereof. The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the Constitution of the United States or of any party state, or where the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the Constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Metropolitan Council

Notice of Review Schedule for 1987 Work Program and Budget

The Metropolitan Council is developing a 1987 work program and budget for adoption in September. The Council's Management Committee will be reviewing the proposed budget and seeking public comment during July, August and September.

The proposed budget was developed based on direction provided by Council members in May. Priorities identified for 1987 include: 1) long term care, 2) metro governance, 3) solid waste, 4) integration of human services policies into the Council's Metropolitan Development and Investment Framework, 5) economic and fiscal research and 6) airports/community compatibility.

OFFICIAL NOTICES

The following is the final schedule for review of the 1987 work program and budget.

July 15	Management Committee review.
July 22	Management Committee review. Public meeting to receive comments.
July 24	Management Committee review.
August 5	
August 12	
August 19	
September 11	Public hearing on 1987 work program and budget.
September 16	Management Committee review and recommendation.
September 14	Hearing record closes.
September 25	Council adopts 1987 work program and budget.

All meetings are open to the public. Please call to confirm meeting dates, times and agendas. A notice of public hearing will be published. If you have any questions regarding the schedule or proposed budget, call the Council's Finance Division and talk to Alan Morris (291-6446) or Tim Fleetham (291-6374).

Minnesota Teachers Retirement Association

Meeting Notice

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Wednesday, July 23, 1986, and Thursday, July 24, 1986. Both meetings will be held at 8:00 a.m. in Room 101 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota to interview finalists for the position of Executive Director.

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

Contracts and Requisitions Open for Bid

Call 296-6152 for Referral to Specific Buyers.

<u>Commodity for Bid</u>	<u>Bid Closing Date at 2 pm</u>	<u>Department or Division</u>	<u>Delivery Point</u>	<u>Requisition #</u>
Telephone System	July 15, 1986	Pollution Control	Roseville	02-310-14802
Lounge Area Furniture	July 15, 1986	Human Services Regional Treatment Center	Willmar	02-310-14755, 14756
Additional terminals for VAX	July 15, 1986	Housing Finance	St. Paul	34-000-04896
Bathing Systems	July 15, 1986	Human Services Nursing Home	Aw-Gwah-Ching	02-310-14377
Bathing Systems	July 15, 1986	Human Services Regional Treatment Center	Brainerd	55304-06999

STATE CONTRACTS

<u>Commodity for Bid</u>	<u>Bid Closing Date at 2 pm</u>	<u>Department or Division</u>	<u>Delivery Point</u>	<u>Requisition #</u>
Bathing Systems	July 15, 1986	Human Services Regional Treatment Center	Fergus Falls	02-310-14816
Remanufactured Starters & Alternators	July 17, 1986	Transportation & Corrections	Various	Price-Contract
Automatic Scrubber	July 17, 1986	Mankato State University	Mankato	26-071-16595
Radio Communication Equip.	July 17, 1986	Mankato State University	Mankato	26-071-16870
Fascimili Equipment	July 18, 1986	Revenue	Various	67-240-11415
Stacking Chairs	July 18, 1986	Vermillion Community College	Ely	27-147-48377
Safety Shoes	July 18, 1986	Various	Various	Price-Contract
Plumbing Fixtures	July 18, 1986	Correctional Facility	Stillwater	78-620-00027
Phone System	July 18, 1986	Energy & Economic Development	St. Paul	22-400-01262
Photo Copy Machine Rental	July 21, 1986	St. Cloud State University	St. Cloud	26-073-18933
Photo Copy Machine Rental	July 21, 1986	Natural Resources	Bemidji	29-001-10248
System Upgrade/MTCE	July 21, 1986	Jobs & Training	St. Paul	21-200-13020
TI Microcomputers	July 21, 1986	Mankato State University	Mankato	26-071-16856
Sperry Terminals	July 21, 1986	Mankato State University	Mankato	26-071-16848
MV8000 Upgrade	July 21, 1986	Health	Minneapolis	12-400-95575

Department of Energy and Economic Development

Request for Proposals for a Motion Picture and Television Industries Development Program

The Department of Energy and Economic Development announces its intention to solicit proposals from an organization to design a program developing the motion picture and television industries in Minnesota.

The organization will be required to design a marketing and promotional strategy for film and video production, develop a resource bank of information pertaining to location and points of interest for film and video productions and products.

The estimated amount of the contract will not exceed \$60,000 and is to be spent over a one year time period.

Copies of the Request for Proposal can be obtained from:

Colleen Kuchenmeister
 Department of Energy and Economic Development
 900 American Center Building
 St. Paul, MN 55101
 612/297-1179

Department of Energy and Economic Development—Energy Division

Request for Proposals for Graphic Design Services

The Energy Division of the Minnesota Department of Energy and Economic Development is requesting proposals from contractors to provide the following graphic design services:

- cover and layout design, type specifications and camera ready mechanicals for brochures, reports, factsheets, ads, etc.
- slides and overhead transparencies
- artwork for displays
- technical illustrations, graphs, charts, maps
- logos

STATE CONTRACTS

The \$12,000 contract may be divided among several contractors. Services must be available upon request from August 15, 1986 through February 15, 1987.

Proposals should be submitted by July 30, 1986, stating services offered, hourly rate for those services and any minimum requirements. Samples of work also must be included.

All questions related to this notice and all proposals should be directed to:

Chris Gilchrist
Department of Energy & Economic Development
Energy Division
900 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-2291

Minnesota Housing Finance Agency

Request for Proposals for Administrators for the Minneapolis Urban Indian Housing Loan Program

The Minnesota Housing Finance Agency announces the availability of funding for the Minneapolis Urban Indian Housing Loan Program. Proposals are hereby solicited from all interested parties who are considered eligible "Administrators" by Minnesota Rule, Part 4900.1510.

The deadline for receipt of hand delivered proposals is 4:30 p.m., August 8, 1986. All other proposals must be sent by certified mail and postmarked no later than August 8, 1986.

The Minnesota Urban Indian Housing Loan Program provides money for housing loan programs for low and moderate income American Indians residing in Minneapolis. There is approximately \$430,550 currently available for the Urban Indian Housing Program, although this amount may be amended.

Proposals must include:

1. Evidence of applicant eligibility as an "Administrator". This can be determined by examination of eligible "Administrator" criteria contained in the information packet described below.
2. The proposed program including population and need data for American Indians residing in the area to be served and methods to be used to meet the identified needs.
3. A financial description of the program including the dollar amount of funds requested, types and terms of loans, the costs and method of program administration, and the source of funds with which State appropriations will be combined. Please note that evidence regarding the availability of this additional source of funds must be submitted with the proposals, and that said funds must be available as of the date of program commencement.
4. A description of the methods proposed to identify and select participants.
5. Evidence of administrative capacity to carry out the proposed program including resumes of personnel, a brief description of past performance which indicates previous housing experience, if any.
6. The extent to which American Indians will be or are involved in the administration of the program and in the ownership, management and labor force of contractors or subcontractors intended to be employed in the program, if known.

All proposals will be evaluated by Agency staff in accordance with Minnesota Rules 4900.1560. Comments from the Urban Indian Advisory Council will be solicited and considered for each proposal. Any applicant submitting a proposal which meets the objectives of the Minneapolis Urban Indian Housing Loan program and which the applicant determines is not best presented in the form of proposal required by this request may submit the proposal in any form desired, provided that the applicant also submits a proposal meeting the requirements of the request.

Complete proposal packets which contain specific information and instructions for proposal submissions may be obtained from the Minnesota Housing Finance Agency, 400 Sibley Street, Suite 300, St. Paul, Minnesota 55101. Attn: Donna Folstad, Indian Housing Coordinator.

Department of Human Services—Health Care Programs Division

Notice of Availability of Health Care Consultation Contracts

The Department of Human Services intends to issue a consultant contract to a physician board certified or eligible in internal medicine, family practice or rehabilitation with a background and experience in the determination of disability. This physician will function as a member of the State Medical Review Team.

The contract will be available immediately and extend to June 30, 1987.

This contract will be awarded to a candidate based on his/her experience, education, achievements and professional standing. The Department of Human Services will make the final selection of a consultant and issue a contract based upon the Department's needs, but not to exceed \$19,360.00 for the period from present through June 30, 1987.

Proposals must be received by August 8, 1986 and should be directed to:

Thomas L. JoliCoeur, Supervisor
Health Care Programs Division
Professional Services Section
Space Center
444 Lafayette Road
St. Paul, Minnesota 55101
(612)297-2022

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—Energy Division

Notice of Availability of Community Energy Council Grant Funds

Pursuant to Minnesota Rules 4160.5100-4160.5900 the Department of Energy and Economic Development announces that it is accepting applications for community energy council grants from cities and counties, individually, collectively, or through the exercise of joint powers agreements. The maximum amount of a grant to an individual applicant is \$15,000. The maximum amount of a grant to joint application is \$15,000 for the first applicant and \$12,000 for each additional applicant to a maximum of \$50,000. All grants require a ten percent local match.

Funds are available as follows:

Legislative appropriation of \$150,000. Funds are available from this source to support a variety of local energy programs in different energy use sectors.

Applications must be received no later than 4:30 p.m. on September 2, 1986, at the address given below.

Application forms, program rules and other information can be obtained by contacting:

Mark Schoenbaum
Department of Energy and
Economic Development
900 American Center Bldg.
150 E. Kellogg Blvd.
St. Paul, MN 55101
(612) 297-3602

SUPREME COURT DECISIONS

Decisions Filed Thursday 3 July 1986

Compiled by Wayne O. Tschimperle, Clerk

C8-84-1065 Carole Lewis, et al., v. The Equitable Life Assurance Society of the United States, petitioner, Appellant. Court of Appeals.

Dismissal provisions in employer's personnel handbook meet the requirements for formation of a unilateral contract and are therefore part of plaintiff's employment contracts.

The trial court's instruction to the jury that a covenant of good faith was implied in plaintiff's employment agreements was erroneous but not prejudicial.

In an action for defamation, the publication requirement may be satisfied by facts showing plaintiff was compelled to publish the defamatory statement to a third person if it was foreseeable to defendant that plaintiff would be so compelled.

In an action for defamation, an employer's communication to an employee of the reasons for employee's discharge presents a proper occasion upon which to recognize a qualified privilege.

Punitive damages are not available in a defamation action based upon compelled self-publication.

Affirmed in part; reversed in part. Amdahl, C.J.

Dissenting, Kelley, J.

Concurring in part, dissenting in part, Simonett, J., and Coyne, J.

C1-86-294, C3-86-295 State of Minnesota v. Richard A. DeWitt, Defendant (C1-86-294) and State of Minnesota v. Rochester Sand & Gravel, Inc., Defendant (C3-86-295). Olmsted County.

Criminal indictments for state antitrust law violations brought under Minn. Stat. § 325D.56 (1984) are governed by the 4-year statute of limitations in Minn. Stat. § 325D.64 (1984) and not the general 3-year limitation period for criminal indictments under Minn. Stat. § 628.26 (1984).

Certified question answered in the affirmative. Yetka, J.

C9-84-1169 In Re Petition of Inter-City Gas Corporation for Authority to Change its Schedule of Rates for Gas Service in Minnesota. Court of Appeals.

Increasing public utilities rates in an interim period pro rata to all consumers, as contemplated by statute, does not result in unfair or unreasonable rates, nor in a violation of due process.

The statutory plan does not permit refunds when correctly assessed interim rates generate annual revenues which do not exceed those authorized by the final determination.

Affirmed. Coyne, J.

Dissenting, Yetka, J.

C5-84-875, C9-84-913, C0-84-914, C8-84-921, C6-84-934 In the Matter of the Application of Peoples Natural Gas Company for Authority to Increase Rates for Gas Utility Service in Minnesota. Court of Appeals.

A valid agency interpretation does not fail because it reflects the policy of an improperly promulgated rule.

Increasing public utilities rates in an interim period pro rata to all consumers, as contemplated by statute, does not result in unfair or unreasonable rates, nor in a violation of due process. *In re Petition of Inter-City Gas Corporation*, ___ N.W. 2d ___ (Minn. 1986) (filed herewith).

Any refunds due under the statutory interim rate setting process are properly distributed in the same pro rata method by which the excess amounts were collected.

Affirmed. Coyne, J.

Dissenting, Yetka, J.

CX-84-1035, C7-84-1168 In the Matter of the Petition for Continental Telephone Company of Minnesota, Inc., for Authority to Change its Schedule of Telephone Rates for Customers within the State of Minnesota. Court of Appeals.

Increasing both components of a two-component utility charge for one consumer group while increasing only one of the components for other consumer groups violates the statutory directive of maintaining the existing rate design when authorizing interim rates for a public utility.

Refunds required because revenues under interim rates exceeded what would have been authorized under final rates must be distributed in the same proportions as the interim rate increase was allocated.

The Minnesota Public Utilities Commission must deal with all significant issues that arise in exercising its duty and power to set just and reasonable rates.

Affirmed in part, reversed in part, and remanded to the Minnesota Public Utilities Commission for further proceedings in accordance with this opinion. *Coyne, J.*

Dissenting, *Yetka, J.*

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Physicians Directory 1985. Names and addresses in alphabetical order of licensed chiropractors, doctors of medicine and osteopaths, optometrists, podiatrists and registered physical therapists. Code #1-1. \$15.00.

Health Care Facilities Directory 1986. Contains a list of hospitals and related institutions licensed and/or certified in Minnesota. Alphabetical listing by county. Includes town and facility name, ownership, capacity, available services, address, phone number, and director's name. Code #1-89. \$15.00.

OTHER PUBLICATIONS:

Legislative District Maps. A six-map set of Minnesota Legislative and U.S. Congressional Districts. Shows boundaries since redistricting. (3 maps 17" × 22", 1 map 25" × 29", 2 maps 28" × 40"). Sent to you in a sturdy mailing tube. Code #7-7. \$4.95.

MN Hazardous Waste Rules (as in effect 2-10-86). MN Rules Chapter 7045 and 7046. The rules governing the permits, storage, production and shipment of Hazardous Waste. Code #3-71. \$13.50.

Occupational Safety and Health Rules (as in effect 1-6-86). Chapters 5205-5206, 5210, 5215. State standards for safe working conditions including: personal protective equipment, walking and working surfaces, illumination and ventilation. 84 pp. Code #3-18. \$9.00.

The Medical Alley Directory. Reach the decision-makers without delay at more than 300 medical and bio-tech companies and healthcare delivery organizations. Entries include major products and/or services, company background, special interests, trade name(s), major activities, and addresses and phone numbers. (Code #40-7. \$109.00)

The following two publications are discounted more than 40%.

Education Laws 1984. A complete extract from the 1984 Minnesota Statutes of the empowering legislation relating to public schools. Code #2-83. ~~\$16.00~~ reduced to \$9.00.

Education Laws 1985 Supplement. The 1986 Education Laws (with changes incorporated from the 1986 Legislative Session) will not be available until the Winter of 1986. Code #2-83s1. ~~\$12.50~~ reduced to \$7.00.

* *Minnesota Laws 1985.* All laws passed in the Regular and Special Sessions. Code #18-3. \$37.00, plus \$2.22 tax.

* *Minnesota Rules 1985.* 10-volume set. Code #18-200. Single volumes: \$13.00 plus 78¢ tax; Full set: \$125.00 plus \$7.50 tax.

* *Minnesota Rules 1986 Supplement Number 1.* Code #18-200A. \$15.00 + 90¢ tax.

* *Minnesota Statutes 1985 Supplement.* Pocket part supplement to Minnesota Statutes 1984. Code #18-7. \$25.00 plus \$1.50 tax.

State Register Index. Contains cumulative finding aids to Volume 9 of the *State Register*, including Minnesota Rules Amendments and Additions. Executive Orders list & index. Agency & Subject Matter indices. Code #13-9 SR INDEX. \$5.00.

SUBSCRIPTIONS:

State Register. Minnesota's official weekly publication for agency rules and notices, executive orders of the Governor, state contracts, Supreme Court Calendar, Supreme Court and Tax Court Decisions. Annual subscription \$130; Trial Subscription (13 weeks) \$40.00; Single copies \$3.25.

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