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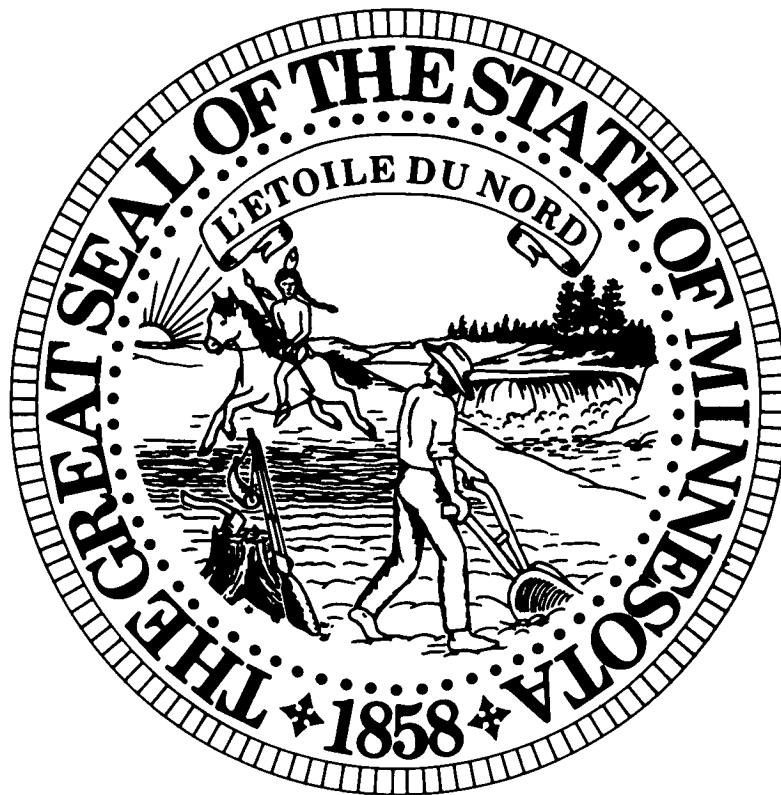
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State of Minnesota

STATE REGISTER

Department of Administration—Print Communications Division



Rules edition
Published every Monday

22 January 1990

Volume 14, Number 30

Pages 1829-1896

STATE REGISTER

Judicial Notice Shall Be Taken of Material Published in the State Register

The *State Register* is the official publication of the State of Minnesota, containing executive and commissioners' orders, proposed and adopted rules, official notices, state and non-state contracts, contract awards, grants, supreme court and tax court decisions, and a monthly calendar of cases to be heard by the state supreme court.

A *Contracts Supplement* is published every Thursday and contains additional state contracts and advertised bids, and the most complete source of state contract awards available in one source.

Printing Schedule and Submission Deadlines

Vol. 14 Issue Number	*Submission deadline for Adopted and Proposed Rules, Commissioners' Orders**	*Submission deadline for Executive Orders, Contracts, and Official Notices**	Issue Date
30	Monday 8 January	Friday 12 January	Monday 22 January
31	Friday 12 January	Monday 22 January	Monday 29 January
32	Monday 22 January	Monday 29 January	Monday 5 February
33	Monday 29 January	Monday 5 February	Tuesday 12 February

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

The *STATE REGISTER* is published every Monday (Tuesday when Monday is a holiday) by the State of Minnesota, Department of Administration, Print Communications Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to *Minnesota Statutes* § 14.46. A *STATE REGISTER Contracts Supplement* is published every Thursday. The Monday edition is the vehicle for conveying all information about state agency rulemaking, including official notices; hearing notices; proposed, adopted and emergency rules. It also contains executive orders of the governor; commissioners' orders; state contracts and advertised bids; professional, technical and consulting contracts; non-state public contracts; state grants; decisions of the supreme and tax courts; a monthly calendar of scheduled cases before the supreme court; and other announcements. The Thursday edition contains additional state contracts and advertised bids, and the most complete listing of contract awards available in one source.

In accordance with expressed legislative intent that the *STATE REGISTER* be self-supporting, the following subscription rates have been established: the Monday edition costs \$130.00 per year and includes an index issue published in August (single issues are available at the address listed above for \$3.50 per copy); the combined Monday and Thursday editions cost \$195.00 (subscriptions are not available for just the *Contracts Supplement*); trial subscriptions are available for \$60.00, include both the Monday and Thursday edition, last for 13 weeks, and may be converted to a full subscription anytime by making up the price difference. No refunds will be made in the event of subscription cancellation.

Both editions are delivered postpaid to points in the United States, second class postage paid for the Monday edition at St. Paul, MN, first class for the Thursday edition. Publication Number 326630 (ISSN 0146-7751).

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

Rudy Perpich, Governor
Sandra J. Hale, Commissioner
Department of Administration

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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.

Session Review—Summarizes actions of the Minnesota Senate.

Contact: Senate Public Information Office
 Room 231 State Capitol, St. Paul, MN 55155
 (612) 296-0504

HOUSE

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 in the State Register

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 75 state agencies have the authority to issue rules. Each agency is assigned specific *Minnesota Rule* chapter numbers. Every odd-numbered year the *Minnesota Rules* are published. This is a ten-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Proposed and adopted emergency rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

If an agency seeks outside opinion before issuing new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION in the *Official Notices* section of the *State Register*. When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the *State Register*. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety in the *State Register*, only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the *Minnesota Guidebook to State Agency Services*.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues 1-13 inclusive; issues 14-25 inclusive; issue 26, cumulative for issues 1-26; issues 27-38 inclusive; issue 39, cumulative for 1-39; issues 40-51 inclusive; and issue 52, cumulative for 1-52. An annual subject matter index for rules appears in August. For copies of the *State Register*, a subscription, the annual index, the *Minnesota Rules* or the *Minnesota Guidebook to State Agency Services*, contact the Print Communications Division, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000 or toll-free in Minnesota 1-800-9747.

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Pursuant to Minn. Stat. §§ 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 Agriculture

Proposed Permanent Rules Relating to the Testing of Equipment and Equipment Operators Involved in Determining the Quality and Condition of Grain Received for Purchase or Storage

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, Sections 14.22-14.28. The statutory authority to adopt this rule is *Minnesota Statutes*, section 17B.041, subdivision 1.

All persons 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. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

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

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

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

The proposed rule may be modified if the modifications are supported by data and views submitted to the department and do not result in a substantial change in the proposed rule 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 rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ms. Milligan.

Most businesses affected by the rules are small businesses as defined by *Minnesota Statutes*, section 14.115. However, all reporting requirements in the rule are required by statute, and any exemption of small business from the requirements of the rule would be contrary to the intent of the statute.

If no hearing is required, upon adoption of the final rules, the rules, and the required supporting documents will be submitted 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 rules must submit a written request to Ms. Milligan.

Dated: 1 December 1989

Jim Nichols, Commissioner
Department of Agriculture

Rules as Proposed (all new material)

GRAIN STANDARDS TESTING

1511.0100 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1511.0100 to 1511.0170.

Subp. 2. **Department.** "Department" means the Minnesota Department of Agriculture.

Subp. 3. **Person.** "Person" means an individual, firm, co-partnership, cooperative, company, association, or receiver licensed by the department to purchase grain or store grain for others.

Subp. 4. **Test equipment.** "Test equipment" means mechanical or electronic devices commonly used in the measurement of grain qualities, including equipment that determines moisture or protein content, test weight per bushel apparatus, and dockage testing devices.

Subp. 5. **Reject tag.** "Reject tag" means a device that is applied to test equipment that fails to meet established tolerances.

Subp. 6. **Tolerances.** "Tolerances" means values fixing the minimum or maximum limit of allowable error or departure from true performance or value.

Subp. 7. **Standard sample.** "Standard sample" means a sample of grain with a known measurement of quality or weight for the purpose of testing equipment.

Subp. 8. **Grain.** "Grain" means cereal grain, coarse grain, or oilseed in unprocessed form for which a standard has been established by the United States Secretary of Agriculture or the Minnesota Board of Grain Standards, dry edible beans, or other agricultural crops designated by the commissioner by rule.

Subp. 9. **On-site review.** "On-site review" means the testing of equipment and test equipment operators conducted where grain quality is determined for grain that is received for purchase or storage.

Subp. 10. **Condemned tag.** "Condemned tag" means a device that is applied to equipment that is beyond a state of repair rendering the equipment unfit for making grain quality determinations.

Subp. 11. **Chief equipment operator.** "Chief equipment operator" means a person assigned by the firm management as the responsible person for operating equipment used to determine grain quality.

Subp. 12. **Authorized service representative.** "Authorized service representative" means a person that has been certified by the manufacturer or distributor of the test equipment as being technically qualified and capable of servicing their test equipment.

1511.0110 ESTABLISHED TOLERANCES.

Established tolerances for each type of equipment are:

- A. moisture determination, plus or minus 0.5 of one percent;
- B. protein determination, plus or minus 0.5 of one percent;
- C. test weight determination, plus or minus one-half pound; and
- D. dockage determination, plus or minus 0.5 of one percent.

1511.0120 TEST EQUIPMENT LIST PROVIDED TO DEPARTMENT.

A person who receives grain for purchase or storage in Minnesota shall provide the department with a list of equipment used to determine grain quality on forms provided by the department. The list must include the model number, serial number, and make or brand name of each piece of equipment used to determine moisture or protein content, test weight measuring apparatus, and dockage testing devices.

1511.0130 TESTING GRAIN EQUIPMENT.

Subpart 1. **Testing for accuracy.** Persons in Minnesota who receive grain for purchase or storage are subject to having the equipment used to determine grain quality routinely tested for accuracy by the department. The test equipment must include mechanical or electronic devices that are used to determine moisture or protein content, test weight scales, and dockage testing devices.

Subp. 2. **Standard samples.** Standard samples for testing equipment, prepared by the department, must be forwarded to persons or firms that perform quality determinations for grain received for purchase or storage.

Subp. 3. **Analysis; results.** Department standard samples received by a firm must be analyzed by the designated chief equipment operator. Test results must be recorded on the forms provided by the department and returned to the department within five days of receipt of the standard samples.

1511.0140 RETESTING OF EQUIPMENT.

Test equipment that does not meet the established tolerances must be retested. A second set of standard test samples must be forwarded for test equipment that exceeds the established tolerance. Results of the second set of standard test samples must be returned to the department within five days of receipt of the standard test samples.

1511.0150 ON-SITE REVIEWS OF TEST EQUIPMENT AND EQUIPMENT OPERATORS.

The department may randomly perform an on-site review of test equipment and the chief test equipment operator at each location where grain is being received for purchase or storage. An on-site review must be conducted during normal business hours. An on-site review may be conducted when one or more of the following conditions are determined by the department:

- A. if the test results of standard samples are not returned to the department within the prescribed time;
- B. if test equipment fails to meet the established tolerance on the second set of standard test samples;
- C. if the department determines that inaccurate test results may be caused by the chief test equipment operators' procedures;
- D. if the department determines that the environmental conditions in the area where the test equipment is operated may be inadequate; and
- E. if the department receives a signed statement from a purchaser or seller of grain requesting a review of the test equipment or test equipment operator.

1511.0160 TAGGING OF TEST EQUIPMENT.

Subpart 1. **Attachment and removal of tags.** Test equipment found to exceed the established tolerances during an on-site review must have a reject tag attached to the test equipment by the department and the equipment must not be further used to determine the quality of grain received for purchase or storage until the test equipment has been serviced and the reject tag is removed:

- A. by an employee of the department, upon completion of testing that shows the equipment to be within the established tolerance; or
- B. by an authorized service representative who certifies to the department that the equipment has been serviced and tested for compliance within the established tolerance.

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Proposed Rules

Subp. 2. **Return of tags.** A reject tag must be returned to the department immediately upon placing the equipment back into service. The information requested on the reverse side of the reject tag must be completed and contain the signature of the authorized service representative or the department employee.

Subp. 3. **Condemned tag.** A condemned tag must be attached to test equipment used to determine grain quality when it is determined that the test equipment is no longer serviceable.

1511.0170 POSTING NOTICE.

A person in Minnesota who receives grain for purchase or for storage must post a notice, furnished by the department, informing persons delivering grain for sale or storage of their right to have a representative sample of the grain in dispute forwarded to the department for analysis. The notice must be posted in a conspicuous place in conjunction with the license to buy or buy and store grain.

Department of Health

Proposed Permanent Rules Relating to Services to Clients of Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions

Notice of Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room D, 5th Floor, Veterans Service Building, 20 West 12th Street, St. Paul, MN on February 22 and 23, 1990 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon Lunde, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7645, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may, at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in *Minnesota Statutes*, section 14.50. The rule hearing is governed by *Minnesota Statutes*, section 14.14 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 4656.0250 to 4656.0330 establish procedures for assessing the amount and types of services being provided to clients of all intermediate care facilities, including state operated community-based residential facilities, that participate in the Medical Assistance program. This assessment is completed for the purpose of assigning client reimbursement classifications required by the client centered reimbursement system specified in parts 9553.0010 to 9553.0080. This rule does not apply to intermediate care facilities in regional treatment centers. This rule affects intermediate care facilities that provide services to persons with mental retardation or related conditions.

The proposed rule establishes standards for: requirements for completing assignments; areas to be assessed; requirements for the assignment of a client reimbursement classification; request for reconsideration of client reimbursement classifications; audits of assessments; and payment source update information.

The agency's authority to adopt the proposed rules is contained in *Minnesota Statutes*, section 144.0723, subdivision 8.

Adoption of these rules will not result in additional spending by local public bodies in the excess of \$100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Marian Lewis, Minnesota Department of Health, 393 North Dunlap Street, P.O. Box 64938, St. Paul, MN 55164-0938.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Marian Lewis, Minnesota Department of Health, 393 North Dunlap Street, P.O. Box 64938, St. Paul, MN 55164-0938. A copy of the rule may also be viewed at any of the 87 county welfare 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 Marian Lewis at 643-2502.

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 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, 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone (612) 296-5148.

Sister Mary Madonna Ashton
Commissioner

Rules as Proposed (all new material)

4656.0250 SCOPE.

Parts 4656.0250 to 4656.0330 establish procedures for the assessment of the amount and types of services being provided to clients of intermediate care facilities for persons with mental retardation or a related condition (facility) for the purpose of implementing the client centered reimbursement system required by *Minnesota Statutes*, section 256B.501, subdivision 3g.

As authorized by *Minnesota Statutes*, section 144.0723, parts 4656.0250 to 4656.0330 also establish procedures for assigning client reimbursement classifications according to the amounts and types of services being provided to clients.

Rules established by the Department of Human Services, parts 9553.0010 to 9553.0080, establish program operating cost payment rates that correspond to the client reimbursement classifications assigned by the Department of Health.

Parts 4656.0250 to 4656.0330, therefore, must be read in conjunction with parts 9553.0010 to 9553.0080.

Parts 4656.0250 to 4656.0330 affect the Quality Assurance and Review program, clients of ICFs/MR, ICFs/MR, case managers and the Minnesota Department of Human Services and Department of Health.

4656.0260 DEFINITIONS.

Subpart 1. **Applicability.** As used under parts 4656.0250 to 4656.0330 the following terms have the meanings given them under this part.

Subp. 2. **Assessment.** "Assessment" means an examination of a client record, and whenever possible, observation of a client to determine the client's status and the types, frequency, and amounts of intervention that the client needs and that the facility is providing to the client to meet those needs. The assessment can also be supplemented by interviews with facility staff.

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Proposed Rules

Subp. 3. **Assessment form.** "Assessment form" means the form developed by the Department of Human Services in conjunction with the Quality Assurance and Review program of the Department of Health which is used for performing ICF/MR client assessments for reimbursement purposes.

Subp. 4. **Case manager.** "Case manager" has the meaning given it under part 9525.0015, subpart 5.

Subp. 5. **Client.** "Client" means any person who receives services in a facility.

Subp. 6. **Client record.** "Client record" means the entire written record that pertains to a client and that is maintained by a facility.

Subp. 7. **Client reimbursement classification.** "Client reimbursement classification" means a classification assigned according to part 9553.0056, subpart 2, as proposed in 14 *State Register*,, 1990, and as later adopted.

Subp. 8. **Department.** "Department" means the Minnesota Department of Health.

Subp. 9. **Desk audit.** "Desk audit" means a review of the assessment form, conducted at the department, to identify inaccurate or incomplete assessments.

Subp. 10. **Documentation checklist.** "Documentation checklist" means a form with a written list of documents and a statement signed by the case manager which indicates that the case manager reviewed the documents to support the assessment completed by the case manager.

Subp. 11. **Facility or ICF/MR.** "Facility" or "ICF/MR" means a program licensed under *Minnesota Statutes*, section 252.28 and a physical plant licensed as a supervised living facility under *Minnesota Statutes*, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for persons with mental retardation or a related condition.

Subp. 12. **Manual.** "Manual" means the ICF/MR Reimbursement and QA&R Procedures Manual, 1990, produced jointly by the Department of Human Services and Department of Health. Portions of the manual are incorporated by reference in part 4656.0295. The manual is available at the State Law Library, 117 University Avenue, Saint Paul, MN 55155. The manual is not subject to frequent change.

Subp. 13. **On-site audit.** "On-site audit" means a review of the assessment form conducted at the facility to verify the accuracy of the assessment.

Subp. 14. **Quality assurance and review or QA&R.** "Quality assurance and review" or "QA&R" means the program established under *Minnesota Statutes*, sections 144.072 and 144.0721.

Subp. 15. **Representative.** "Representative" means the client's legal representative as defined in part 9525.0015, subpart 18, the person authorized to pay the client's facility expenses, or any other individual designated by the client.

Subp. 16. **Request for classification or RFC.** "Request for classification" or "RFC" means the completed assessment form, transmittal sheet, and documentation checklist submitted by the case manager to the department for the purpose of assigning a client reimbursement classification.

Subp. 17. **Transmittal sheet.** "Transmittal sheet" means a cover sheet, submitted with one or more requests for classification, that gives the name, address, and phone number of the case manager and that indicates the number and types of requests for classification being submitted.

Subp. 18. **Working day.** "Working day" means Monday through Friday excluding legal holidays recognized by the state of Minnesota.

4656.0280 INSPECTION OF CARE REQUIREMENT.

The department shall annually inspect the appropriateness and quality of care of services provided to clients by all facilities. The inspection of care must be conducted according to the requirements of Code of Federal Regulations, title 42, sections 456.600 to 456.614.

4656.0290 REQUIREMENTS FOR COMPLETING ASSESSMENTS.

Subpart 1. **Quality assurance and review assessments.** Quality assurance and review shall assess all clients of ICFs/MR annually at the same time that it completes the inspection of care as required under part 4656.0280. Assessments under this subpart shall be based on the client record for the past 12 months.

Subp. 2. **Case manager assessments.** The case manager shall assess clients in ICFs/MR according to part 9553.0057, subparts 3 and 4, as proposed in 14 *State Register*,, 1990, and as later adopted. Assessments completed under part 9553.0057, subpart 3, shall be based on the client record at the time of the interdisciplinary team meeting convened according to part 9525.0105. Assessments completed under part 9553.0057, subpart 4, shall be based on the client record for the preceding three months.

Subp. 3. **Assessment forms.** Assessments completed by QA&R or the case manager must be recorded on an assessment form prepared by the Department of Human Services.

4656.0295 AREAS TO BE ASSESSED.

A client must be assessed in the areas of personal interaction, independence, and integration; challenging behaviors; activities of daily living; and special treatments. Assessments must be completed according to the following items.

A. An assessment for personal interaction, independence, and integration will be completed according to sections 2.0 through 2.6 of the manual defined in part 4656.0260, subpart 12. Sections 2.0 through 2.6 of the manual are incorporated by reference.

B. An assessment for challenging behaviors will be completed according to sections 3.0 through 3.8 of the manual defined in part 4656.0260, subpart 12. Sections 3.0 through 3.8 of the manual are incorporated by reference.

C. An assessment for activities of daily living and self-preservation will be completed according to sections 4.0 through 4.8 of the manual defined in part 4656.0260, subpart 12. Sections 4.0 through 4.8 of the manual are incorporated by reference.

D. An assessment for special treatments will be completed according to sections 5.0 through 5.9 of the manual defined in part 4656.0260, subpart 12. Sections 5.0 through 5.9 of the manual are incorporated by reference.

4656.0300 ASSIGNMENT OF A CLIENT REIMBURSEMENT CLASSIFICATION.

Subpart 1. **Requirement.** The department shall assign client reimbursement classifications specified in part 9553.0056, subpart 2, as proposed in 14 *State Register*,, 1990 and as later adopted, according to items A and B.

A. The client reimbursement classification for a client assessed by QA&R under part 4656.0290 shall be assigned after the assessment form is completed.

B. The client reimbursement classification for a client assessed by the case manager under part 4656.0290 shall be assigned after the case manager submits a request for classification. The request for classification must be mailed to the department no later than five working days after the case manager completes the assessment.

Subp. 2. **Time frame for assignment of client reimbursement classification.** The department shall assign the client reimbursement classification within 15 working days after receiving the completed assessment form submitted by QA&R or the request for classification submitted by the case manager under subpart 1.

Subp. 3. **Request for additional information.** If the request for classification submitted under subpart 1 is incomplete, the department shall inform the case manager of the need to submit additional information necessary for assigning the client reimbursement classification.

The case manager must mail the additional information to department no later than five days after receiving the request for the information. The case manager may ask the facility to submit the information for the case manager.

Subp. 4. **Notice of client reimbursement classification.** The department shall notify each client or the client's representative, the client's case manager, and the facility of the client reimbursement classification assigned to the client no later than 20 working days after receiving the completed assessment form or the request for classification submitted under subparts 1 and 3. Individual client notices shall be sent by first-class mail to the facility in which the client resides for distribution to the client. The facility must distribute the notice to the client or the client's representative and to the client's case manager. This notice must be distributed within three working days after the facility receives the notices from the department. The notice must:

A. include the address and telephone number of the Minnesota State Ombudsman for Mental Health and Mental Retardation; and

B. inform the client or the client's representative of the client reimbursement classification that was assigned, the opportunity to review the documentation supporting the client reimbursement classification, the opportunity to obtain clarification from the department, and the opportunity to request a reconsideration of the client reimbursement classification.

4656.0310 REQUEST FOR RECONSIDERATION OF CLIENT REIMBURSEMENT CLASSIFICATION.

Subpart 1. **General requirement.** The client, client's representative, or the facility may request that the department reconsider an assigned client reimbursement classification. The request for reconsideration must be submitted in writing to the department within 30 days after the receipt of the notice of client reimbursement classification. The request for reconsideration must include:

- A. the name of the client;
- B. the name and address of the facility in which the client resides;
- C. the reasons for the request for reconsideration;

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- D. the requested changes to the client reimbursement classification; and
- E. copies of documentation supporting the requested client reimbursement classification.

The documentation accompanying the reconsideration request is limited to documentation establishing that the needs of the client at the time of the assessment resulting in the disputed classification justify a change of client reimbursement classification.

Subp. 2. Access to information. On written request, the facility must give the client's case manager, the client, or the client's representative a copy of the assessment form and the other documentation that was given to the department to support the assessment findings. The facility shall also provide access to and a copy of other information from the client record that has been requested by or on behalf of the client to support a client's reconsideration request. A copy of any requested material must be distributed within three working days after the facility receives a written request for the information. If the facility fails to provide the material within this time, the department shall issue an order requiring the facility to comply with the request within 24 hours. The order shall also state that for the first day of noncompliance after the 24-hour period has elapsed, a \$100 fine shall be assessed. The fine will increase by \$50 for each subsequent day of noncompliance.

Subp. 3. Facility request for reconsideration. A facility request for reconsideration must be made according to items A and B.

A. The facility requesting a reconsideration under subpart 1 must send a notice to the client or client's representative and the client's case manager that states that a reconsideration is being requested and that states the reason for the request. The notice must also state that the client's rate may change if the request is approved by the department, that copies of the facility's request and supporting documentation are available for review, and that the client or the client's representative also has the right to request a reconsideration.

B. In addition to the information required by subpart 1, a reconsideration request from a facility must contain the following information:

- (1) the date the reimbursement classification notices were received by the facility;
- (2) the date the reimbursement classification notices were distributed to the client or to the client's representative; and
- (3) a copy of the notice sent under item A.

C. If the facility fails to provide the information in item B, the request must be denied, and the facility may not make further reconsideration requests on that specific client reimbursement classification.

Subp. 4. Process of reconsideration by the department. A reconsideration must be made by QA&R staff not involved in reviewing the assessment that established the disputed client reimbursement classification. The reconsideration must be based upon the information provided to the department under subparts 1 and 3. Within 15 working days after receiving the request for reconsideration, the department shall affirm or modify the original client reimbursement classification. The original client reimbursement classification must be modified if the department determines that the assessment resulting in the client reimbursement classification did not accurately reflect the status of the client at the time of the assessment. The department's decision under this part is the final administrative decision of the department.

Subp. 5. Additional information required for reconsideration. The department reserves the right to request additional information necessary to make an accurate reconsideration determination. The facility shall submit the requested information to the department within five working days after receiving the request for additional information.

Subp. 6. Notice of reconsideration decision. The department shall mail to the facility written notice of the department's decision regarding the request for reconsideration. The notice must be mailed no later than five working days after the decision regarding the reconsideration request is made. The notice must also include the address and telephone number of the Minnesota State Ombudsman for Mental Health and Mental Retardation. The facility must distribute the notice to the client or the client's representative within three working days.

Subp. 7. Effective dates. The effective date of a change in client reimbursement classification due to a reconsideration shall be established according to part 9553.0057, subpart 7, item B, as proposed in 14 *State Register*,, 1990, and as later adopted. The client reimbursement classification assigned by the department must be the client reimbursement classification that applies while the request for reconsideration is pending.

4656.0320 AUDITS OF ASSESSMENTS.

Subpart 1. Audit types. QA&R shall conduct desk audits or on-site audits of assessments performed by case managers. On-site audits conducted under subpart 3 shall be conducted at least once in a calendar year and shall be on an unannounced basis.

Subp. 2. Desk audits. QA&R shall conduct desk audits for any assessment that QA&R believes to be inaccurate. QA&R may request the facility or the case manager to submit additional information needed to conduct a desk audit. The case manager or facility shall mail the requested information within three working days after receiving the request.

Subp. 3. **On-site audits.** QA&R shall conduct on-site audits for at least ten percent of the total assessments completed by case managers in the previous year. If the audit reveals that the initial assessment does not accurately reflect the client's status at the time of the assessment, and no supporting documentation can be produced by the facility, QA&R shall change the client reimbursement classification so that it is consistent with the results of the audit. The effective dates for changes in client reimbursement classification due to audits are specified in part 9553.0057, subpart 5, as proposed in 14 *State Register*,, 1990, and as later adopted.

Subp. 4. **Special audits.** The department may conduct special audits if it determines that circumstances exist that could change or affect the validity of client reimbursement classifications assigned to clients. Examples of circumstances include, but are not limited to:

- A. frequent changes in the administration or management of the facility;
- B. a high frequency in the number of reconsideration requests received from a facility;
- C. frequent adjustments of client reimbursement classifications resulting from reconsiderations or audits; or
- D. a criminal indictment alleging provider fraud.

Subp. 5. **Access to records.** The facility shall grant the department access to the client records during regular business hours for the purposes of conducting an audit.

Subp. 6. **Documentation time frame.** The department shall consider the documentation under items A and B as relevant to an audit.

A. For audits of assessments completed by the case manager under part 9553.0057, subpart 3, as proposed in 14 *State Register*,, 1990, and as later adopted, the department shall consider documentation in the client record up to and including the date the client was assessed by the case manager.

B. For audits of assessments completed by the case manager under part 9553.0057, subpart 4, as proposed in 14 *State Register*,, 1990, and as later adopted, the department shall consider the documentation in the client record from three months preceding the assessment up to and including the date the client was assessed by the case manager.

Subp. 7. **Notice of audit findings.** QA&R staff shall not discuss preliminary audit findings with the facility staff. Within 20 working days after completing the audit, the department shall mail a notice of the results of the audit to the facility. If the audit results in a change in the client reimbursement classification, the facility shall distribute the notice to the client or the client's representative, and the case manager within five working days after receiving the notice. The notice shall contain:

- A. the client reimbursement classification;
- B. a statement informing the client, the client's representative, and the facility of their right to review the documents supporting the client reimbursement classification;
- C. a statement informing the client, the client's representative, and the facility of their right to request a reconsideration of the client reimbursement classification; and
- D. the address and telephone number of the Minnesota State Ombudsman for Mental Health and Mental Retardation.

4656.0330 DEATH, DISCHARGE, AND CHANGE OF PAYMENT SOURCE INFORMATION.

Every month the facility shall provide updated information to the department regarding the deaths, discharges, and changes in payment source when the client changes from private pay to medical assistance that occurred within the facility during the previous month. This information must be provided on forms developed by the department.

Department of Human Services

Proposed Permanent Rules Relating to Rates for Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions

Notice of Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room D, 5th Floor, Veterans Service Building, 20 West 12th Street, St. Paul, MN on February 22 and 23, 1990 commencing at 9:00 a.m. and continuing until all

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Proposed Rules

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

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon Lunde, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7645, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may, at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in *Minnesota Statutes*, section 14.50. The rule hearing is governed by *Minnesota Statutes*, section 14.14 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 9553.0010 to 9553.0080 establish procedures for determining the total payment rates for all intermediate care facilities, including state operated community-based residential facilities, that participate in the Medical Assistance program. This rule does not apply to intermediate care facilities in regional treatment centers. This rule affects intermediate care facilities that provide services to persons with mental retardation or related conditions.

The proposed amendments reimburse facilities according to the "client centered reimbursement system." The 1985 Minnesota Legislature mandated the commissioner to study alternative mechanisms for reimbursement which could help the state better target resources to clients whose need was the greatest. The agency is changing its methods and standards of reimbursement because the proposed system reimburses operating costs at varying levels based on client needs.

The proposed amendments establish standards for: determination of allowable and non allowable costs; reporting by cost category; determination of the program operating cost payment rates; determination of the allowable historical program operating cost service unit per diem; computation of total service units for the first rate year; interim program operating cost payment rate settle-up; client reimbursement classifications and classification weights; client assessment; life safety code adjustment; determination of total payment rate; rate setting procedures for newly constructed or newly established facilities or approved class A to class B conversions; and severable provisions.

The agency's authority to adopt the proposed rules is contained in *Minnesota Statutes*, section 256B.501, subdivisions 1 to 3.

The adoption of this rule will not increase aggregate local public body spending beyond money already appropriated for this purpose by over \$100,000 in either of the first two years following the rule's adoption. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Nancy Bishop, Rules and Bulletins Division, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155-3816 (612/296-7454).

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Nancy Bishop at the above address. A copy of the rule may also be viewed at any of the 87 county welfare 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 Anu Seam at 297-1217.

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 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, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

Ann Wynia
Commissioner

Rules as Proposed

9553.0010 SCOPE.

Parts 9553.0010 to 9553.0080 establish procedures for determining the total payment rates for all intermediate care facilities for persons with mental retardation or related conditions participating in the medical assistance program, except including state operated community-based residential facilities defined in Minnesota Statutes, section 252.50, subdivision 1. Parts 9553.0010 to 9553.0080 do not apply to intermediate care facilities in state owned hospitals regional treatment centers as defined in Minnesota Statutes, section 246.50, subdivision 5. Parts 9553.0010 to 9553.0080 are effective for payment rates established on or after January 1, 1986 1989. Parts 9553.0010 to 9553.0080 should be read in conjunction with parts 4656.0250 to 4656.0330, as proposed in 14 State Register,, 1990, and as later adopted.

9553.0020 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 1a. Active treatment. "Active treatment" means a continuous program for each person, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services, and related services, that is directed towards (1) the acquisition of the behaviors necessary for the person to function with as much self-determination and independence as possible; and (2) the prevention or deceleration of regression or loss of current optimal functional status. Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

[For text of subps 2 and 3, see M.R.]

Subp. 3a. Assessment. "Assessment" has the meaning given to it under part 4656.0260, subpart 2, as proposed in 14 State Register,, 1990, and as later adopted.

Subp. 3b. Assessment form. "Assessment form" means the form developed by the department in conjunction with the quality assurance and review program of the Department of Health, which is used for performing ICF/MR client assessments for reimbursement purposes.

[For text of subps 4 to 7, see M.R.]

Subp. 7a. Case manager. "Case manager" has the meaning given to it in part 9525.0015, subpart 5.

[For text of subps 8 and 9, see M.R.]

Subp. 9a. Client. "Client" means any person who receives services in a certified facility. "Client" has the same meaning as "resident," as that term is used in Minnesota Statutes, section 256B.501.

Subp. 9c. Client reimbursement classification. "Client reimbursement classification" means each of the categories established in part 9553.0056, subpart 2.

[For text of subps 10 to 20, see M.R.]

Subp. 20a. Foster care services. "Foster care services" means adult foster care services defined in part 9555.5105, subpart 4, and foster care services defined in part 9560.0520, subpart 2.

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[For text of subps 21 to 24, see M.R.]

Subp. 24a. Home and community-based services. “Home and community-based services” has the meaning given to it in part 9525.1800, subpart 14.

[For text of subps 25 to 28, see M.R.]

Subp. 28a. Least restrictive environment. “Least restrictive environment” has the meaning given to it in part 9525.0015, subpart 17.

Subp. 28b. Manual. “Manual” means the ICF/MR Reimbursement and QA&R Procedures Manual, 1990, produced jointly by the Department of Human Services and the Department of Health. Portions of the manual are incorporated by reference in part 9553.0056, subpart 1. The manual is available at the State Law Library, 117 University Avenue, Saint Paul, Minnesota 55155. It is not subject to frequent change.

[For text of subps 29 and 30, see M.R.]

Subp. 30a. Nursing home. “Nursing home” has the meaning given to it in part 9549.0020, subpart 31.

[For text of subps 31 to 33, see M.R.]

Subp. 34. Program. “Program” means those functions and activities of the facility that contribute to the care, supervision, developmental growth, and skill acquisition of the residents under parts 9525.0210 to 9525.0430 and Code of Federal Regulations, title 42, section 442-400 483.400, et seq.

[For text of subps 35 to 37, see M.R.]

Subp. 37a. Quality assurance and review or QA&R. “Quality assurance and review” or “QA&R” means the program established under Minnesota Statutes, sections 144.072 and 144.0721.

[For text of subp 38, see M.R.]

Subp. 38a. Regional treatment center or RTC. “Regional treatment center” or “RTC” has the meaning given to it in Minnesota Statutes, section 252.025, subdivision 1.

[For text of subps 39 to 42, see M.R.]

Subp. 42a. Representative. “Representative” has the meaning given to it in part 4656.0260, subpart 15, as proposed in 14 State Register, 1990, and as later adopted.

Subp. 42b. Semi-independent living services. “Semi-independent living services” has the meaning given to it in part 9525.0500, subpart 14.

Subp. 43. Resident Client day. “Resident Client day” means a day on which services provided to residents clients are rendered and billable, or a day for which a bed is held and billed. Client day includes temporary care days.

Subp. 44. Respite Temporary care. “Respite Temporary care” means short-term supervision, assistance, and care provided to persons with mental retardation or related conditions due to the temporary absence or need for relief of the caregiver who normally provides these services and is not an institutional provider. A client receiving temporary care stays at the facility for less than 30 consecutive days.

[For text of subps 45 to 50, see M.R.]

9553.0035 DETERMINATION OF ALLOWABLE COSTS.

[For text of subps 1 to 12, see M.R.]

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

[For text of subps 14 to 16, see M.R.]

Subp. 17. Special needs rate exception payments. The amount of special needs rates exceptions approved by the commissioner for the most recent 12-month period under parts 9510.1020 to 9510.1140, shall be included in the facility’s allowable program costs for the reporting year ending December 31, 1989, if they meet all the following criteria:

A. the amount was approved for a period of at least 12 months, with no more than 30 days between each approval;

B. the amount was approved for additional direct service staff, staff training, or staff consultation for eligible clients under part 9510.1050, subpart 2, item C, subitem (1);

C. the client for whom the approval was granted was a client of that facility on April 30, 1990; and

D. the approval was in effect any time during calendar year 1989 and the client was receiving services reimbursed under parts 9510.1020 to 9510.1140 at the time of the 1989 QA&R assessment.

All special needs rate exception payments included in the facility's allowable program costs under this subpart shall be terminated by the commissioner effective October 1, 1990.

9553.0036 NONALLOWABLE COSTS.

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

[For text of items A to Z, see M.R.]

AA. Costs incurred in providing approved services for very dependent persons with special needs under parts 9510.1020 to 9510.1140, except as provided in part 9553.0035, subpart 17.

[For text of items BB to GG, see M.R.]

9553.0040 REPORTING BY COST CATEGORY.

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

[For text of items A to I, see M.R.]

J. accrued vacation and sick leave; ~~and~~

K. repairs necessitated solely as a result of destructive resident behavior; and

L. allowable special needs costs as provided in part 9553.0035, subpart 17.

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

[For text of items A to C, see M.R.]

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

[For text of subitems (1) to (5), see M.R.]

(6) licensing and permit fees, except as in subpart 5 6, item F B; and

[For text of subitem (7), see M.R.]

[For text of item E, see M.R.]

[For text of subps 3 to 6, see M.R.]

9553.0050 DETERMINATION OF TOTAL OPERATING COST PAYMENT RATE.

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

A. The total allowable historical operating cost per diem shall be limited according to subitems (1) to (5).

(1) For the rate years beginning on or after October 1, 1986, the administrative allowable historical operating costs shall be limited as in units (a) to (g).

(a) The commissioner shall classify each facility into one of two groups based on the number of licensed beds reported on the facility's cost report. Group one shall include those facilities with more than 20 licensed beds. Group two shall include those facilities with 20 or fewer licensed beds.

(b) The commissioner shall determine the administrative allowable historical operating cost per licensed bed for each facility within the two groups in unit (a) by dividing the administrative allowable historical operating cost in each facility by the number of licensed beds in each facility.

(c) The commissioner shall establish the administrative cost per licensed bed limit by multiplying the median of the array for each group of administrative allowable historical operating costs per licensed bed by ~~105 percent~~ the percentage that establishes the limit at the 75th percentile of the array of each group.

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(d) For the rate year beginning October 1, 1986, the cost of a certified audit must not be included in the computation of the administrative allowable historical operating cost or its limit. The facility shall report to the commissioner by July 31, 1986, the greater of the cost incurred for a certified audit for either the reporting year ended December 31, 1985, or a fiscal year ending during the 1985 calendar year.

The commissioner shall determine the average cost of a certified audit per licensed bed by totaling the cost of each certified audit submitted to the commissioner by July 31, 1986, and dividing the sum by the total number of licensed beds in facilities which have submitted costs for a certified audit. The maximum allowable cost for a certified audit shall be the lesser of the facility's reported cost or 115 percent of the average cost of a certified audit per licensed bed multiplied by the number of licensed beds in the facility.

(e) (d) For the rate years beginning on October 1, 1986, and October 1, 1987 1989, the maximum administrative allowable historical operating cost shall be the lesser of the facility's administrative allowable historical operating cost or the amount calculated for the facility's group in unit (c) multiplied by the facility's licensed beds.

(e) For rate years beginning on or after October 1, 1990, the commissioner shall increase the administrative cost per licensed bed limit specified in unit (c), and the maintenance operating cost limit specified in subitem (2), by multiplying the administrative operating cost per bed limit and the maintenance operating cost limit by the forecasted index specified in subpart 2, item A, except that the index shall be based on the 12 months between the midpoints of the two reporting years preceding the rate year.

(f) For rate years beginning on or after October 1, 1988, the commissioner shall increase the administrative cost per licensed bed limit in unit (e) by multiplying the limit established for the rate year beginning October 1, 1987, by the percent moving average of the index of average hourly earnings in nursing and personal care facilities for the fourth quarter of the rate year following the reporting year, forecast by Data Resources, Inc. in the second quarter of the calendar year following the reporting year. The forecast appears in Health Care Costs, published by Data Resources, Inc., and is incorporated by reference. Health Care Costs is available through the Minitex interlibrary loan system. It is published monthly. The maximum administrative allowable historical operating cost shall be the lesser of the facility's administrative allowable historical operating cost or the amount determined in this unit multiplied by the facility's licensed beds.

(g) (f) The administrative cost per licensed bed limit and the average cost of a certified audit determined in this subitem must not be adjusted as a result of field audits, appeals, and amendments.

(2) For the rate years beginning on or after October 1, 1986, the allowable historical operating costs in the maintenance operating cost category must not exceed the operating cost payment rate for the maintenance operating cost category in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year. For the period January 1, 1988 to September 30, 1988, the allowable historical operating costs in the maintenance operating cost category must not exceed 125 percent of the operating cost payment rate for the maintenance operating cost category in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year. For rate years beginning on or after October 1, 1988 1990, the allowable historical operating costs in the maintenance operating cost category must not exceed the amount determined for the period January 1, 1988 to September 30, 1988, increased annually by the index in subitem (1), unit (f): appropriate index for the respective rate year. The index for rate years beginning on or after October 1, 1990, is specified in subpart 2, item A, except that the index shall be based on the 12 months between the midpoints of the two reporting years preceding the rate year.

(3) For the rate year beginning October 1, 1986, purpose of calculating the efficiency incentive under subpart 2, item E, for rate years beginning on or after October 1, 1990, the allowable historical operating costs in the administrative operating cost category must not exceed the operating cost payment rate for the administrative operating cost category in effect during the reporting year times the prorated resident days that correspond to those operating cost payment rates paid during the reporting year. Except for the purpose of calculating the efficiency incentive under subpart 2, item E, this limit on administrative operating costs shall not be in effect for rate years beginning on or after October 1, 1987.

(4) For the rate year beginning October 1, 1986, and October 1, 1987, the facility's total operating cost payment rate in effect during the reporting year must be adjusted for reclassifications in accordance with part 9553.0040 and be separated into program, maintenance, special, and administrative operating cost payment rates according to units (a) to (c).

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

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

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

administrative ratios determined in unit (a). For rate years beginning on or after October 1, 1988, the program operating cost payment rate in effect during the reporting year times the prorated resident client days that correspond to those operating cost payment rates paid during the reporting year must be used in computing the total of the limits in the computation of the efficiency incentive under subpart 2, item E. For reporting years ending on or after December 31, 1989, this computation shall be based on the actual client days in each client reimbursement classification in the reporting year.

(5) The limits in subitems (2), (3), and (4) shall not apply to a facility with a payment rate established according to part 9553.0075, subparts 1 to 3.

B. The program allowable historical operating cost per diem shall be ~~computed by dividing the program allowable historical operating costs in that cost category incurred during the reporting year by the greater of resident days or 85 percent of capacity days determined as specified in part 9553.0052.~~

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

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

E. ~~For the rate year beginning October 1, 1986, the allowable certified audit cost per diem shall be computed by dividing the allowable certified audit cost as determined in item A, subitem (1), unit (d) by the greater of resident days or 85 percent of capacity days.~~

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

(1) a field audit adjustment as in part 9553.0041, subpart 13; or

(2) a settle-up payment rate computed as in part 9553.0075.

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

A. ~~For the rate year beginning October 1, 1986, and for the first three months of the rate year beginning October 1, 1987, the allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be adjusted by the annualized percentage change in the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent Decembers before the beginning of the rate year. The year 1967 is the standard reference base period. For the rate year beginning October 1, 1986, the allowable certified audit cost per diem in subpart 1, item E, shall not be adjusted by the CPI-U. Beginning January 1, 1988, and for rate years beginning on or after October 1, 1988, the allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be adjusted by the annualized percent moving average of the index specified in subpart 1, item A, subitem (1), unit (f). For the period January 1, 1988 to September 30, 1988, the program allowable historical operating cost per diem determined according to subpart 1, item B, shall be adjusted by adding 2.46 to the annualized percent moving average of the index specified in subpart 1, item A, subitem (1), unit (f). For rate years beginning on or after October 1, 1990, the allowable historical operating cost per diems determined in subpart 1, items B to E, shall be adjusted by the composite forecasted index. The commissioner shall establish a statewide composite forecasted index to take into account economic trends and conditions between the midpoint of the facility's reporting year and the midpoint of the rate year following the reporting year. The statewide composite forecasted index must incorporate the forecast by Data Resources, Inc. of increases in the average hourly earnings of nursing and personal care workers indexed in Standard Industrial Code 805 in "Employment and Earnings," published by the Bureau of Labor Statistics, United States Department of Labor. This portion of the index must be weighted annually by the proportion of total allowable salaries and wages to the total allowable operating costs in the program, maintenance, and administrative operating cost categories for all facilities.~~

For adjustments to the other operating costs in the program, maintenance, and administrative operating cost categories, the statewide composite forecasted index must incorporate the Data Resources, Inc. forecast for increases in the national CPI-U. This portion of the index must be weighted annually by the proportion of total allowable other operating costs to the total allowable operating costs

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in the program, maintenance, and administrative operating cost categories for all facilities. The commissioner shall use the indices as forecasted by Data Resources, Inc., in the fourth quarter of the reporting year.

The Data Resources, Inc., forecast of increases in the average hourly earnings of nursing and personal care workers and forecast of increases in the national CPI-U are incorporated by reference. The forecasts appear in Health Care Costs, published by Data Resources, Inc. Health Care Costs is available through the Minitex interlibrary loan system and is published monthly.

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

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

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

E. ~~If the reporting year's total operating cost excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of \$2 per resident per day. Beginning January 1, 1988, and~~ For rate years beginning on or after October 1, 1988 1990, if the reporting year's total allowable operating cost after all limits excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of \$2 per resident per day. A facility whose program allowable historical operating cost incurred during the reporting year is below the program historical operating cost limit established in subpart 1, item A, ~~subitems (2), (3), and subitem (4)~~ subitem (4) is not eligible to receive the efficiency incentive. The efficiency incentive must not be adjusted as a result of a field audit.

F. ~~The total operating cost payment rate for the rate years beginning on or after October 1, 1986, shall be the sum of items B to E. For the rate year beginning October 1, 1986, the total operating cost payment rate shall be the sum of items B to E and the allowable certified audit cost per diem as determined in subpart 1, item E.~~

Subp. 3. **One time adjustment to program operating cost payment rate.** For the purposes of this subpart, "additional program staff" means staff in excess of the number included in the facility's total payment rate during the rate year covering the date of the finding of deficiency or need. The one time adjustment shall be determined according to items A to ~~H~~ G.

A. A facility is eligible for a one time adjustment to the facility's program operating cost payment rate when the facility meets one of the conditions in subitems (1) to ~~(4)~~ (5) and the conditions in item B.

(1) The commissioner or the commissioner of health has issued a correction order to the facility under parts 9525.0210 to 9525.0430 or 4665.0100 to 4665.9900.

After October 1, 1990, the facility shall only be eligible for a one-time adjustment under this subitem if:

(a) the Department of Human Services or the Department of Health adopts new regulations under parts 4665.0100 to 4665.9900 or 9525.0210 to 9525.0430; and

(b) the facility is issued a correction order for noncompliance with the new regulations during two consecutive years after the adoption of the new regulations.

(2) The federal government ~~or the commissioner of health~~ has issued a deficiency order under Code of Federal Regulations, title 42, section 442, ~~as amended through October 1, 1986,~~ requiring the facility to correct a deficiency in the number or type of program staff necessary to implement the residents' individual habilitation plans.

After October 1, 1990, the facility shall only be eligible for a one-time adjustment under this subitem if:

(a) the federal government or the commissioner of health adopt new regulations under Code of Federal Regulations, title 42, section 442; and

(b) the facility is issued a deficiency order for noncompliance with the new regulations during two consecutive years after the adoption of the new regulations.

(3) The commissioner has determined a need exists based on a determination or redetermination of need plan approved under *Minnesota Statutes*, section 252.28 and parts 9525.0015 to 9525.0145. After October 1, 1990, this subitem shall not be a condition upon which a one-time adjustment can be based.

(4) The commissioner has approved, under *Minnesota Statutes*, section 252.28 and parts 9525.0015 to 9525.0145, a Class A facility's plan to substantially modify the facility to serve persons who require a facility that meets the standards for impractical evacuation capability as provided in the Code of Federal Regulations, title 42, section ~~442.508, as amended through October 1, 1986~~ 483.470. For purposes of this subitem, "substantially modify" means to modify the facility so that at least 50 percent of the licensed beds may be used to serve persons who meet the criteria in part 9510.1050, subpart 2, items C and D.

(5) The United States Department of Labor has issued a citation under United States Code, title 29, section 207(o) requiring facilities to pay additional wages for overtime or new staff. For purposes of determining the amount of the one-time adjustment under item D, only the cost of salaries and related payroll taxes and fringe benefits necessary to correct the citation for future periods is allowable. Fines, penalties, or other retroactive costs of complying with the citation are not allowable. Adjustments under this subitem are available to facilities only once.

[For text of items B and C, see M.R.]

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

(1) The necessary and reasonable costs of units (a) to (f) shall be determined by the commissioner:

(a) the salary and related fringe benefits and payroll taxes for required additional program staff;

(b) program supplies;

(c) up to \$1,500 of equipment needed to implement the program. The commissioner may approve an amount which exceeds the \$1,500 equipment limit if the commissioner determines that the cost of the equipment and the payment schedule for the equipment are reasonable and the equipment is necessary to implement the change in the program. The commissioner's determination shall be final;

(d) program consultants;

(e) repairs to property damaged by the residents; and

(f) employee training needed to meet the needs of the persons identified in the plan approved by the commissioner.

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

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

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

[For text of item E, see M.R.]

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

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

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

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

G. The facility must record the costs associated with this subpart separately from other facility costs until the commissioner's fiscal and program review establishes that the facility has implemented the plan specified in item C, subitem (4). To prevent duplicate payment, the program costs associated with this subpart are nonallowable until after the commissioner has reviewed and approved these costs in accordance with item F. If the commissioner approves these costs, the costs incurred during the reporting year which includes 12 months of the additional costs identified in item D, subitem (1), shall be allowable.

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H. The commissioner shall authorize payments under this subpart only once in a three year period for a facility.

9553.0052 DETERMINATION OF PROGRAM OPERATING COST PER DIEMS.

Subpart 1. Service units for rate years beginning on or after October 1, 1990. For rate years beginning on or after October 1, 1990, each facility's allowable historical program operating cost service unit per diems shall be determined as in this subpart and subpart 2, and if appropriate, may be adjusted as in subpart 3.

A. The facility's client days in each client reimbursement classification for the reporting year must be multiplied by the weight for that client reimbursement classification as listed in part 9553.0056, subpart 3.

B. The amounts determined in item A must be summed to determine the facility's total service units for the reporting year.

C. For the rate year beginning October 1, 1990, the facility's total service units shall be computed according to the procedures in part 9553.0053.

Subp. 2. Allowable historical program operating cost service unit per diem. The allowable historical program operating cost service unit per diem must be computed by dividing the allowable historical program operating cost by the total service units determined in subpart 1.

Subp. 3. Base adjustment to allowable historical program operating cost service unit per diem. Items A to C set forth the procedures to be applied to establish a base adjustment to the facility's allowable historical program operating cost service unit per diem for the period January 1, 1991, to September 30, 1992.

A. All facilities will be arrayed by the department based on their allowable historical program operating cost service unit per diem for the reporting year 1990 as determined in subpart 2.

In the rate notice sent to providers according to part 9553.0041, subpart 9, the department will specify if the facility's allowable historical program operating cost service unit per diem falls below the 20th percentile in the array, and the amount of increase in program operating costs which will make their per diem equal to the 20th percentile. The notice will also specify that if a provider qualifies for the base adjustment to program operating costs, the provider may apply to the department according to the procedures detailed in this subpart.

B. To qualify for the base adjustment to the facility's allowable historical program operating cost service unit per diem, a facility must be licensed and certified as an ICF/MR for all of the reporting year ending December 31, 1989, and must not have received an interim or settle-up payment rate during that reporting year.

C. To apply for the base adjustment to the facility's allowable historical program operating cost service unit per diem, the facility must meet the requirements in subitems (1) and (2):

(1) The facility must sign and submit a written affidavit to the commissioner stating that any adjustment received under this subpart will be spent on program operating costs described in part 9553.0040, subpart 1. The department will prepare the form for the affidavit and mail it to eligible facilities on or before September 1, 1990. The provider must sign the affidavit, attach the budget described in subitem (2), and send it to the commissioner on or before October 31, 1990.

(2) The facility must attach to the affidavit a budget specifying the amount of base adjustment needed and explain how that amount will enhance the facility's capability of meeting the assessed needs of its clients. The budget must include the number of staff hours and the type of staff to be added to the facility and the projected program operating cost of salaries, related fringe benefits, and payroll taxes for the additional staff hours. The budget must also specify any other projected increases in program operating costs.

D. If a facility meets the criteria in items A to C, the commissioner shall increase the facility's allowable historical program operating cost service unit per diem to an amount that is equal to the lesser of the amount requested in the budget or the amount specified in the rate notice sent under item A divided by the total service units determined in subpart 1. Neither the amount specified in the rate notice nor the array established in item A will be adjusted for any subsequent recomputations, including field audits, appeals, and amendments. This increase shall be effective January 1, 1991.

E. The commissioner shall review the facility's cost report submitted for the reporting year ending December 31, 1991. No portion of the base adjustment computed according to item D may be used to provide services that are not reimbursed as program operating costs according to part 9553.0040, subpart 1.

If the facility's program operating costs, including the one time adjustment program operating costs for the reporting year ending December 31, 1991, are less than 98 percent of the facility's total program operating cost payments for facilities with 20 or fewer licensed beds, or less than 99 percent of the facility's total program operating cost payments for facilities with more than 20 licensed beds, then the commissioner must reduce the facility's payment rate and determine the retroactive settle-up amounts according to the procedure in item F.

F. For the purpose of determining the retroactive settle-up amounts, the facility's total program operating cost payments must

be computed by multiplying the facility's program operating cost payment rates, including one time program operating cost adjustment rates for those reporting years, by the number of client days that correspond to the program operating cost payment rates paid during that reporting year.

G. The commissioner shall divide the amount of underspending determined in item F by the facility's client days for the reporting year ending December 31, 1991, and shall reduce the facility's payment rates by this amount for the period January 1, 1991, to September 30, 1992.

Subp. 4. **Program operating cost per diem.** For the rate year beginning October 1, 1990, and for each rate year after that, the commissioner shall determine the facility's program operating cost per diem by multiplying the facility's allowable historical program operating cost service unit per diems established in subpart 2, or, if appropriate, as adjusted in subpart 3, by each of the classification weights specified in part 9553.0056, subpart 3.

Subp. 5. **Habilitation incentive for certain discharges.** An eligible facility may receive a habilitation incentive payment for clients discharged to noninstitutional service settings during the reporting year. The habilitation incentive shall be paid as a per diem adjustment to the eligible facility's payment rates, and shall be subject to items A and B.

For purposes of this subpart, "noninstitutional service setting discharge" means a client's discharge to semi-independent living services (SILS), home and community-based waived services, foster care services, or to the client's family. The term does not include discharge to a regional treatment center, an ICF/MR, a nursing home, or a hospital.

A. A facility shall qualify for the habilitation incentive payment if:

(1) the client was in the facility for at least 365 consecutive client days immediately preceding the date of discharge, and the date of discharge was on or after October 1, 1990;

(2) the reason for the discharge was not the client's death;

(3) the client was eligible for medical assistance;

(4) no facility had ever received the habilitation incentive for the same client before;

(5) the case manager certifies in writing that the discharge is expected to be permanent, that it meets the provisions of subitems (1) to (4), that the case manager agrees that the noninstitutional service setting is a less restrictive setting than the facility, that the discharge is a result of the implementation of active treatment programs of the facility, and that the facility should receive the habilitation incentive payment. The case manager's certifications must be recorded on a form prepared by the commissioner. This form must be submitted with the facility's cost report to the department by April 30 following the reporting year in which the client was discharged; and

(6) the facility's payment rates are not subject to parts 9553.0054 and 9553.0075.

B. The commissioner shall review the criteria in item A during the months following the April 30 deadline and shall establish the facility's habilitation incentive payment according to subitems (1) to (4).

(1) The commissioner shall multiply the payment rate that was in effect for the discharged client on the day before discharge by five. The payment rate used for this purpose must exclude any one time adjustments permitted under part 9553.0050, subpart 3, and habilitation incentives determined under this subpart.

(2) For each eligible facility, the amounts determined in subitem (1) shall be summed.

(3) The amount determined in subitem (2) for each facility shall be divided by the facility's total client days from the facility's cost report preceding the commissioner's review. The resulting quotient is the facility's habilitation incentive per diem.

(4) The facility's habilitation incentive per diem shall be added to the facility's total payment rates for the rate year following the commissioner's review.

The first reporting year subject to review under this subpart is the reporting year ending December 31, 1990.

9553.0053 COMPUTATION OF TOTAL SERVICE UNITS FOR THE FIRST RATE YEAR.

For the rate year beginning October 1, 1990, the commissioner shall compute each facility's total service units as in items A to F.

A. Compute the facility's total service units for the reporting year ending December 31, 1989, as in part 9553.0052, subpart 1, items A and B.

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.

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B. Compute the facility's minimum total service units for the reporting year ending December 31, 1989, by assuming all clients received standard personal interaction, independence, and integration services, as scored in part 9553.0056, subpart 1, item A.

C. Compute the facility's maximum total service units for the reporting year ending December 31, 1989, by assuming all clients received intensive personal interaction, independence, and integration services as scored in part 9553.0056, subpart 1, item B.

D. Subtract the minimum total service units in item B from the maximum total service units in item C and multiply the result by ten percent.

E. Add the amount determined in item D to the amount in item B.

F. The facility's total service units for the purposes of part 9553.0052, subpart 1, item C, shall be the greater of the facility's total service units in item A or the service units calculated in item E.

9553.0054 INTERIM PROGRAM OPERATING COST PAYMENT RATE SETTLE-UP.

The interim program operating cost payment rate for facilities specified in part 9553.0075 is subject to retroactive upward or downward adjustment based on the settle-up cost report and items A to C.

A. The settle-up program operating cost payment rate for interim periods occurring before October 1, 1990, is subject to the rules that were in effect during the interim period.

B. The settle-up program operating cost payment rates for interim periods or the portion of an interim period occurring after October 1, 1990, shall be determined according to subitems (1) to (4).

(1) The facility's total service units shall be determined according to part 9553.0052, subpart 1, using the information provided in the facility's interim period cost report.

(2) The facility's settle-up program operating cost service unit per diem for program operating cost payment rates established after September 30, 1990, must be determined according to part 9553.0052, subpart 3.

(3) The settle-up program operating cost service unit per diem must be multiplied by each of the classification weights in part 9553.0056 to establish the facility's program operating cost payment rates.

(4) The statewide composite forecasted index in part 9553.0050, subpart 2, item A, must not be applied to the facility's allowable historical program operating costs.

C. For the nine-month period following the settle-up cost reporting period, the program operating cost payment rates must be determined as in item B except that the program operating cost payment rates in item B shall be multiplied by the statewide composite forecasted index in part 9553.0050, subpart 2, item A, and by the number of full months between the midpoint of the settle-up cost reporting period to the midpoint of the nine-month period following the settle-up cost reporting period. The product shall be divided by 21.

This part does not apply to facilities whose interim program operating cost payment rates were established under the facility closure provisions of *Minnesota Statutes*, section 252.292. The program operating cost payment rates for these facilities shall be equal to their allowable program operating costs divided by the total client days from the facility's settle-up cost report.

9553.0056 CLIENT REIMBURSEMENT CLASSIFICATIONS AND CLASSIFICATION WEIGHTS.

Subpart 1. Scoring the assessment. QA&R must score a client's assessment in the areas of activities of daily living; challenging behaviors; personal interaction, independence, and integration; and special treatments. The scores must be based on information on the assessment form completed according to parts 4656.0250 to 4656.0330, as proposed in 14 *State Register* ..., .., 1990, and as later adopted, and *Minnesota Statutes*, section 144.072.

A. Assessments must be scored in the activities of daily living, challenging behavior, and personal interaction, independence, and integration areas according to steps 1 to 3 of attachment I of the manual defined in part 9553.0020, subpart 28b. Attachment I, steps 1 to 3, of the manual are incorporated by reference.

B. A client must be defined as receiving special treatments if the client is receiving one or more of the following services:

(1) clinical monitoring by a licensed nurse on all three shifts;

(2) turning and positioning not less than every two hours;

(3) tube feeding;

(4) parenteral therapy;

(5) tracheostomy care or suctioning three or more times a day;

- (6) wound care or decubiti, three or more times a day;
- (7) oxygen or respiratory care, three or more times a day; and
- (8) physician prescribed observation and intervention, three or more times a day, that requires at least one hour of staff time per day.

Assessments must be scored in the special treatments area according to step 4 of attachment I of the manual defined in part 9553.0020, subpart 28b. Attachment I, step 4 of the manual is incorporated by reference.

Subp. 2. Client reimbursement classifications. The client reimbursement classifications specified in items A to N are based on the scores calculated in subpart 1 and are as follows:

- A. A client must be assigned to client reimbursement classification level 1S if the assessment is scored:
 - (1) in the low activities of daily living category;
 - (2) in the low challenging behavior category;
 - (3) as receiving standard personal interaction, independence, and integration services; and
 - (4) as not receiving special treatments as defined in subpart 1, item B.
- B. A client must be assigned to client reimbursement classification level 1I if the assessment is scored:
 - (1) in the low activities of daily living category;
 - (2) in the low challenging behavior category;
 - (3) as receiving intensive personal interaction, independence, and integration services; and
 - (4) as not receiving special treatments as defined in subpart 1, item B.
- C. A client must be assigned to client reimbursement classification level 2S if the assessment is scored:
 - (1) in the low activities of daily living category;
 - (2) in the high challenging behavior category;
 - (3) as receiving standard personal interaction, independence, and integration services; and
 - (4) as not receiving special treatments as defined in subpart 1, item B.
- D. A client must be assigned to client reimbursement classification level 2I if the assessment is scored:
 - (1) in the low activities of daily living category;
 - (2) in the high challenging behavior category;
 - (3) as receiving intensive personal interaction, independence, and integration services; and
 - (4) as not receiving special treatments as defined in subpart 1, item B.
- E. A client must be assigned to client reimbursement classification level 3S if the assessment is scored:
 - (1) in the medium activities of daily living category;
 - (2) in the low challenging behavior category;
 - (3) as receiving standard personal interaction, independence, and integration services; and
 - (4) as not receiving special treatments as defined in subpart 1, item B.
- F. A client must be assigned to client reimbursement classification level 3I if the assessment is scored:
 - (1) in the medium activities of daily living category;
 - (2) in the low challenging behavior category;
 - (3) as receiving intensive personal interaction, independence, and integration services; and
 - (4) as not receiving special treatments as defined in subpart 1, item B.

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G. A client must be assigned to client reimbursement classification level 4S if the assessment is scored:

- (1) in the medium activities of daily living category;
- (2) in the high challenging behavior category;
- (3) as receiving standard personal interaction, independence, and integration services; and
- (4) as not receiving special treatments as defined in subpart 1, item B.

H. A client must be assigned to client reimbursement classification level 4I if the assessment is scored:

- (1) in the medium activities of daily living category;
- (2) in the high challenging behavior category;
- (3) as receiving intensive personal interaction, independence, and integration services; and
- (4) as not receiving special treatments as defined in subpart 1, item B.

I. A client must be assigned to client reimbursement classification level 5S if the assessment is scored:

- (1) in the high activities of daily living category;
- (2) in the low challenging behavior category;
- (3) as receiving standard personal interaction, independence, and integration services; and
- (4) as not receiving special treatments as defined in subpart 1, item B.

J. A client must be assigned to client reimbursement classification level 5I if the assessment is scored:

- (1) in the high activities of daily living category;
- (2) in the low challenging behavior category;
- (3) as receiving intensive personal interaction, independence, and integration services; and
- (4) as not receiving special treatments as defined in subpart 1, item B.

K. A client must be assigned to client reimbursement classification level 6S if the assessment is scored:

- (1) in the high activities of daily living category;
- (2) in the high challenging behavior category; and
- (3) as receiving standard personal interaction, independence, and integration services.

L. A client must be assigned to client reimbursement classification level 6I if the assessment is scored:

- (1) in the high activities of daily living category;
- (2) in the high challenging behavior category; and
- (3) as receiving intensive personal interaction, independence, and integration services.

M. A client must be assigned to client reimbursement classification level 7S if the assessment is scored:

- (1) as receiving special treatments as defined in subpart 1, item B;
- (2) as receiving standard personal interaction, independence, and integration services; and
- (3) and does not meet the criteria for assignment to client reimbursement classification 6S as specified in item K.

N. A client must be assigned to client reimbursement classification level 7I if the assessment is scored:

- (1) as receiving special treatments as defined in subpart 1, item B;
- (2) as receiving intensive personal interaction, independence, and integration services; and
- (3) and does not meet the criteria for assignment to client reimbursement classification 6S as specified in item L.

Subp. 3. Classification weights. The commissioner shall assign weights to each client reimbursement classification established in subpart 2 according to the following table:

<u>Client Reimbursement Classification</u>	<u>Classification Weight</u>
<u>1S</u>	<u>1.00</u>
<u>1I</u>	<u>1.04</u>
<u>2S</u>	<u>1.36</u>
<u>2I</u>	<u>1.52</u>
<u>3S</u>	<u>1.58</u>
<u>3I</u>	<u>1.68</u>

Client Reimbursement Classification

Classification Weight

<u>4S</u>	<u>1.87</u>
<u>4I</u>	<u>2.02</u>
<u>5S</u>	<u>2.09</u>
<u>5I</u>	<u>2.26</u>
<u>6S</u>	<u>2.26</u>
<u>6I</u>	<u>2.52</u>
<u>7S</u>	<u>2.10</u>
<u>7I</u>	<u>2.37</u>

9553.0057 CLIENT ASSESSMENT.

Subpart 1. Assessment of clients. QA&R will assess all clients annually according to the procedures in parts 4656.0250 to 4656.0330, as proposed in 14 State Register,, 1990, and as later adopted. The case manager will assess clients specified in subparts 3 and 4.

Subp. 2. Change in classification due to annual assessment by QA&R. Changes in client reimbursement classifications due to annual assessments by QA&R are governed by items A and B.

A. Except for the change specified in item B, any change in client reimbursement classification due to annual assessment by the QA&R will be effective on the first day of the month following the date when QA&R completes the assessment.

B. If the assessment results in a decrease in the client's reimbursement classification because of:

(1) a change in activities of daily living from high to medium or low, or from medium to low;

(2) a change in challenging behavior from high to low; or

(3) a change from special treatments to nonspecial treatment;

then the decrease will be effective two months after the first day of the month following the date when QA&R completes the assessment.

Subp. 3. Assessment of clients admitted to facilities. Case managers must assess all clients after they are admitted to a facility. The assessment must be conducted according to items A to E.

A. The client's case manager must assess the client at the time of, or within five days after, the interdisciplinary team meeting convened according to parts 9525.0015 to 9525.0165.

B. The assessment for each client must be based on the procedures in parts 4656.0250 to 4656.0330, as proposed in 14 State Register,, 1990, and as later adopted.

C. The case manager must submit the completed assessment form to the Department of Health and mail a copy to the facility within five working days following the assessment.

D. The client reimbursement classification for clients admitted to a facility is effective on the date of the client's admission.

E. A client who is admitted to the facility to receive temporary care services must not be assessed by the case manager. The client reimbursement classification for a temporary care client will be the one that corresponds to the client's payment rate calculated according to part 9553.0070, subpart 3. The Department of Health will not assign client reimbursement classifications based on QA&R's assessment of temporary care clients.

Subp. 4. Assessment by case manager when client status changes. The facility may request the case manager to reassess a client or the case manager may reassess a client on the case manager's initiative, if the facility or the case manager believe that the client's status has changed since the QA&R annual assessment. Assessments under this subpart will be governed by items A to C.

A. The facility that requests a reassessment must provide the case manager with enough evidence to establish that the client reimbursement classification will change as a result of the reassessment. The case manager shall decline to reassess a client if the case manager determines that there is insufficient evidence to show that the client reimbursement classification will change.

B. Case manager assessments completed under this subpart must occur between the third and the ninth month following the QA&R's annual assessment. The case manager can complete only one assessment annually for each client under this subpart.

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C. Any change in client reimbursement classification that results from an assessment under this subpart must be effective on the first day of the month following the date when the case manager assesses the client. If the assessment results in a decrease in the client's reimbursement classification for any of the reasons in subpart 2, item B, then the decrease will be effective on the date specified in subpart 2, item B. The facility must furnish additional information requested by the Department of Health as necessary to determine a client reimbursement classification.

Subp. 5. Change in client reimbursement classification due to audits of assessments of clients. Audits will be conducted according to parts 4656.0250 to 4656.0330, as proposed in 14 State Register ..., ..., 1990, and as later adopted. Change in client reimbursement classification that results from an audit will be retroactive to the effective date of the assessment that was audited.

Subp. 6. Reconsideration of client reimbursement classification. Request for reconsideration of a client reimbursement classification must be made under parts 4656.0250 to 4656.0330, as proposed in 14 State Register ..., ..., 1990, and as later adopted.

Subp. 7. Change in client reimbursement classification due to request for reconsideration of client reimbursement classification. Change in client reimbursement classification due to request for reconsideration of client reimbursement classification must be made according to items A and B.

A. The client reimbursement classification assigned by the Department of Health under part 4656.0300, as proposed in 14 State Register ..., ..., 1990 and as later adopted, must be the classification that applies to the client while the request for reconsideration is pending.

B. Change in a client reimbursement classification resulting from a reconsideration must be retroactive to the effective date of the assessment for which a reconsideration was requested.

Subp. 8. Client access to assessments and documentation. The facility must provide access to information about rates, assessments, and documentation provided to the Department of Health in support of the client's assessment to the client or the client's representative according to items A to D.

A. The facility must provide information about current rates no later than five days after a verbal request by the client or the client's representative.

B. The facility must provide written notice to a private paying client of the total payment rates established by the commissioner before the date the payment rate takes effect.

C. The facility must distribute to the client, or the person or entity responsible for payment, the notice of the client reimbursement classification received from the Department of Health within three working days of receipt of the notice. When the private paying client is not the person responsible for payment, the notice of the client reimbursement classification must be sent to the person responsible for payment. If the client reimbursement classification has changed, the facility must include the current payment rate for the new client reimbursement classification along with the notice.

D. The facility must provide each client, or the client's representative, with a copy of the assessment form and any other documentation provided to the Department of Health in support of the assessment. These documents must be provided within three working days of receipt of a written or verbal request from the client or the client's representative.

9553.0061 LIFE SAFETY CODE ADJUSTMENT.

Subpart 1. **Determination of adjustment.** Adjustments to the special operating cost payment rate for actions taken to comply with the Code of Federal Regulations, title 42, section 442.508, as amended through October 1, 1986 483.470, shall be determined under subparts 2 to 9.

Subp. 2. **Conditions.** The commissioner shall allow an adjustment to a facility's special operating cost payment rate when the state fire marshal or the commissioner of health has issued a statement of deficiencies to the facility under the Code of Federal Regulations, title 42, section 442.508, as amended through October 1, 1986 483.470, if the criteria in items A to D are met.

A. The physical plant for which the statement of deficiencies was issued has 16 or fewer licensed beds.

B. The commissioner has determined that the most programmatically sound and cost effective means of correcting the deficiencies is to modify the physical plant or add depreciable equipment.

C. The cost of the physical plant modification or additional depreciable equipment cannot be covered by reallocating facility staff and costs including funds accumulated in the facility's funded depreciation account and other savings or investment accounts of the provider.

D. The provider has complied with the requirements in subparts 3 and 4.

Subp. 3. **Request for life safety code adjustment.** The provider shall submit to the commissioner a written request for a life safety code adjustment to the special operating cost payment rate. The request must include:

A. a copy of the state fire marshal's or the commissioner of health's statement of deficiencies;

B. a copy of the facility's plan of correction approved by the state fire marshal or the commissioner of health; and

C. a description of the type of physical plant modifications or additional depreciable equipment required to meet the approved plan of correction including the estimated cost based on bids developed ~~in accordance with~~ according to subpart 4.

[For text of subp 4, see M.R.]

Subp. 5. **Evaluation of documents submitted.** The commissioner shall evaluate the documents submitted under subpart 3. If the commissioner determines that the plan of correction is not programmatically sound or cost effective, the commissioner may require the facility to submit an alternative plan of correction to the state fire marshal or the commissioner of health for approval. If the state fire marshal or the commissioner of health approves the alternative plan of correction, the commissioner may require the facility to resubmit bids under subpart 4.

[For text of subps 6 to 9, see M.R.]

9553.0070 DETERMINATION OF TOTAL PAYMENT RATE.

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

Subp. 2. **Limitations to total payment rate.** The total payment rate must not exceed the rate paid by private paying residents for similar services for the same period. This limit does not apply to payments made by the commissioner for approved services for very dependent persons with special needs under parts 9510.1020 to 9510.1140.

Subp. 3. ~~Respite Temporary care payment rate. Rates charged for respite care must be identified separately. The respite care payment rate may be different than the total payment rate established by the commissioner if the services provided to the respite care resident are not similar to services provided to other facility residents for the same period. The payment rate for temporary care clients shall be the facility's total payment rate in effect for the client reimbursement classification immediately above the facility's average service unit score for the reporting year. For purposes of this subpart, "average service unit score" means the facility's total service units divided by the facility's client days for the reporting year.~~

Subp. 4. ~~Adjustment to total payment rate for phase-in of common reporting year Payment rates for clients admitted to a facility. A facility whose total payment rate established for the rate year beginning during calendar year 1985, will be in effect for a period greater than 12 months due to the phase-in of a common reporting year, shall receive for the months over 12 months, its total payment rate increased by the prorated annual percentage change in the all urban consumer price index (CPI-U) for Minneapolis/St. Paul as published by the Bureau of Labor Statistics between January 1984 and January 1985, new series index (1967 = 100). That adjusted total payment rate shall be in effect until September 30, 1986. This adjusted total payment rate must not be in effect for more than nine months. Except for temporary care clients, if the case manager has not completed the client's assessment by the provider's billing date, the payment rate shall be the payment rate that corresponds to the 61 client reimbursement classification as defined in part 9553.0056, subpart 2, item L. However, this payment rate will be subject to retroactive adjustment after the client's assessment is completed, and the payment rate for the client shall be the payment rate that corresponds to the client reimbursement classification of the client.~~

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

Subpart 1. **Interim payment rate.** A provider may request an interim payment rate for a newly constructed or newly established facility or for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds provided that the conversion is approved by the commissioner. To receive an interim payment rate, the provider must submit a projected cost report in compliance with parts 9553.0010 to 9553.0080 to the extent applicable, for the year in which the provider plans to begin operation or plans to convert beds. The interim program operating cost payment rate must be determined using projected client days but not less than 80 percent of licensed capacity days. Parts 9553.0050, ~~subpart subparts 1, item A, subitems (2), (3), and (4); subpart 2, item E; and subpart 3; 9553.0052 to 9553.0058; and part 9553.0060, subpart 6,~~ shall not apply to interim payment rates. The interim property related payment rate must be determined using projected resident days but not less than 80 percent of licensed capacity days. The effective date of the interim payment rate for a newly constructed or newly established facility must be the later of the first day a medical assistance recipient resides in the newly constructed or established bed or the date of medical assistance program certification. The effective date of the interim payment rate for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds must be the later of the date on which 60 percent of the converted beds are occupied by residents requiring a Class B bed as determined by the commissioner or the date on which the beds are licensed as Class B beds by the Minnesota Department of

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Health. ~~Prior to~~ Before the effective date of the interim payment rate, the provider may submit a request to update the interim rate. After the effective date of the interim payment rate, no adjustments shall be made in the interim payment rate until ~~settle up~~ settle-up.

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

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

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

(1) ~~the settle-up program operating cost payment rates must be computed as in part 9553.0054;~~

(2) ~~part parts 9553.0050, subpart subparts 1, item A, subitems (2), (3), and (4); subpart 2, item E; and subpart 3; and part 9553.0060, subpart 6, do not apply;~~

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

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

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

(5) (6) ~~the settle-up total payment rate must not exceed the interim payment rate by more than 0.4166 percent for each full month between the effective date of the interim payment rate period and the end of the first fiscal period. For purposes of settle-up payment rates in effect on or after October 1, 1990, the total allowable operating costs, allowable special operating costs, and allowable property related costs for the settle-up cost report period must not exceed the facility's interim payment rate multiplied by 0.4166, times the number of full months between the effective date of the interim payment rate period and the end of the interim rate period, times the facility's client days from the settle-up cost report. If the facility's allowable costs exceed this limit, the excess amount shall be divided by the facility's client days for the settle-up cost report period, and the resulting per diem amount must be subtracted from the facility's settle-up total payment rates.~~

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

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

(1) ~~the settle-up program operating cost payment rates must be computed as in part 9553.0054;~~

(2) ~~part parts 9553.0050, subpart subparts 1, item A, subitems (2), (3), and (4); subpart 2, item E; and subpart 3; and part 9553.0060, subpart 6, do not apply;~~

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

(3) (4) ~~the allowable historical operating cost per diems must be adjusted by multiplying those per diems by 9/12 of the percentage change in the all urban consumer price index (CPI/U) of Minneapolis/Saint Paul as published by the Bureau of Labor Statistics between the two most recent Decembers before the beginning of the rate year; new series index (1967 = 100) the statewide composite forecasted index in part 9553.0050, subpart 2, item A, times the number of full months between the midpoint of the settle-up cost reporting period to the midpoint of the nine-month period following the settle-up cost report period divided by 21.~~

B. The special operating cost payment rate must be determined by dividing the allowable historical special operating costs by the greater of resident days or 85 percent of licensed capacity days.

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

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

Subp. 5. Allowable historical maintenance operating costs. For purposes of part 9553.0050, subpart 1, item A, subitem (2), the facility's allowable historical operating costs in its maintenance operating cost category for the second rate year following the settle-up reporting period must not exceed 125 percent of the operating cost payment rate for the maintenance operating cost category in effect during the reporting year preceding the second rate year, times the prorated client days that correspond to those operating cost payment rates paid during that reporting year.

For later rate years, the allowable historical operating costs in the maintenance operating cost category must not exceed the limit above, increased annually by the same index specified in part 9553.0050, subpart 1, item A, subitem (2).

9553.0079 SEVERABLE PROVISIONS.

If any provisions of parts 9553.0010 to 9553.0080 are made invalid through judicial review or the state plan approval process, the commissioner may establish facility payment rates to be effective from the first day of the month following the date of the invalidation through the remaining portion of the rate year and for later rate years without benefit of the invalid provisions.

RENUMBERING. Subpart 1. **Instruction to revisor.** In the next edition of *Minnesota Rules*, the revisor of statutes shall renumber the part number in column A with the part number in column B and make all appropriate cross-reference changes in *Minnesota Statutes* and *Minnesota Rules*.

Column A	Column B
9553.0051	9553.0058
9553.0020, subp 43	9553.0020, subp 9b

Subp. 2. Change in terms. The revisor of statutes is directed to change the word "resident" wherever it appears in *Minnesota Rules*, parts 9553.0010 to 9553.0080 to "client." However, the revisor shall not change "resident" to "client" in *Minnesota Rules*, part 9553.0020, subpart 9a.

Department of Human Services

Proposed Permanent Rules Relating to Periodic Redetermination of Medical Assistance Eligibility

Notice of Intent to Adopt a Rule without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 256B.04, subdivision 2.

All persons have 30 days or until 4:30 p.m. on February 21, 1990 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. 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.

Comments or written requests for a public hearing must be submitted to Eleanor Weber, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 297-4301.

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

The proposed amendment of Part 9505.0115, subpart 3 changes the period of the required review of a medical assistance recipient's assets from quarterly to semiannually if the recipient's assets are within \$300 of the asset limitations. The proposed amendment will reduce the counties' administrative burden of reviewing assets and will result in cost savings to the medical assistance program.

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

A free copy of the rule is available upon request from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 296-7454.

A copy of the rule may also be viewed at any of the 87 county welfare or human services 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 upon request from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816, (612) 296-7454.

Adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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 Nancy Bishop, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

Ann Wynia
Commissioner of Human Services

Rules as Proposed

9505.0115 REDETERMINATION OF ELIGIBILITY.

[For text of subps 1 and 2, see M.R. 1989]

Subp. 3. **Periodic redetermination.** The local agency shall perform periodic redeterminations before the end of the eligibility periods defined in part 9505.0110, subpart 2, items A and B, so that eligibility is not interrupted because of agency delay of redetermination. The local agency shall review ~~quarterly~~ semiannually those cases where the person's assets are within \$300 of the asset limitations in parts 9505.0059 and 9505.0060.

[For text of subps 4 and 5, see M.R. 1989]

Higher Education Coordinating Board

Proposed Permanent Rules Relating to Financial Aid

Notice of Intent to Adopt a Rule without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Higher Education Coordinating Board intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is in *Minnesota Statutes* 136A.04, Subd. 1(9), 136A.16, and 136A.234.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. 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.

Comments or written requests for a public hearing must be submitted to:

Mary Lou Dresbach
Minnesota Higher Education Coordinating Board
Capitol Square Building, Suite 400
550 Cedar Street
St. Paul, MN 55101
(612) 296-9656

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

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

A STATEMENT OF NEED AND REASONABLENESS that describes the need for the 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 Mary Lou Dresbach upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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 Mary Lou Dresbach.

Dated: 5 January 1990

David R. Powers
Executive Director
Minnesota Higher Education
Coordinating Board

Rules as Proposed

4830.0100 DEFINITIONS FOR HIGHER EDUCATION PROGRAMS.

[For text of subs 1 to 4, see M.R.]

Subp. 5. **Eligible student.** "Eligible student" means a student who meets, at a minimum, all of the following requirements:

[For text of items A to D, see M.R.]

E. is in good standing and making satisfactory progress, as determined by the school; ~~and~~

F. is a permanent resident of the United States, if the student is not a United States citizen; ~~and~~

G. is not in default, as defined under the applicable loan program, of any educational loan, or, if the student is in default, has made satisfactory arrangements to repay the loan.

Subp. 6. **Executive director.** "Executive director" means the executive director of the ~~Higher Education Coordinating board,~~ or board staff who perform duties as assigned by the executive director.

[For text of subs 7 to 9, see M.R.]

Subp. 10. **Minnesota resident.** "Minnesota resident" means:

A. ~~For~~ a dependent student, ~~a student~~ whose parent or legal guardian resides in Minnesota on the date of application; ~~or~~

B. ~~For~~ an independent student, ~~a student~~ who has resided in Minnesota for other than educational purposes for at least 12 consecutive months prior to the date of application;

C. a student who graduated from a Minnesota high school; or

D. a student who, after residing in the state for a minimum of one year, earned a high school equivalency certificate in Minnesota.

Subp. 10a. Determination of student residence. The residence of the parent whose financial information is reported in the financial need analysis determines the residence of the student.

[For text of subp 11, see M.R.]

Subp. 12. Returning student. "Returning student" is a student who has not been in attendance at a postsecondary institution for at least the last three consecutive years before applying for aid.

STATE SCHOLARSHIPS AND GRANTS ~~IN AID~~

4830.0200 SCOPE.

Parts 4830.0200 to 4830.0700 govern state scholarships and ~~grants-in-aid~~ grants.

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

4830.0300 ELIGIBLE SCHOOLS.

Subpart 1. **Annual list.** Annually the board shall adopt by resolution a list of schools at which a state scholarship or ~~grant-in-aid grant~~ may be used. Schools may be added to the list by the board anytime during the school year.

Subp. 2. **Requirements.** To be eligible a school must:

- A. be located in Minnesota;
- B. offer at least one program that:
 - (1) is vocational or academic in nature;
 - (2) leads to a certificate or degree;
 - (3) is at least ten weeks long; and
 - (4) involves at least 12 academic credits or 300 clock hours; ~~and~~
- C. be:
 - (1) accredited by a federally recognized accrediting agency or association;
 - (2) approved to offer degrees or use terms in its name according to part 4840.0500; or
 - (3) licensed by an appropriate state agency; and

D. sign an institutional agreement with the executive director.

4830.0400 APPLICATION DATES AND STUDENT ELIGIBILITY.

[For text of subpart 1, see M.R.]

Subp. 2. [See Repealer.]

Subp. 2a. Out-of-state housing. A student's Minnesota residence is not lost if the student must live outside of Minnesota for housing purposes while attending an eligible school located within ten miles of the Minnesota border. The student must have moved to the out-of-state address within six months of beginning attendance at an eligible school.

Subp. 3. **Eligibility for initial scholarship.** To be eligible for an initial scholarship a student must be an eligible student, as defined in part 4830.0100, subpart 5, except item E, and:

- A. ~~in~~ demonstrate financial need;
- B. have ranked in the upper quarter of the class at the end of the junior year of senior high school, or the equivalent, based on the student's cumulative scholastic record in senior high school; ~~and~~
- C. be enrolled in a program that is at least ten weeks long, and involves at least 12 academic credits or 300 clock hours; and
- D. must not have received a previous Minnesota state scholarship or grant-in-aid grant.

Subp. 4. **Eligibility for initial ~~grant-in-aid grant~~.** To be eligible for an initial ~~grant-in-aid grant~~ a student must be an eligible student, as defined in part 4830.0100, subpart 5, except E, and:

- A. ~~in~~ demonstrate financial need;
- B. if under 17 years old, ~~a holder of~~ hold a high school diploma or the equivalent; ~~and~~
- C. be enrolled in a program that is at least ten weeks long, and involves at least 12 academic credits or 300 clock hours; and
- D. must not have received a previous Minnesota state scholarship or grant-in-aid grant.

Subp. 5. **Renewal awards.** A scholarship or ~~grant-in-aid grant~~ is renewable for a maximum of six semesters, nine quarters, or the equivalent, but must not continue after the first of the following occurrences:

- A. the recipient has obtained a baccalaureate degree; or
- B. the recipient has been enrolled on a full-time basis for eight semesters, 12 quarters, or the equivalent. To be eligible to renew a scholarship or ~~grant-in-aid grant~~ a student must apply each year and continue to meet the requirements for an initial scholarship or ~~grant-in-aid grant~~, except for subparts 3 and 4, item C D. A student must have made satisfactory progress as determined by the school.

Subp. 6. Overlapping awards. A student may not receive funds from the state campus-based part-time student grant program and the state scholarship and grant program for the same or overlapping periods of enrollment.

4830.0500 RANKING APPLICANTS.

Subpart 1. **Classification and ranking of applicants.** Each applicant shall be placed in at least one of the following classifications:

renewal scholarship, renewal ~~grant-in-aid grant~~, initial scholarship, initial ~~grant-in-aid grant~~. ~~Grant-in-aid Grant~~ applicants are ranked according to parental contribution; applicants with the least parental contribution are awarded first. Scholarship applicants are ranked according to class rank as a junior in high school; applicants with the highest class rank are awarded first.

Subp. 2. **Priority of classes of applicants.** Applicants renewing scholarships shall be given first priority. Applicants renewing ~~grants-in-aid grants~~ shall be given second priority. Applicants for initial scholarships shall be given third priority. Applicants for initial ~~grants-in-aid grants~~ shall be given fourth priority. Awards shall be made on a funds available basis. Once an award is made it may not be withdrawn in order to award an applicant of higher priority.

[For text of subp 3, see M.R.]

4830.0600 AWARDS.

Subpart 1. **Monetary awards.** The amount of a scholarship or grant ~~in aid financial stipend~~ may not exceed an applicant's cost of attendance, as defined in *Minnesota Statutes*, section 136A.121, subdivision 6, after deducting the following:

[For text of item A, see M.R.]

B. For an applicant who is not an independent student, a contribution by the applicant's parents, as determined by a the financial need analysis. ~~The parental contribution will be considered in determining the state award.~~

[For text of items C and D, see M.R.]

Subp. 1a. **Minimum.** The minimum ~~financial stipend award amount~~ shall be \$100.

Subp. 2. **Adjustments to awards.** If financial need decreases because a recipient chooses a different school after the scholarship or grant ~~in aid~~ award is offered, the award shall be reduced. If a change in schools causes financial need to increase, the award shall be increased only if funds are available.

4830.0700 METHOD OF PAYMENT.

Subpart 1. **Payments to schools.** After a scholarship and grant ~~in aid~~ award is determined, the award shall be sent by the executive director to the school chosen by the recipient. The school shall apply the award to the recipient's educational costs in the following order: tuition, fees, books, supplies, and other expenses. The costs must be prorated for each term of the academic year. The school shall notify each recipient that the award has been received by the school.

Subp. 2. **Refunds.** A scholarship and grant ~~in aid~~ is awarded for full-time attendance at a specified school for the academic year of nine months within a the state fiscal year. If a recipient fails to enroll or reduces enrollment, the school must refund the unused portion of the award. If the executive director determines that a school has fraudulently handled scholarship or grant money, the refund of the unused portion of the award is immediately due, and the board may institute a civil action for recovery if necessary. Refunds to the board are determined as follows:

A. Determine the percentage that the state scholarship or grant award represents of the student's total financial aid package for the applicable term;

B. Multiply that percentage by the amount determined to be refunded to the student under the school's refund policy. The result yields the amount to be refunded to the board.

A refunded award must be sent by the school to the board's scholarship or grant ~~in aid~~ account. Refunded awards are available for reassignment to other qualified applicants.

Subp. 3. **School accounting requirements.** Schools shall maintain separate accounts for scholarship and grant ~~in aid~~ funds. Refunds to the board must be accompanied with a list stating the social security number, name, award type, amount of refund, term, and refund code for each student included in the refund. The refund must be made to the board within 30 days from the end of the academic term, or 30 days from the date the school is notified of a student's withdrawal, whichever is less. Schools must provide evidence, prepared according to generally accepted accounting principles, that all awards have either been distributed or refunded to the board.

Subp. 4. Recovery of overpayments. An overpayment occurs when a grant recipient receives more money than the recipient is eligible to receive under the award calculation. A grant recipient shall reimburse the board for overpayment regardless of the cause. The overpayment amount is the difference between the amount received and the calculated award eligibility. The reimbursement amount includes any costs or expenses incurred by the board in collecting the debt, including reasonable attorney fees. The reimbursement is recoverable from the recipient or the recipient's estate. The board may institute a civil action for recovery if necessary.

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Proposed Rules

The recipient must not receive additional awards until the overpayment is recovered or the recipient is making payments under an approved plan. Additional awards for which the recipient is eligible may be used to recover an unreimbursed overpayment.

PART-TIME STUDENT GRANTS

4830.1550 SCOPE.

Parts 4830.1550 to 4830.1556 govern state ~~grants-in-aid~~ grants for part-time less than half-time students.

4830.1551 ELIGIBLE SCHOOLS.

Schools eligible for part-time student grants are the same schools eligible for state scholarships and ~~grants-in-aid~~ grants under part 4830.0300.

4830.1552 APPLICATION AND DISTRIBUTION OF FUNDS FOR GRANTS.

Subpart 1. **Allocation formula.** The ~~board~~ executive director shall allocate funds to each school according to the following formula:

A. Each school's share is the number of part-time students enrolled in the last fiscal year, multiplied by the average registration level of its part-time students in the last fiscal year, multiplied by the institutional budget used by the scholarship and ~~grant-in-aid~~ grant program for the current fiscal year.

B. Each school's initial allocation is the school's share divided by the sum of school shares, multiplied by the last year's percent of usage ~~percent~~, multiplied by 90 percent. Percent of usage ~~percent~~ is defined as follows:

(1) If no final report is received by the first working day after August 9, the ~~usage percentage~~ percent of usage is 80 percent.

(2) If the final report is received before August 10, the ~~usage~~ percent of usage is the total amount of funds used divided by the last year's allocation.

(3) A refund in excess of \$1,000 received after April 1 is multiplied by 150 percent and subtracted from the original allocation to determine the funds used. This amount is divided by the last year's allocation to determine the percent of usage ~~percentage~~.

C. Each January, the ~~board~~ executive director shall allocate the remaining ten percent of the total part-time grant allocation according to the same formula, except that the last year's percent of usage must not be applied.

"Number of part-time students" means the sum of all enrolled resident, extension, and unclassified part-time students, who are Minnesota residents, and are reported to the board for its annual enrollment survey as lower division, upper division, and vocational students in the fall term of the school year.

"Registration level" is the number of credits (or an equivalent measure) taken by part-time students in the fall term of the school year as reported to the board for its annual enrollment survey, divided by 12 credits (or an equivalent measure).

Subp. 2. **Notification.** The ~~board~~ executive director shall notify each school of the amount allocated to it.

Subp. 3. **Accountability.** Each participating school shall be accountable for any funds disbursed to students for ~~grants-in-aid~~ grants for part-time students. Funds may be used only during the fiscal year of disbursement. If a student does not use a grant because the student does not enroll or withdraws from school, the school may use the funds for other eligible students or return them to the board.

Subp. 4. **Unused funds.** When requested by the ~~board~~ executive director, a school shall report its use of funds and shall return unused funds. The ~~board~~ executive director shall reallocate unused funds to schools desiring additional funds.

4830.1553 DETERMINATION OF ELIGIBILITY.

A school shall determine if a student is eligible for a part-time student grant. To be eligible a student must be an eligible student as defined in part 4830.0100, subpart 5, items A, B, C, E, ~~and F, and G.~~ The student must be pursuing course work applicable to a degree, diploma, or certificate ~~After July 1, 1986, a recipient of an award who is enrolled less than half-time, as defined by the board, may continue to apply for awards and be enrolled either less than half-time as defined by the board, or as a new or returning student enrolled at least half-time but less than full-time as defined by the board.~~

4830.1554 AMOUNT AND TERM OF GRANTS.

[For text of subs 1 and 2, see M.R.]

Subp. 3. **Amount.** The amount of the grant when combined with (a) ~~federal, state, institutional, and private~~ grant assistance ~~that the student receives from federal, state, institutional, or private sources,~~ (b) employer reimbursement, and (c) the expected parent/student contribution resulting from the assessment of financial need under subpart 1, must not exceed the student's direct educational cost as defined in subpart 2.

4830.1555 REPORTS OF DATA.

The school must collect demographic, educational, and financial data specified by the ~~board~~ executive director from eligible students requesting grants. The school shall provide the ~~board~~ executive director with individual student data upon request.

End of year program activity and student data reports are required by the board executive director. The school must correctly complete and submit the reports and any applicable refunds to the board executive director by the first working day after August 9. ~~If the reports are not completed by the deadline,~~ The board executive director shall withhold the school's subsequent year's allocation if the above deadline is not met.

4830.2100 ELIGIBLE SCHOOLS.

Schools eligible for work-study grants are the same schools eligible for state scholarships and ~~grants-in-aid~~ grants under part 4830.0300.

4830.2200 APPLICATION AND DISTRIBUTION OF FUNDS FOR GRANTS.

[For text of subs 1 and 2, see M.R.]

Subp. 3. **Modification of allocations.** The board executive director shall allocate funds equal to a school's estimated need if the estimated need is less than the amount determined by the allocation formula.

[For text of subp 4, see M.R.]

Subp. 5. **Unused funds.** The school must return funds which the school determines will not be used within 30 days from the date of a request by the board executive director. The board executive director shall reallocate the funds to other participating schools requesting additional funds.

Subp. 6. **Reallocation.** The board executive director shall reallocate funds using the formula specified in subpart 2, items A and B.

4830.2300 ELIGIBLE STUDENTS WORK-STUDY GRANTS.

A school shall determine if a student is eligible for a work-study grant. To be eligible a student must ~~be an eligible student, as defined in meet the requirements of part 4830.0100, subpart 5, except that the student may be a graduate student items B to F.~~ A student employed during periods of nonenrollment must sign a statement of intent to enroll full-time the next term or provide proof of registration for the next term.

4830.2500 CONTRACTS WITH EMPLOYERS.

[For text of subs 1 to 3, see M.R.]

Subp. 4. **Supervision.** The school, with the employer, must develop for each work-study assignment a program of supervision consistent with the nature of the assignment and the needs of the individual student. Upon request ~~of the board,~~ the school must submit the program of supervision to the executive director for review and comment.

[For text of subp 5, see M.R.]

4830.2600 REPORTS BY SCHOOL.

The school must collect demographic and program activity data as specified by the board executive director. The school shall provide the board executive director with individual student data upon request.

End of year program activity and student data reports are required by the board executive director. The school must correctly complete and submit these reports and any applicable refunds to the board executive director by the first working day after August 9. ~~If the reports are not completed by the deadline,~~ The board executive director shall withhold the school's subsequent year's allocation if the above deadline date is not met.

4850.0010 PURPOSE.

The purpose of parts 4850.0010 to 4850.0018 is to augment *Minnesota Statutes*, sections ~~136A.14 to 136A.141, and~~ 136A.15 to 136A.1702, establishing a state program of supplemental loans to postsecondary students by providing standards, criteria, and rules for the program.

4850.0011 DEFINITIONS.

Subpart 1. **Academic year.** "Academic year" means:

A. a period of time, typically eight or nine months, in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters, or three quarters at an eligible school using credit hours; or

B. at least 900 clock hours of training for a program at an eligible school using clock hours; ~~or.~~

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Proposed Rules

~~C.~~ A student may borrow for a portion of the academic year, or for all of it (see "loan period").

[For text of subs 2 to 4, see M.R.]

Subp. 5. **Certificate or degree.** "Certificate" or "degree" means a written or printed statement of the fact that the holder has met the eligible school's minimum requirements for completion, and ~~certifying~~ certifies a minimum mastery of the subject matter for a particular academic or vocational program.

[For text of subs 6 to 8, see M.R.]

Subp. 9. **Credit worthy cosigner.** "Credit worthy cosigner" means one who, in the judgment of the ~~board~~ executive director has:

[For text of items A to D, see M.R.]

Subp. 10. **Cosigners.** All borrowers from the student educational loan fund shall have a credit worthy cosigner who is either a United States citizen or a permanent resident. The cosigner is jointly and separately responsible for making loan payments (principal, interest, and other charges). The cosigner is relieved of this financial responsibility only in the event of death or permanent disability of the borrower. A cosigner must:

A. ~~A cosigner must~~ be at least 18 years old;

B. ~~A cosigner must~~ be a person or an eligible school; and

C. agree to the release of information to a consumer credit reporting agency, as described in part 4850.0012, subpart 4.

If the cosigner has no credit history, credit worthiness shall be determined by the ~~board~~ executive director, by a review of banking references and a review of net worth data with a minimum test requiring that net worth equal or exceed a sum ten times the size of each loan amount requested.

[For text of subp 11, see M.R.]

Subp. 12. **Delinquency.** "Delinquency" means the condition that exists when a borrower's scheduled payment of principal or interest or both is received by the ~~board~~ executive director after the due date.

[For text of subp 13, see M.R.]

Subp. 14. **Eligible school.** "Eligible school" means a school that:

[For text of items A and B, see M.R.]

C. signs an institutional loan participation agreement with the Minnesota Higher Education Coordinating Board executive director that lists the duties and responsibilities of both the school and the ~~board~~ executive director.

Subp. 15. **Eligible student.** "Eligible student" means a student who:

A. is enrolled in an eligible school in Minnesota, or is a Minnesota resident enrolled in an eligible school in another state or United States territory or is a student who graduated from a Minnesota high school ~~and has not since established residence in another state~~ and is enrolled in an eligible school in Minnesota or another state or United States territory;

[For text of items B and C, see M.R.]

D. is not currently in default, as defined by each specific program, of any student educational loan program (Stafford Loan, GSL, FISL, NDSL, Perkins, HPL, HEAL, ALAS/SLS, or other state supplemental loan program) at the current or any previous school;

[For text of items E to I, see M.R.]

[For text of subp 16, see M.R.]

Subp. 16a. Executive director. "Executive director" means the executive director of the board, or board staff who perform duties as assigned by the executive director.

[For text of subs 17 to 20, see M.R.]

Subp. 21. **Graduate student.** "Graduate student" means a student who is pursuing a program, or has a baccalaureate degree and is enrolled in courses which are normally part of a program, leading to a graduate or professional degree or certificate at an eligible school; and has successfully completed the equivalent of at least three years of full-time study at an eligible school either prior to entrance into the program or as part of the program itself.

[For text of subp 22, see M.R.]

Subp. 23. **In-school period.** "In-school period" means the period that the ~~borrower~~ eligible student is enrolled in an eligible school.

Subp. 24. **Late charge.** "Late charge" means a charge, not to exceed \$20, that is assessed against borrowers each time a payment of principal and/or interest is received by the ~~board~~ executive director more than 15 days after the due date.

[For text of subps 25 and 26, see M.R.]

Subp. 27. **Payout Repayment period.** "Payout Repayment period" means the time period which begins immediately following the transition period and runs to the earliest of:

[For text of items A to D, see M.R.]

[For text of subps 28 to 30, see M.R.]

4850.0012 SCHOOL AGREEMENTS AND STUDENT APPLICATIONS.

Subpart 1. **Institutional loan participation agreement.** The eligible school and the ~~board~~ executive director must sign a loan participation agreement that will:

- A. state the eligible school's responsibility for proper certification and delivery of loans to students; and
- B. name a representative of the eligible school who is to be responsible for the administration of the agreement.

Subp. 2. **Termination.** The ~~board~~ executive director may terminate the agreement with an eligible school upon determining that the school is not complying with the rules in parts 4850.0010 to 4850.0018. All obligations of the school under the agreement shall continue in full force and effect with respect to all SELF loans then outstanding to students of the school.

Subp. 3. **Application, guarantee, and promissory note.** The student shall complete the SELF application and attached promissory note, and deliver or mail them to the eligible school for certification. The eligible school shall then deliver or mail the application and promissory note to the student who shall deliver or mail them to the cosigner who shall complete his or her portion of the application and promissory note and deliver or mail them to the ~~board~~ executive director. The ~~board~~ executive director will check the application and promissory note for completeness, determine the eligibility of the applicant, and conduct a credit check of the cosigner. If the ~~board~~ executive director approves the loan application, the document file shall be sent to the trustee (or agent) for approval. The trustee (or agent) shall approve the application and forward the document file to the servicer or shall reject the application and return the document file to the ~~board~~ executive director. The servicer shall enter the application on the servicing computer system, prepare and mail a disclosure statement to the borrower and cosigner, advise the school of the loan approval, schedule disbursements, deduct and mail the guarantee fee from the loan proceeds to the insurer, and place the document file in permanent storage. If the ~~board~~ executive director rejects the loan application, the applicant and the cosigner must be advised in writing of the decision and the reasons for the rejection.

[For text of subp 4, see M.R.]

4850.0014 AMOUNT AND TERMS.

Subpart 1. **Loan amounts.** The minimum loan amount from the student educational loan fund is \$1,000.

The annual and maximum loan amounts for:

A. an undergraduate student are those prescribed in *Minnesota Statutes*, section 136A.1701. The loan must not exceed the stated annual undergraduate borrowing maximum or the cost of attendance less all other financial aid (including PLUS loans borrowed on the student's behalf); and the cumulative student loan debt (excluding PLUS loans borrowed on the student's behalf) must not exceed the product of the grade level times the annual undergraduate borrowing maximum, except in grade level 05 when the cumulative undergraduate loan debt maximum stays the same as in grade level 04. For example, if the annual undergraduate borrowing maximum in statute ~~was~~ is \$4,000, the cumulative undergraduate loan debt maximum, by grade level, is:

- (1) grade level 1, \$ 4,000;
- (2) grade level 2, \$ 8,000;
- (3) grade level 3, \$12,000;
- (4) grade level 4, \$16,000; and
- (5) grade level 5, \$16,000.

B. a graduate student are those prescribed in *Minnesota Statutes*, section 136A.1701. The loan must not exceed the stated annual graduate student borrowing maximum or the cost of attendance less all other financial aid (including PLUS loans borrowed on the student's behalf); and the cumulative student loan debt of the graduate student (excluding PLUS loans borrowed on the student's behalf) does not exceed the total amount prescribed in *Minnesota Statutes* for both undergraduate and graduate educations combined.

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Proposed Rules

For example, if the stated total borrowing maximum ~~was~~ is \$25,000, the cumulative graduate student borrowing maximum, by grade level, is:

- (6) grade level 6, \$25,000;
- (7) grade level 7, \$25,000;
- (8) grade level 8, \$25,000; and
- (9) grade level 9, \$25,000.

[For text of subp 2, see M.R.]

Subp. 3. **Interest rate.** For loans made from the bonds, the interest rate on the loan must be fixed by the board executive director at a margin in excess of the "index rate" on the bonds. If the bonds bear interest at more than one rate at any one time, the "index rate" will be the weighted average of the interest rates. The "index rate" may change on Thursday of each week. If the "index rate" increases or decreases, the interest rate on the loan increases or decreases automatically on the same day without notice to the borrower. If the board executive director determines that the margin does not reflect the costs of the SELF program, the board executive director must increase or decrease the margin. The board executive director shall advise borrowers of changes in the margin.

For loans made from sources other than the bonds, the interest rate on the loan will be determined by the board executive director at a margin in excess of the "index rate." The "index rate" is the average rounded to the nearest quarter of one percent of the bond equivalent yield, for auctions of 13 week treasury bills, during the preceding calendar quarter. If the index rate increases or decreases, the interest rate on the loan automatically increases or decreases on the same day without notice to the borrower. The interest rate on the loan cannot increase or decrease more than two percentage points over any four consecutive calendar quarters. The board executive director shall set the margin to reflect the costs of the SELF program. If the board executive director determines that the margin does not reflect the costs of the SELF program, the board executive director must increase or decrease the margin. The board executive director shall advise borrowers of changes in the margin.

4850.0015 LOAN DISBURSEMENTS.

Subpart 1. **Disbursement scheduling.** Checks must be jointly payable to the borrower and the eligible school. If the loan period covers more than one academic or payment period, the loan must be disbursed in installments during each academic or payment period. (For example, if an eligible school's academic year is divided by quarters, the student's loan amount may be disbursed in three installments, once each quarter.) Disbursements must be made at the beginning of each academic term, unless the board executive director requires or the school suggests other more appropriate dates.

[For text of subp 2, see M.R.]

Subp. 3. **Disbursement when check arrives during loan period.** When the check arrives during the loan period, the school, having checked enrollment and satisfactory academic progress, shall endorse the check along with the student, subtract from the proceeds that amount owed to it for the payment period, and make arrangements with the student for the use of any remaining proceeds. The student has the same options for receiving any remaining proceeds as described in subpart 2. If the student is on a school approved leave of absence when the check arrives and is scheduled to return within 30 days from the date on the check, the school may hold the check until the student returns. If the student fails to ~~do so~~ return or does not show up for disbursement, the check must be returned to the board executive director within 30 days from the date on the check.

Subp. 4. **Disbursement when check arrives after loan period.** When the check arrives after the loan period, the school, having checked enrollment and satisfactory academic progress, may endorse the check along with the student within 30 days from the end of the loan period, subtract from the proceeds that amount owed to it for the payment period, and make arrangements with the student for use of any remaining proceeds. The student has the same options for receiving any remaining proceeds as described in subpart 3. If the check arrives more than 30 days after the end of the loan period, the school must return the check to the board executive director.

4850.0016 NONENROLLMENT, TRANSFER, AND WITHDRAWAL.

Subpart 1. **Nonenrollment.** A school shall return a check to the board executive director for a student who fails to enroll within 30 days of the date on the check.

Subp. 2. **Withdrawal and transfer to another eligible school.** If the student fails to complete the loan period at the school where the loan application was certified and transfers to another eligible school, any remaining scheduled disbursements must be canceled. The school must immediately notify the board executive director of any borrower who withdraws for any purpose. The student may apply for any remaining loan eligibility at the other eligible school, assuming the amount approved is at least \$1,000.

Subp. 3. **Withdrawal.** In the event that a borrower, for any reason, fails to complete a loan period and withdraws, at a time when the institution pays a refund of charges to the student, ~~an amount equal to the ratio of the disbursed loan to the total amount of the borrower's financial aid package for the same period is to be subtracted from the institutional refund amount, returned to the board, and applied to the outstanding loan amount~~ some portion of that refund must be returned to the board for the SELF Loan Program within 30 days of the date the school becomes aware of the withdrawal. Refunds to the board are determined by items A and B.

A. Determine the percentage that the SELF loan represents of the student's total financial aid package for the applicable term.

B. Multiply that percentage by the amount determined to be refunded to the student under the school's refund policy. The result yields the amount to be refunded to the board.

Subp. 4. **Reduction of enrollment to less than half-time status.** The school shall notify the board executive director immediately when a student reduces enrollment below a half-time status, but remains enrolled. Such a student shall be permitted to remain in an in-school repayment period for no more than six months including normal school vacation periods before the transition period begins.

4850.0017 REPAYMENT PROCEDURES.

Borrowers shall make payments of principal and interest according to the following schedule:

A. During the school in-school period, the board or its agent shall bill borrowers for accrued interest once during each calendar quarter.

[For text of item B, see M.R.]

C. During the payout repayment period, borrowers must repay their loans in monthly installments of principal and interest the board or its agent shall bill borrowers for accrued interest and principal once during each calendar month. The interest rate may vary throughout the period. The board or its agent must bill borrowers monthly for amounts due. The sum of the monthly payments must equal the sum of accrued interest plus principal. The monthly payments of principal must be in amounts calculated at the beginning of the repayment period as if two conditions existed. The two conditions are: (1) interest on the loan accrues at a fixed rate equal to the interest rate in effect at the time of the calculation and (2) the loan is payable over its term in equal monthly installments. The borrower must pay a total of at least \$600 each year on all of the borrower's SELF loans. If the borrower's spouse also has SELF loans, their combined annual payments on all SELF loans must be at least \$600.

D. Late charges must be billed to the borrower on the 30-day delinquent letter mailed by the board or its agent and are due and payable immediately.

[For text of items E and F, see M.R.]

G. The board executive director shall grant forbearances in those instances when the borrower experiences hardship in making payments of principal and/or interest, and when the cosigner has since either died or, become temporarily or permanently disabled, or for some other reason, such as unemployment or limited fixed income, demonstrated an inability to make payment. Such a forbearance shall be granted for documented upon receipt of written documentation from the borrower and the cosigner relating to the unemployment or similar financial hardship eases case and is limited to 90 120 days, renewable upon further documentation for another 90 120 days. However, the borrower or cosigner must make at least three full payments before the forbearance is renewed.

H. The board executive director shall provide borrowers and cosigners with an annual statement of outstanding principal and interest paid during the previous calendar year.

4850.0018 CLAIMS.

Subpart 1. **When filed.** If after exercising due diligence, and after 120 days from the billing date the board executive director fails to collect a payment from a borrower or the cosigner, a claim must be filed by the board executive director with the program insurer for the outstanding principal of the loan plus accrued interest.

Subp. 2. **When paid.** Claims are paid in four categories:

A. A claim for death of the borrower must be filed by the board executive director upon receipt of a death certificate. The cosigner's obligation to make any further payment of principal and interest or both on a SELF loan is canceled as of the date of death.

B. If the borrower **becomes totally and permanently disabled**, a claim must be filed by the board executive director upon receipt of proper medical documentation. The cosigner's obligation to make any further payment of principal and interest on a SELF loan is canceled as of the date of medical documentation.

C. If a borrower or cosigner fails to perform any of the conditions of the promissory note, a claim must be filed by the board executive director.

D. If a borrower is adjudicated bankrupt and has liability for the SELF loan discharged, the cosigner remains liable for unpaid principal and interest. If the cosigner fails to perform any of the conditions of the promissory note, the board executive director shall file a claim.

REPEALER. Minnesota Rules, parts 4830.0400, subpart 2, 4830.3000, 4830.3100, 4830.3200, 4830.3300, and 4830.3400 are repealed.

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Proposed Rules

Minnesota Housing Finance Agency

Proposed Permanent Rules Relating to Home Ownership Assistance Fund

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Housing Financing Agency intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes* 462A.06, Subd. 4 and 11.

All persons 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. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. 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*, section 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Susan K. Noren
Legal Division
Minnesota Housing Finance Agency
400 Sibley Street, Suite 300
St. Paul, Minnesota 55101-1998
Telephone: 612-296-9794

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule 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 rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Susan K. Noren upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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 Susan K. Noren.

Dated: 19 January 1990

James J. Solem
Commissioner

Rules as Proposed (all new material)

HOME OWNERSHIP ASSISTANCE FUND

4900.1300 SCOPE.

Parts 4900.1300 to 4900.1390 govern the home ownership assistance fund.

4900.1315 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 4900.1300 to 4900.1390 have the meanings given them in this part.

Subp. 2. **Agency.** "Agency" means the Minnesota Housing Finance Agency.

Subp. 3. **Entry costs.** "Entry costs" means the financial requirements other than first mortgage loan proceeds needed to purchase residential real property, including required down payment, closing costs, mortgage insurance premium, origination fee, and other costs and expenses.

Subp. 4. **First mortgage loan.** "First mortgage loan" means a real estate loan that has priority over all other voluntary liens against certain real property.

Subp. 5. **Mortgage revenue bonds.** "Mortgage revenue bonds" means tax-exempt bonds issued by public entities payable from revenues derived from repayment of principal and interest on mortgage loans that were financed from the proceeds of the bonds.

Subp. 6. **Participation interest.** "Participation interest" means a percentage or specified monetary interest in a first mortgage loan that is shared by more than one lender.

Subp. 7. **Principal residence.** "Principal residence" means the primary, year-round domicile of the recipient. A residence that is primarily used in a trade or business, as an investment property, or a recreational home is not a principal residence.

Subp. 8. **Purchase price.** "Purchase price" means the contract price paid or payable by the buyer to the seller for the purchase of a property covered by a first mortgage loan.

Subp. 9. **Recipient.** "Recipient" means a person or household receiving home ownership assistance fund loans as described in part 4900.1375, subparts 2 to 8.

Subp. 10. **Single head of household.** "Single head of household" means an adult who is 18 years of age or older and is the parent, guardian, or legal custodian of one or more minor children under 18 years of age living in the home of the parent, guardian, or legal custodian.

4900.1331 HOME OWNERSHIP ASSISTANCE FUND.

Subpart 1. **Purpose of program.** The home ownership assistance fund is established to assist persons and families of low and moderate income as specified in part 4900.1345, subpart 2, in the purchase of affordable housing according to parts 4900.1300 to 4900.1390. Toward this end, the agency may provide assistance directly to home buyers, may use funds to provide additional security for eligible loans, and may provide additional security for bonds issued by the agency.

Subp. 2. **Use of fund; general.** Home ownership assistance fund money may only be used in conjunction with first mortgage loans made or purchased by the agency. However, within this limitation, money may be combined with funds from outside sources, including funds from other federal, state, and local government agencies or instrumentalities, private foundations, mortgage insuring entities, the Federal Housing Finance Board, or other public or private sources.

Subp. 3. **Fund recapture.** Home ownership assistance must provide for a reasonable likelihood of recapturing the money for later use. Home ownership assistance fund money under part 4900.1375, subparts 2 to 9, must be secured by a lien on the property being purchased with an appropriate repayment schedule. A repayment provision under part 4900.1375, subparts 2 to 8, must take into consideration potential income growth of recipients and the percentage of income that recipients may reasonably dedicate toward mortgage payments under mortgage industry accepted underwriting standards.

Subp. 4. **Default.** A home ownership assistance fund loan under part 4900.1375, subparts 2 to 8, is in default if the recipient defaults in the timely observance and performance of a condition or covenant of the first mortgage loan or of the home ownership assistance fund loan, or sells, assigns, rents, or transfers the property, whether by deed, contract for deed, or otherwise. A transfer of the property to a surviving joint tenant, if any, by reason of the death of the recipient does not constitute a default.

In the event of default, the home ownership assistance fund loan is immediately due and payable in its entirety, at the option of the agency, and is subject to interest from the date of default until the date of payment at the same rate of interest as the first mortgage loan on the property.

4900.1345 RECIPIENTS HOME OWNERSHIP ASSISTANCE FUND.

Subpart 1. **Three-year requirement.** In cases in which home ownership assistance fund money is to be used in conjunction with mortgage revenue bond funds, each recipient of home ownership assistance fund money under part 4900.1375, subparts 2 to 7, must not have had an ownership interest in a principal residence for three years before the date of receipt of home ownership assistance fund money. In cases in which home ownership assistance fund money is to be used under part 4900.1375, subparts 2 to 7, in conjunction with funds other than mortgage revenue bond funds, the three-year requirement also applies, except that recipients who are single heads of households who have sold a principal residence as a result of a marriage dissolution decree or who have been displaced through government action or natural disaster are exempt from the requirement.

Subp. 2. **Income limits.** In cases in which home ownership assistance fund money is to be used under part 4900.1375, subparts 2 to 8, in conjunction with mortgage revenue bond funds, the maximum income for a recipient of home ownership assistance fund money must not exceed 60 percent of the greater of state or area median income as determined and adjusted from time to time by the United States Department of Housing and Urban Development. In cases in which home ownership assistance fund money is to be used under part 4900.1375, subparts 2 to 8, in conjunction with funds other than mortgage revenue bond funds, the maximum income for a recipient must not exceed 75 percent of the greater of state or area median income as determined and adjusted from time to time by the United States Department of Housing and Urban Development.

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Proposed Rules

4900.1359 ELIGIBLE PROPERTY.

To qualify as an eligible property, the property being purchased with the assistance of a home ownership assistance fund loan must be a newly constructed or existing single-family residential dwelling located within the state. At the time the property is purchased, the property must be totally completed, in good repair, and meet mortgage industry accepted underwriting standards, or provisions must be made to assure that these standards will be met.

4900.1375 USE OF HOME OWNERSHIP ASSISTANCE FUND.

Subpart 1. **Scope.** The home ownership assistance fund may be used for the purposes specified in this part and within the limitations specified.

Subp. 2. **Monthly assistance.** The agency may provide recipients with interest-free monthly assistance loans in the form of monthly payments of a portion of the principal and interest installment due on mortgage loans for eligible properties. The payment must not exceed \$160 per month, and must be reduced annually.

Subp. 3. **Entry cost assistance.** The agency may provide interest-free loans to recipients who are determined, on the basis of normal credit procedures, to lack the financial resources necessary to pay entry costs on the property to be purchased. The amount of the entry cost assistance loan must equal (1) the maximum allowable under the applicable mortgage insurance program; or (2) the lesser of 50 percent of the entry costs or \$3,500 if the maximum allowable under clause (1) exceeds this amount. Entry cost assistance may be used to pay a portion of the entry costs on the property to be purchased that are customary within the mortgage industry.

Subp. 4. **Noninterest participation loans.** The agency may take an interest-free participation interest in a first mortgage loan on an eligible property to reduce the interest rate on the mortgage note executed by recipients to affordable levels. The maximum interest rate reduction that the agency may effect on a first mortgage through a participation interest is two percent.

Subp. 5. **Equity participation loan.** The agency may provide equity participation loans to recipients in which a share of the equity proportionate to the agency's share of the equity participation loan shall be repaid to the agency upon sale of the property. The maximum equity participation loan that the agency may provide must not exceed 20 percent of the purchase price of the property or \$15,000, whichever is less.

Subp. 6. **Buydown loans.** The agency may provide an interest-free loan to buy down the interest rate on a first mortgage on an eligible property to enable increased recipient affordability. The maximum amount that a mortgage interest rate may be permanently bought down is 1.5 percent. The maximum amount that a mortgage interest rate may be temporarily bought down is three percent, and the amount of the interest rate buydown may not be reduced to a level that exceeds one percent per year.

Subp. 7. **Equity contribution loans.** The agency may provide interest-free equity contribution loans on an eligible property to enable a recipient to afford to purchase a home. The maximum equity contribution loan that the agency may provide must not exceed 20 percent of the purchase price of the property or \$15,000, whichever is less.

Subp. 8. **Emergency mortgage assistance.** The agency may provide interest-free emergency mortgage assistance loans or mortgage reinstatement loans for recipients who own and occupy an eligible property and who have been unable to make mortgage payments due to unemployment, medical reasons, death of a mortgagor, or other valid, substantiated reasons; are at least 60 days behind in monthly payments on a first or second residential mortgage; and have reasonable prospects for maintaining a first or second mortgage after receiving such a loan. Recipients must have established an acceptable credit rating before requesting assistance under this subpart and be ineligible for mortgage assistance from any federal government program. Loans may provide for installment of principal, interest, real estate taxes, hazard or flood insurance, mortgage insurance premiums, and homeowners association dues. A maximum of 24 months of assistance may be provided.

Subp. 9. **Construction or rehabilitation loans.** The agency may make or participate in construction or rehabilitation loans to nonprofit entities as defined in part 4900.0010, subpart 21, for the construction or rehabilitation of housing designed for program recipients. The maximum loan may not exceed the "average area purchase price safe harbor limitations for single family residences" as provided and adjusted from time to time by the United States Department of Housing and Urban Development under section 103(a) of the Internal Revenue Code of 1986. The minimum interest rate for loans under this part must not be less than three percent per year and the maximum term of the loan must not exceed three years. The loans shall be provided primarily in circumstances in which the agency is implementing efforts or programs to aid in disposition of government real estate assets or in specific neighborhood revitalization efforts. The loans may be made in conjunction with other subsidies from public or private sources. The agency shall impose requirements customarily used within the mortgage industry to effect repayment of loans provided under this part.

Subp. 10. **Coinsurance and mortgage insurance risk sharing agreements.** The agency may provide for coinsurance or risk sharing pools to facilitate the availability of agency mortgage financing programs in cooperation with either government mortgage insuring or guaranteeing entities, or with private mortgage insurance entities licensed to do business in the state and maintaining an A2 rating from Moody's Investor's Service and AA from Standard and Poors Corporation. The fund must be limited to provide for mortgage insurance services for first mortgage loans with loan-to-value ratios in excess of 90 percent in areas of the state in which

mortgage insurance services are unavailable on reasonable terms and conditions. The agency may not contribute more than five percent of the original principal amount for each loan to be coinsured under the pool, and may not pay more than 50 percent of the losses incurred on a claim for a defaulted mortgage loan subject to the pool.

4900.1390 LIMITS ON HOME OWNERSHIP ASSISTANCE.

The agency may further limit the amount of home ownership assistance fund money provided under part 4900.1375, subparts 2 to 8, to provide that recipients do not receive assistance beyond the amount necessary to make home ownership affordable under mortgage industry accepted underwriting standards. Among the factors that the agency must consider in limiting the amount of assistance shall be the interest rate on the first mortgage loans, the percentage of recipient income that may reasonably be spent on housing payments, the availability of funds from other sources to combine with the home ownership assistance fund, the resources available under the home ownership assistance fund, and general housing and construction costs in the state.

REPEALER. *Minnesota Rules*, parts 4900.1310, 4900.1320, 4900.1330, 4900.1340, 4900.1350, 4900.1360, 4900.1361, and 4900.1362, are repealed.

Department of Natural Resources

Proposed Permanent Rules Relating to Boat and Water Safety

Notice of Intent to Amend a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Natural Resources intends to adopt an amendment of the above-referenced rule without public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in *Minnesota Statutes*, section 14.22-14.28. Authority for the amendment of these rules is contained in *Minnesota Statutes*, Section 361.26, subd. 2.

All persons have 30 days to submit comments in support of or in opposition to the rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any changes proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a 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 Department will proceed pursuant to *Minnesota Statutes*, Section 14.13 to 14.20.

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

Anita M. Twaroski
Bureau of Information and Education
Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4046

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 rules has been prepared and is available upon request from Anita M. Twaroski.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted 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 the submission of this material 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 a written request to Anita M. Twaroski.

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Proposed Rules

The Department does not anticipate that this rule amendment will have any impact on small business or agricultural land in the area.

Dated: 9 January 1990

Joseph N. Alexander
Commissioner
MN Department of Natural Resources

Rules as Proposed

6105.0330 RESTRICTED SPEED ZONES.

[For text of subpart 1, see M.R. 1989]

Subp. 2. **Slow-no wake speed.** No motorboat shall be operated in excess of a slow-no wake speed in the following areas:

- A. at the narrows located approximately at mile 28.6, which is 0.4 miles downstream from the Arcola high bridge;
- B. between the Coast Guard navigational buoys designating location of the navigation channel from the railroad swing bridge located at approximately mile 17.3 to the south side of the southernmost island in the chain of islands located at approximately mile 16.5;
- C. between the Coast Guard navigational buoys designating the Kinnickinnic River delta narrows from approximately mile 6.6 to approximately mile 6.0;
- D. at the Prescott Narrows from the north side of U.S. Highway No. 10 bridge located approximately at mile 0.3 to the confluence of the Saint Croix River with the Mississippi River;
- E. within 100 feet of shore (including the shores of islands) and of swimmers, from sandbars located approximately at mile 31.0 to the confluence of the Saint Croix River with the Mississippi River; ~~and~~
- F. in that area known as Andersen Bay, located approximately at mile 20.0;
- G. in the area known as Afton-Catfish Bar, located approximately at mile 11.5 to 11.8 in the navigational channel as established by regulatory buoys; and
- H. between the dam at Taylors Falls to the confluence of the Saint Croix River with the Mississippi River, when the water level reaches 683.0 feet, mean sea level, as measured at the Stillwater gauge.

[For text of subp 3, see M.R. 1989]

Adopted Rules

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

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

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

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

Department of Health

Adopted Permanent Rules Relating to Certification Procedures for Environmental Testing Laboratories

The rules proposed and published at *State Register*, Volume 14, Number 4, pages 151-158, July 24, 1989 (14 S.R. 151) are adopted with the following modifications:

Rules as Adopted

4740.2010 DEFINITIONS.

Subp. 2. **Acceptable performance or acceptable results.** "Acceptable performance" or "acceptable results" means analytical test

results generated by a laboratory using methods as specified in part 4740.2030, subpart 1, that fall within the range of standard deviations of the mean allowed by the approved provider.

4740.2020 ADMINISTRATIVE PROCEDURES REGARDING CERTIFICATION.

Subpart 1. **Application.** A laboratory may request to be certified by the commissioner for the analysis of the environmental analytes described in part 4740.2040.

A. The laboratory must specify the analytes for which it seeks certification. No analyte shall be certified without the laboratory meeting base certification requirements.

B. The laboratory shall apply on a form that is provided by the commissioner and that requests the following information:

~~A-~~ (1) the address and phone number of the laboratory;

~~B-~~ (2) the ownership of the laboratory;

~~C-~~ (3) the names of officers or managing agents of the laboratory and the laboratory director;

~~D-~~ (4) signatures of two managing agents with authority to bind the laboratory and proof of their authority to bind;

~~E-~~ (5) the names of principal, lead, or supervisory professional staff performing or responsible for the analyses, their educational level, field of study, and analytical laboratory experience; and

~~F-~~ (6) written assurance that the laboratory meets the standards of parts 4740.2010 to 4740.2040.

C. With the application the laboratory shall submit:

D. The commissioner shall certify a laboratory at a specific location. When a laboratory owns or manages laboratory facilities at different locations, a separate application must be submitted for each separate laboratory location.

Subp. 6. **Certification renewal.** The commissioner shall renew a base certification and analyte certification if the commissioner receives the following from the laboratory at least 30 days before the expiration date of the certificate: (1) an application meeting the standards of subpart 1, items A; B; C, subitems (1) to (3); and D; and part 4740.2030, subpart 2; and (2) appropriate fees at least 30 days before the expiration date of the certificate. With the renewal application the laboratory shall submit any changes to the quality assurance plan or laboratory manual or a statement that the plan and manual continue to accurately describe current practices. The revised manual and plan must continue to meet the standards of part 4740.2030, subparts 4 and 6. The renewal certification is valid for one year. The commissioner shall inspect a laboratory certified by renewal at least once every three years.

Subp. 7. **Suspension of certification.** The following are grounds to suspend a base certification or analyte certification of the laboratory:

C. failure to use approved methodology or follow methodology in sample analysis; or

D. suspension of certification by an authority with which the commissioner has a reciprocity agreement.

The commissioner shall restore the certification when the laboratory demonstrates it is in compliance with parts 4740.2010 to 4740.2040.

During the time of suspension, the laboratory must notify clients who request analysis of the analyte for which the certification has been suspended an existing client or new client of the suspension if the client requests analysis of the analyte for which the certification has been suspended and requires the requested analysis to be performed by a certified laboratory.

Subp. 8. **Revocation of certification.** The following are grounds to revoke a base certification or analyte certification of the laboratory:

E. failure to produce acceptable results on an initial and follow-up performance evaluation sample; ~~or~~

F. revocation of certification by a certifying authority with which the commissioner has a reciprocity agreement; or

G. failure to cooperate with an inspector designated by the commissioner.

Within 30 days after the revocation, the laboratory must notify all existing and new clients for which it is presently analyzing samples whose analytical work requires a certified laboratory that it is not certified. ~~The laboratory must also notify new clients that it is not certified.~~ The laboratory shall provide verification of this notice to the commissioner. The laboratory shall not advertise itself as certified and shall remove or replace any advertisements that indicate that it is certified.

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.

Adopted Rules

A laboratory that has had its certification revoked may not reapply for certification until it has corrected all deficiencies. It may reapply according to subdivision 1 and, with the application, must provide documentation of the steps taken to correct the deficiencies.

Subp. 9. **Certification of laboratories in other states.** A laboratory in another state may request certification in Minnesota. In addition to following the application process described in subpart 1, the laboratory shall submit with its application an out-of-state inspection fee unless a reciprocity agreement exists.

The commissioner may enter into agreements with federal agencies and agencies of other states for reciprocal recognition of laboratory certification programs or portions of programs as substantially equivalent. The commissioner shall provide a list of reciprocity agreements upon request.

When such an agreement exists, the commissioner shall certify an out-of-state laboratory that completes the application form under subpart 1, submits the appropriate fees, provides a copy of current certification from the reciprocal state, private or federal agency, and provides a copy of the certifying authority's most recent inspection report. The laboratory shall notify the commissioner within 30 days after any action relevant to certification that is taken by the reciprocal certifying authority.

4740.2030 REQUIREMENTS FOR BASE CERTIFICATION.

Subpart 1. **Methodology.** The laboratory shall specify the analytical methodology, sample collection, and preservation procedures used for each analyte for which it seeks certification. The analytical methodology, sample collection, and preservation procedures used for samples required to be analyzed under a permit, program, or rule administered by a state agency must meet the requirements specified by that permit, program, or rule. The analytical methodology, sample collection, and preservation procedures used to analyze samples for the Safe Drinking Water Program must comply with the Code of Federal Regulations, title 40, sections 141.21 to 141.24, and Minnesota Rules, chapter 4720. The analytical methodology, sample collection, and preservation procedures used to analyze samples under the Clean Water Program must comply with the Code of Federal Regulations, title 40, section 136.3.

When a client collects a sample, the laboratory must inform the client of the appropriate procedures. The laboratory may delegate responsibility for proper sample collection and submission under parts 4740.2010 to 4740.2040 to a client. The laboratory must report any deviations as noted in subpart 9, item A.

Alternative methodology may be used if the EPA approves the methodology and the laboratory submits a copy of the EPA approval to the commissioner.

Subp. 2. **Performance evaluations.** The laboratory shall analyze a performance evaluation sample for each certified analyte at least once during the term of certification. The laboratory shall handle and analyze the performance evaluation samples with its usual analysts, equipment, and methods. The laboratory shall obtain the performance evaluation samples from an approved provider. The commissioner shall publish at least annually in the *State Register* a list of approved providers of performance evaluation samples. If the commissioner determines performance evaluation samples are not available for an analyte, the commissioner may review the laboratory's quality control data to evaluate precision and accuracy for that analyte.

The laboratory must show acceptable performance as determined by the approved provider on each performance evaluation sample.

The laboratory shall provide the commissioner with the results of performance from the approved provider within 44 30 days after the laboratory receives them. When a provider notifies the laboratory that a performance evaluation sample result falls outside acceptable results, the laboratory must promptly take corrective action. Within 44 30 days after receiving notice of the unacceptable results, the laboratory must submit to the commissioner documentation of the corrective action planned and taken. Within 30 days after receiving notice of unacceptable results, the laboratory must request a follow-up performance evaluation sample from an approved provider. The laboratory shall provide the commissioner with the results of the follow-up performance evaluation within 44 30 days after receiving them.

The commissioner may supply blind performance evaluation samples to certified laboratories on a randomly chosen basis and to a specific laboratory if the commissioner receives a complaint about the laboratory's performance or suspects fraud in the generation ~~of~~ or reporting ~~of~~ of test results. A blind performance evaluation sample is one that is not distinguishable as a performance evaluation sample.

Subp. 3. **Records.** The laboratory shall maintain records according to items A to ~~E~~ F for each sample processed.

A. The laboratory shall maintain the records in items B, ~~C~~, ~~and D~~ to E for three years from the date of analysis for the Clean Water Program and ten years from the date of analysis for the Safe Drinking Water Program.

C. The laboratory shall maintain records of the raw data generated and used in determining the final analytical data.

D. The laboratory shall maintain a record of quality control data generated as part of its quality assurance plan and quality control activities specific to each analysis.

~~D~~. E. The laboratory shall maintain records of equipment. The records must include the name of the item of equipment, the manufacturer's name, the serial number, the date the item was placed in service, and the date it was removed from service. The laboratory shall maintain records of maintenance and repair on each item of equipment.

~~E. F.~~ The laboratory shall supply ~~any analytical, quality control, or equipment and maintenance data requested by any data listed in items B to E upon request of~~ the commissioner within the timeframes in item A. The laboratory shall maintain records for an additional period of time if the commissioner specifies the records and the time period in writing to the laboratory.

Subp. 5. **Minimum quality control practices.** The laboratory shall use at a minimum the quality control practices described in items A to G. The laboratory must record and maintain all quality control data in this subpart according to subparts 3 and 4.

A. At least one reagent blank must be analyzed on each analysis day for those tests for which reagent blanks are ~~considered good laboratory practice required in the methodologies specified in part 4740.2030, subpart 1, or for which reagent blanks exist.~~

F. When the verification value of the working standard is not within ten percent, or within another limit defined in the acceptable method, of the value indicated by the standard curve, appropriate corrective action must be taken.

Subp. 6. **Laboratory procedures manual.** The laboratory shall possess a written document-controlled manual of procedures used by laboratory personnel to analyze samples. Actual practice must conform to the written procedures. The manual must have a table of contents and numbered pages. The manual must be reviewed annually and changes must be initiated by the laboratory director or the director's designee. The description of each test procedure must include sections describing the sample used for the analysis, the sample acceptance and rejection criteria, the reagents, supplies, and materials and equipment used, step-by-step analysis procedures, methods of calculation, detection limits, reporting limits, safety precautions, and limitations of the procedure.

Subp. 9. **Sample reporting.** The laboratory shall ~~indicate record~~ on the data sheet when a sample ~~that is:~~

A. has been incorrectly collected or preserved ~~as determined by inspection;~~ or

B. is not analyzed within the holding time specified in the methodology.

Subp. 10. **Duty to notify.** The laboratory shall notify the commissioner in writing within 30 days of changes in:

E. principal, lead, or supervisory professional staff performing or responsible for the analyses.

Department of Labor and Industry

Adopted Permanent Rules Relating to Steamfitters

The rules proposed and published at *State Register*, Volume 14, Number 8, pages 357-360, August 21, 1989 (14 S.R. 357) are adopted with the following modifications:

Rules as Adopted

5230.0040 DEFINITIONS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Pipefitter trainee.** A "pipefitter trainee" is any person other than a contracting or journeyman steamfitter, whose principal occupation is learning and assisting in the installation of high pressure steam piping and appurtenances under the direct supervision of a licensed steamfitter.

5230.0110 REGISTRATION OF TRAINEES.

Subpart 1. and 2. [See Repealer.]

Subp. 2a. **Annual registration, supervision.** All contracting pipefitters shall, within ten days of the employment of a pipefitter trainee, inform the department of the employment of the pipefitter trainee, giving the name, address, age, and date of employment of the pipefitter trainee.

All persons learning the trade of pipefitting shall register with the department on an annual basis until the four years of training are documented. The registration shall be made at the time of initial registration with the department and annually after that on the anniversary of the initial registration. Upon completion and verification of four years of employment and training by a licensed contracting pipefitter, the pipefitter trainee shall make application for examination and license as a journeyman.

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.

Adopted Rules

All persons learning the trade of pipefitting shall be under the direct supervision of a contracting or journeyman pipefitter, ~~and when working on high pressure piping projects, shall be limited to working on permitted projects under the provisions of Minnesota Statutes, section 326.47, subdivision 4.~~ The minimum ratio of pipefitter trainees to licensed pipefitters on the jobsite shall be:

B. one pipefitter trainee for every three licensed pipefitters after that; provided, that at least one journeyman or contracting pipefitter must be on the jobsite at all times when work is in progress.

~~Upon completion and verification of four years of employment and training by a licensed contracting pipefitter, the pipefitter trainee may make application for examination and license as a journeyman.~~

REVISOR'S INSTRUCTION. In the next edition of Minnesota Rules, the Revisor of Statutes shall substitute the term "pipefitter" wherever the term "steamfitter" appears in chapter 5230, including headnotes and delete the word "steam" wherever it appears in chapter 5230, including headnotes, except that the word "steam" shall not be deleted from part 5230.0040, subpart 2.

APPLICATION. Part 5230.0110 applies to all high pressure piping projects after ~~December 31, 1989~~ January 31, 1990, to high pressure ~~piping pipefitter~~ trainees registered after ~~December 31, 1989~~ January 31, 1990, and to all high pressure ~~piping pipefitter~~ apprentices registered with the department before ~~January~~ February 1, 1990.

Pollution Control Agency

Adopted Permanent Rules Relating to Air Quality Permit Fees

The rules proposed and published at *State Register*, Volume 14, Number 11, pages 577-583, September 11, 1989 (14 S.R. 577) are adopted with the following modifications:

Rules as Adopted

7002.0100 AIR QUALITY PERMIT FEE SCHEDULE.

Subp. 4b. **Compliance demonstration fees.** Fees under this subpart apply at the time of completion of the review of the activity by the agency. Persons required to perform the following activities shall pay the following applicable fees:

A. \$75 for each method 9 visible emissions evaluation or part 7005.0930 odor emission evaluation performance test report reviewed by the agency;

Subp. 4c. **Compliance demonstration fee surcharges.** Fees under this subpart apply at the time of completion of the review by the agency. In addition to the fees required in subpart 4b, the permittee shall pay compliance demonstration fee surcharges as listed below when applicable:

B. for a single performance test report, other than a method 9 visible emission evaluation or part 7005.0930 odor emission evaluation performance test report:

Subp. 5. **Annual fees.** All persons required to obtain an air emission permit or an indirect source permit shall pay the applicable annual fee according to items A and B.

A. Stationary sources shall pay the following applicable annual fees:

- (1) \$450 for a major emitter; and
- (2) \$225 for a nonmajor emitter.

Annual fees for stationary sources shall be based on the potential emissions of the stationary source on January 1 of the year for which the fee applies. Seasonal facilities are not exempt from annual fees and shall pay annual fees in accordance with their potential to emit. The agency shall not charge an annual fee for a stationary source if the potential to emit any single criteria pollutant is ~~more than 25 tons per year but~~ is less than 50 tons per year for each criteria pollutant unless the stationary source has the potential to emit at least 1,000 pounds of lead per year.

Pollution Control Agency

Adopted Permanent Rules Relating to Water Quality Permit Fees

The rule proposed and published at *State Register*, Volume 14, Number 7, pages 327-331, August 14, 1989 (14 S.R. 327) is adopted as proposed.

Official Notices

Pursuant to the provisions of Minnesota Statutes §14.10, 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.

Minnesota Health Care Access Commission

Notice of Meeting of the Health Care Access Commission

The Meeting of the Health Care Access Commission will be held on Thursday, February 1, 1990 from 1:00 to 4:00 p.m. in the State Office Building, Room 500 South.

Department of Health

Division of Environmental Health

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Various Subjects

NOTICE IS HEREBY GIVEN that the Minnesota Department of Health is seeking information or opinions from sources outside the department in preparing to propose the adoption of new rules and revision of existing rules governing the subjects listed below. The adoption of the rules is authorized by the statutory provisions listed. The Department of Health requests information and opinions on the subject matter of the rules. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to the contact person listed at the Minnesota Department of Health, Division of Environmental Health, 717 Delaware Street Southeast, P.O. Box 59040, Minneapolis, Minnesota, 55459-0040. Oral statements will be received during regular business hours over the telephone at the number listed for the particular subject matter and in person at the above address.

All statements of information and opinions will be accepted until the rules are formally proposed for adoption. Any written material received by the Department of Health will become part of the rulemaking record to be submitted to the Office of the Attorney General or the Office of Administrative Hearings in the event that a rule is adopted.

Subject Matter of Rule	Statutory Authority	Contact Person
• Variance Procedures for Environmental Health Rules (New rule)	<i>Minnesota Statutes</i> , section 144.05	Jane A. Nelson 612/623-5749
• Lead abatement (Permanent rule)	<i>Laws 1989</i> , Chap. 282 Art. 2, sec. 20	Douglas Benson 612/623-5653
• Health Supervision Services in Lodging Establishments	<i>Minnesota Statutes</i> , section 157.031, subd. 5	C.B. Schneider 612/623-5337
• Fines for Uncorrected Deficiencies in Food, Beverage and Lodging Establishments; and Manufactured Home Parks and Recreational Camping Areas	<i>Minnesota Statutes</i> , section 157.081	C.B. Schneider 612/623-5337
• License Fees, Sewer and Water Standards for Manufactured Home Parks and Recreational Camping Areas	<i>Minnesota Statutes</i> , sections 327.14-327.28	C.B. Schneider 612/623-5337
• Children's Camps	<i>Minnesota Statutes</i> , section 144.74	C.B. Schneider 612/623-5337

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Official Notices

- | | | |
|---|--|----------------------------------|
| • Infectious Waste Generators | <i>Minnesota Statutes</i> , section 116.81 | Darrell Anderson
612/623-5333 |
| • Health Risk Limits for Groundwater | <i>Laws 1989</i> , Chap. 326
Art. 1, sec. 8 | David Gray
612/623-5352 |
| • Asbestos (Revision) | <i>Minnesota Statutes</i> , sections 326.70-326.82 | Wm. Fetzner
612/623-5380 |
| • Public Water Supplies | <i>Minnesota Statutes</i> , section 144.383 | Richard Clark
612/623-5227 |
| • Wells and Borings at grade wells, casings
bore holes, construction | <i>Minnesota Statutes</i> , chapter 1031 | Ronald Thompson
612/623-5264 |

Raymond W. Thron, Ph.D., P.E., Director
Division of Environmental Health

Department of Labor and Industry

Workers' Compensation Division

Notice of Solicitation of Outside Information or Opinions in the Matter of the Proposed Amendment of Rules of the Minnesota Department of Labor and Industry Governing Charges for Copies of Medical Records

NOTICE IS HEREBY GIVEN that the Minnesota Department of Labor and Industry, Workers' Compensation Division is seeking information or opinions from sources outside the agency in preparing to propose the amendment of rules governing charges for copies of medical records in workers' compensation cases. The adoption of the rules is authorized by *Minnesota Statutes* § 176.135, subd. 7 (Supp. 1989) and § 176.83 (1988).

The Minnesota Department of Labor and Industry, Workers' Compensation Division, requests information and opinions concerning the subject matter of these rules. Interested or affected persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Gloria Gebhard
Rehabilitation and Medical Affairs
Department of Labor and Industry
1st Floor, 443 Lafayette Road
St. Paul, Minnesota 55155-4304

Any written material received by the Minnesota Department of Labor and Industry, Workers' Compensation Division, shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law Judge in the event that the rule is adopted.

Dated: 12 January 1990

Ken Peterson, Commissioner
Department of Labor and Industry

Metropolitan Council

Public Hearing on the Revision of Plan Amendment Guidelines

The Metropolitan and Community Development Committee of the Metropolitan Council will hold a public hearing on the proposed revision of the guidelines it uses for review of plans and plan amendments of local units of government submitted to it pursuant to the Metropolitan Land Planning Act. The hearing will be held on Thursday, February 15, 1990 at 2:00 p.m. in the Council Chambers, Mears Park Centre, 230 E. Fifth St., St. Paul.

All interested persons are encouraged to attend the hearing and offer comments. People may register in advance to speak by calling the Community Outreach Division at 291-6500. Copies of the revised guidelines are available for public inspection at designated libraries throughout the region. For information on the location of these libraries or a free copy of the document, call 291-8140.

Office of the Secretary of State

Notice of Vacancies in Multi-Member Agencies

NOTICE IS HEREBY GIVEN to the public that vacancies have occurred in multi-member state agencies, pursuant to *Minnesota Statutes* 15.0597, subdivision 4. Application forms may be obtained from the Office of the Secretary of State, Open Appointments, 180 State Office Building, St. Paul, MN 55155-1299; (612) 297-5845, or in person at Room 174 of the State Office Building. More specific information about these vacancies may be obtained from the agencies listed below. The application deadline is February 13, 1990.

STATE BOARD FOR COMMUNITY COLLEGES

203 Capitol Square Bldg., St. Paul 55101 612-296-3356

Minnesota Statutes 136.61

APPOINTING AUTHORITY: Governor. Senate Confirmation. **COMPENSATION:** None.

VACANCY: One member: must be a resident of the 6th Congressional District.

The board sets rules and policies for management of the community college system. Nine members must include one person who has been a full-time community college student within one year of appointment. At least one member shall be a resident of each congressional district. Bi-monthly meetings may alternate between St. Paul and various community college campuses. Members must file with the Ethical Practices Board.

COUNCIL ON DISABILITY

Metro Square Bldg., Suite 145, St. Paul 55101 612-296-6785

Minnesota Statutes 256.481-256.482

APPOINTING AUTHORITY: Governor. **COMPENSATION:** \$48 per diem plus expenses.

VACANCY: One member: open.

The council advises the governor, legislature, service providing agencies, and the public on the needs and potentials of people with physical, mental, or emotional disabilities. Twenty-one members represent the general public and organizations which provide services for persons with disabilities; at least one member from each development region—a majority of members are persons with disabilities or parents or guardians of persons with disabilities (service consumers). The commissioners of the Departments of Education, Health, Human Services, Jobs and Training, Human Rights, and the directors of Vocational Rehabilitation and State Services for the Blind or their designees are ex-officio members. Bi-monthly meetings.

TELECOMMUNICATIONS ACCESS FOR COMMUNICATION-IMPAIRED PERSONS BOARD

Minnesota Public Service Dept., 150 E. Kellogg Blvd., Room 790, St. Paul 55101 612-296-0412

Minnesota Statutes 237.50

APPOINTING AUTHORITY: Governor. **COMPENSATION:** None.

VACANCY: One member: must be communication-impaired as specified in state statutes.

The board determines the priority of eligible applicants for initial distribution of communication devices and the circumstances requiring more than one device per household, and is to develop, implement, and maintain a statewide toll-free telephone relay service to enhance communication between persons using TDD and persons without such special devices. Twelve members include five communications-impaired persons, one communication disabilities professional, one person representing the state's largest local exchange company, one member of Minnesota telephone association, one person representing companies providing inter-LATA service, one person representing the organization the board contracts with to provide telecommunication relay service, and the commissioner of Public Service and the commissioner of Human Services or their designees. Members must file with the Ethical Practices Board. Monthly meetings until March 1989 and quarterly thereafter until June 1993. TDD: 612-296-9863.

BOARD OF ARCHITECTURE, ENGINEERING LAND SURVEYING & LANDSCAPE ARCHITECTURE

402 Metro Square Bldg., St. Paul 55101 612-296-2388

Minnesota Statutes 326.04

APPOINTING AUTHORITY: Governor. **COMPENSATION:** \$35 per diem plus expenses.

VACANCY: One public member: cannot be, or have been, a member of one of the professions regulated by the board, or the spouse of any such person, or have a material financial interest in a firm providing such professional services.

The board licenses and regulates architects, engineers, land surveyors and landscape architects. Seventeen members include three licensed architects, five licensed engineers, one licensed landscape architect, two licensed land surveyors and six public members. Not more than one member may be from the same branch of the engineering profession. Each professional member must have ten years experience in their profession and have been in responsible charge of work for at least five years. Meetings four times a year. Members must file with the Ethical Practices Board.

Official Notices

BOARD OF MARRIAGE AND FAMILY THERAPY

Colonial Pk. Office Bldg., 2700 University Ave. W. Suite 225, St. Paul 55114 612-643-2586
Minnesota Statutes 148B.01-148B.171, 148B.29-148B.39

APPOINTING AUTHORITY: Governor. COMPENSATION: \$35 per diem plus expenses.

VACANCY: One member to fill remainder of term (1/92): professional teaching and research member.

The board adopts and enforces rules relating to licensure of marriage and family therapists and for regulation of their professional conduct. Seven members include four who are licensed, practicing marriage and family therapists, each of whom shall for at least five years immediately preceding appointment, have been actively engaged as a marriage and family therapist, one member must be engaged in the professional teaching and research of marriage and family therapy, and two members representing the general public who have no direct affiliation with the practice of marriage and family therapy. All members must have been a resident of the state two years preceding their appointment. Members must file with the Ethical Practices Board.

ETHICAL PRACTICES BOARD

625 N. Robert St., St. Paul 55101-2520 612-296-5148
Minnesota Statutes 10A.02

APPOINTING AUTHORITY: Governor. House and senate confirmation. COMPENSATION: \$48 per diem plus expenses.

VACANCY: One member: has not been a public official, has not held any political party office other than precinct delegate, or have been elected to public office for which party designation is required by statute in the three years preceding the date of their appointment; political party other than DFL.

The board administers campaign finance disclosure for state candidates, economic interest disclosure for state and metropolitan public officials, lobbyist registration, and public financing of state candidates. Six members include one former state legislator from a major political party different from the governor, one former state legislator from the same political party as the governor, two members who have not been public officials and have not held party office within three years prior to appointment. No more than three members may support the same political party. Monthly meetings. Members must file with the Ethical Practices Board.

ENVIRONMENTAL HEALTH SPECIALIST/SANITARIAN ADVISORY TASK FORCE

P.O. Box 9441, Mpls 55440 612-623-5341
Minnesota Statutes 214.13

APPOINTING AUTHORITY: Commissioner of Health. COMPENSATION: None.

VACANCY: One public member as defined in *Minnesota Statutes* 214.02.

The task force recommends applicants for registration as environmental health specialists/sanitarians, advises the commissioner on standards, rules and requirements for registration, and advises on a continuing education program for registration renewal. Seven members include four registered environmental health specialist/sanitarians, one representative of a regulated industry or educator, and two public members. Two meetings; April and October. Additional meetings scheduled as needed.

MN COUNCIL FOR THE BLIND

Dept. of Jobs and Training, 1745 University Ave., St. Paul 55104 612-642-0508
Minnesota Statutes 248.10

APPOINTING AUTHORITY: Commissioner of Jobs and Training. COMPENSATION: \$48 per diem plus expenses.

VACANCY: One member: knowledgeable of issues concerning services for the blind and visually handicapped Minnesotans.

The council advises the commissioner on the development of policies, programs and services affecting the blind and visually handicapped; to provide the commissioner with a review of ongoing services. The council includes nine members of whom five must be blind or visually handicapped. Terms are staggered. Bi-monthly meetings 5-9 PM at 1745 University Ave. with public hearings held out-state twice a year.

BOARD OF ASSESSORS

MN Dept. of Revenue, Mail Station 3340, St. Paul 55146-3340 612-296-0209
Minnesota Statutes 270.41

APPOINTING AUTHORITY: Commissioner of Revenue. COMPENSATION: None.

VACANCY: One public member: must not have held an assessor's license.

The board licenses assessors and provides continuing education for assessors. Nine members include two public members, one designated appraiser, two county assessors, two local assessors (one township assessor) and two employees of the Department of Revenue. Monthly meetings. Members must file with the Ethical Practices Board.

STATE BOARD OF PUBLIC DEFENSE

875 Summit Ave., LEC 303, St. Paul 55105 612-290-6418
Minnesota Statutes 611.215

APPOINTING AUTHORITY: Governor. Supreme Court. COMPENSATION: Reimbursed for expenses.

VACANCY: One public member (non-attorney): to demonstrate an interest in maintaining a quality, independent defense system for those unable to obtain adequate representation.

The board provides policy and implements standards for all public defender organizations throughout the state, handles appointment and administration of the state public defender and all judicial district public defenders, and oversees five public defense corporations serving primarily minority indigent clients. The seven member board consists of two public members appointed by the governor; four attorneys acquainted with defense of persons accused of a crime, but not employed as prosecutors, and a district court judge appointed by the supreme court.

State Contracts and Advertised Bids

Pursuant to the provisions of Minn. Stat. §14.10, an agency must make reasonable effort to publicize the availability of any 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 \$15,000 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 whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

Awards of contracts and advertised bids for commodities and printing, as well as awards of professional, technical and consulting contracts, appear in the midweek STATE REGISTER Contracts Supplement, published every Thursday. Call (612) 296-0931 for subscription information.

Department of Administration: Materials Management Division**Contracts and Requisitions Open for Bid**

Call 296-2600 for information on a specific bid, or to request a specific bid.

Commodity: Complete line F.H.R. & "multiple" industrial type v-belt
Contact: Dale Meyer 296-3773
Bid due date at 2pm: January 25
Agency: Various
Deliver to: Various
Requisition #: Price Contract

Commodity: Reception furniture
Contact: John Bauer 296-2621
Bid due date at 2pm: January 24
Agency: State University
Deliver to: Bemidji
Requisition #: 26020 14536

Commodity: Print equipment
Contact: John Bauer 296-2621
Bid due date at 2pm: January 24
Agency: State University
Deliver to: Moorhead
Requisition #: 26072 02136

Commodity: Judicial tables
Contact: John Bauer 296-2621
Bid due date at 2pm: January 26
Agency: Administration Department—
Building Construction
Deliver to: St. Paul
Requisition #: 02310 17519

Commodity: Lab cabinets
Contact: John Bauer 296-2621
Bid due date at 2pm: January 26
Agency: State University
Deliver to: Bemidji
Requisition #: 26070 14109

Commodity: Excelerator software
Contact: Joan Breisler 296-9071
Bid due date at 2pm: January 26
Agency: Revenue Department
Deliver to: St. Paul
Requisition #: 67120 23388

State Contracts and Advertised Bids

Commodity: Police equipment outfitting/conversion package
Contact: Dale Meyer 296-3773
Bid due date at 2pm: January 31
Agency: Mn State Patrol
Deliver to: Various
Requisition #: Price Contract

Commodity: Meat for March delivery
Contact: Linda Parkos 296-3725
Bid due date at 2pm: February 12
Agency: Correctional Facility
Deliver to: Stillwater
Requisition #: 78620 00315

Commodity: Meat for March delivery
Contact: Linda Parkos 296-3725
Bid due date at 2pm: February 12
Agency: Correctional Facility
Deliver to: St. Cloud
Requisition #: 78830 10190

Commodity: IBM-PS/2, 555X
Contact: Bernadette Vogel 296-3778
Bid due date at 2pm: January 30
Agency: State University
Deliver to: Mankato
Requisition #: 26071 19497

Commodity: Dictation system lease
Contact: John Bauer 296-2621
Bid due date at 2pm: January 30
Agency: Human Services Department
Deliver to: St. Paul
Requisition #: 55000 02702

Commodity: Pothole patcher
Contact: Mary Jo Bruski 296-3772
Bid due date at 2pm: January 30
Agency: Transportation Department
Deliver to: Various
Requisition #: 79382 01876

Commodity: Network software
Contact: Joan Breisler 296-9071
Bid due date at 2pm: January 26
Agency: North Hennepin Community College
Deliver to: Minneapolis
Requisition #: 27153 21237

Commodity: Time base corrector
Contact: Pam Anderson 296-1053
Bid due date at 2pm: January 30
Agency: State University
Deliver to: Moorhead
Requisition #: 26072 02135

Commodity: Camcorder; TV/VCR
Contact: Pam Anderson 296-1053
Bid due date at 2pm: January 29
Agency: State University
Deliver to: Mankato
Requisition #: 26071 19503

Commodity: Artifact Restoration and Renovation
Contact: Pam Anderson 296-1053
Bid due date at 2pm: January 31
Agency: Iron Range Resources and Rehab. Board
Deliver to: Chisholm
Requisition #: 43000 11615

Commodity: Miscellaneous furniture
Contact: John Bauer 296-2621
Bid due date at 2pm: January 26
Agency: Transportation Department
Deliver to: Maplewood
Requisition #: 79000 04024

Commodity: Six passenger truck
Contact: Mary Jo Bruski 296-3772
Bid due date at 2pm: February 1
Agency: Transportation Department
Deliver to: Various
Requisition #: 79382 02846

Commodity: Filter elements (oil, fuel and air)
Contact: Dale Meyer 296-3773
Bid due date at 2pm: February 1
Agency: Various
Deliver to: Various
Requisition #: Price Contract

Commodity: Truck
Contact: Mary Jo Bruski 296-3772
Bid due date at 2pm: January 31
Agency: Transportation Department
Deliver to: Willmar
Requisition #: 79382 01847

Commodity: Automated weather observation stations
Contact: Joseph Gibbs 296-3750
Bid due date at 2pm: February 26
Agency: Transportation Department
Deliver to: Various
Requisition #: 79000 03944

Department of Administration: Print Communications Division

Printing vendors for the following printing contracts must review contract specifications in printing buyers office at 117 University Avenue, Room 134-B, St. Paul, MN.

Printing vendors NOTE: Other printing contracts can be found in the Materials Management Division listing above, and in the Professional, Technical & Consulting Contracts section immediately following this section.

Commodity: Inspection labels, 200M 2¾" x 2" + ¼" die cut tab, camera ready, flood coat and overprint, 1-sided
Contact: Printing Buyer's Office
Bids are due: January 25
Agency: Electricity Board
Deliver to: St. Paul
Requisition #: 4432

Commodity: Drivers license renewal and voter registration card, 400M, 9" x 8" overall, type to set + negs, 2-sided, slight perf. ½" pinfeed each side
Contact: Printing Buyer's Office
Bids are due: January 25
Agency: Public Safety Department
Deliver to: St. Paul
Requisition #: 4395

Commodity: Unattended vehicle check, 500 4" x 6¼" 20-page books, preprinted numbering, negs available, 2-sided
Contact: Printing Buyer's Office
Bids are due: January 25
Agency: State Patrol
Deliver to: St. Paul
Requisition #: 4392

Professional, Technical & Consulting Contracts

Commodity: Agency letterhead and envelopes, 20M 8½" x 11 two color letterhead; 5M two color 8½" x 5½" letterhead; 5M #10 envelopes 2-color, negs + type to set, 1-sided

Contact: Printing Buyer's Office

Bids are due: January 25

Agency: Council on Disability

Deliver to: St. Paul

Requisition #: 4377

Murder: Minnesota style

Murder in Minnesota: A treasury of vintage crimes in which famous and obscure characters come to life in all their cleverness or murderous madness. Minnesota cases from 1858-1917. 253 pp. photos, index. Code 17-35, \$5.95.

Robber and Hero: On September 7, 1876 six members of the James-Younger gang blasted their way out of Northfield, Minnesota. George Huntington's classic account of the Northfield Bank raid is as fascinating today as it was when first published 19 years after the attempted robbery. 125 pp., charts, maps, photos, with index. Code 17-40, \$5.95.

Secrets of the Congdon Mansion: The prosecutor called it a crime of greed. A complex, intriguing murder case, set in one of Minnesota's most spectacular mansions, and now a top Minnesota tourist attraction on Duluth's famous Lake Superior North Shore Drive. By Joe Kimball, 64 pp., drawings. Code 19-56, \$5.95.

TO ORDER: Send to Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155. Call (612) 297-3000, or toll-free in Minnesota: 1-800-652-9747. Minnesota residents please include 6% sales tax. On all orders, add \$1.50 per order for postage and handling. Prepayment is required. Please include daytime phone. VISA/MasterCard orders accepted over phone and through mail. Prices are subject to change.

Publication editors: As a public service, please reprint this ad in your publication as is, reduced, enlarged, or redesigned to suit your format. Thank you.

Professional, Technical & Consulting Contracts

Department of Education

Request for Proposals to Produce and Develop a Television Commercial

The Minnesota Department of Education, Community and Adult Education Section is sponsoring the T.V. broadcast of the "Learn to Read" (L.T.R.) learning series. The L.T.R. series is designed to help adults who are reading at the 0-4 grade level improve their reading skills.

The Department of Education will receive bids for the development of a 30 second T.V. commercial that will encourage adults who have a very low reading level to participate in this learning activity.

Bids should include all costs of developing, producing and delivering to the Department of Education a broadcast ready 30 second commercial not later than April 30, 1990.

There is an amount of up to \$18,250 available to fund this project. All bids must be delivered to: Robert Gramstad, Manager, Community and Adult Education Section, 991 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, before the close of the working day on February 15, 1990.

Minnesota Historical Society

Advertisement for Rebidding for Construction of Wanigan Replica

BIDS

Sealed bid proposals for construction of a Wanigan replica of a type common to northern Minnesota rivers circa 1900, at the Minnesota Historical Society's Forest History Center, Grand Rapids, Minnesota, in accordance with bidding documents prepared for the Minnesota Historical Society, will be received in the office of the Contract Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, MN 55101 until 2:00 p.m., Central Standard Time, on February 6, 1990, at which time the bid proposals will be publicly opened and read aloud. Bids received after 2:00 p.m., February 6, 1990, will be returned unopened.

BID SECURITY

Each proposal must be accompanied by a cash deposit, cashier's check, certified check, or corporate surety bond of a surety company duly authorized to do business in Minnesota, in the sum of not less than five percent (5%) of the total bid, payable without condition to the Minnesota Historical Society, which is submitted as bid security to guarantee that the bidder, if awarded the contract, will promptly execute such contract in accordance with the bid proposal and will furnish the required Payment and Performance bond.

PLANS AND SPECIFICATIONS

Copies of bidding documents for preparation of bids will be available for inspection at the office of Contract Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, Minnesota, and at the Minnesota Historical Society's Forest History Center, 2609 County Road 76, Grand Rapids, Minnesota.

In addition, photocopies of bidding documents for use by interested contractors may be obtained from the Contract Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, Minnesota 55101, (612) 296-2155.

CONDITIONS OF BIDS

The Minnesota Historical Society reserves the right to accept or reject any or all bids and to waive any irregularities therein. No bid may be withdrawn within thirty (30) days after the scheduled closing time for the receipt of bids.

PRE-BID CONFERENCE

An informational pre-bid conference for prospective bidders will be held on January 31, 1990, at 1:00 p.m. at the Forest History Center, 2609 County Road 76, Grand Rapids, Minnesota.

Minnesota Historical Society

Advertisement for Bids for Typesetting, Keylining, Printing, & Binding of *Minnesota History Magazine*, Vol. 52, Nos. 1-8

BIDS

Sealed bids for the typesetting, keylining, printing, and binding of the Minnesota Historical Society's *Minnesota History* magazine, volume 52, numbers 1-8, in accordance with specifications prepared by the Minnesota Historical Society, will be received in the office of the Contract Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, MN 55101 until 2:00 p.m., Central Standard Time, on February 1, 1990 at which time the bids will be publicly opened and read aloud. Bids received after 2:00 p.m., February 1, 1990, will be returned unopened.

BID SECURITY

Each proposal must be accompanied by a cash deposit, cashier's check, certified check, or corporate surety bond of a surety company duly authorized to do business in Minnesota, in the sum of not less than 5% of the total bid, payable without condition to the Minnesota Historical Society, which is submitted as bid security.

SPECIFICATIONS

Copies of bidding documents for preparation of bids may be obtained by contacting Mark Schwartz, Contract Officer, Minnesota Historical Society, 1500 Mississippi St., St. Paul, MN 55101, (612) 296-2155.

CONDITIONS OF BIDS

The Minnesota Historical Society reserves the right to accept or reject any or all bids and to waive any irregularities therein. No bid may be withdrawn within thirty (30) days after the scheduled closing time for the receipt of bids.

Department of Human Services

Long Term Care Management Division

Request for Proposal to Evaluate the Alternative Care Grant Program

The Alternative Care Grant (ACG) Program which consists of:

1. The Home and Community-Based Waiver for Individuals who are 65 years of age and older; and
2. The Home and Community Based State Program for non-Medicaid Clients.

This is a request for proposals (RFP) to do an independent assessment of Minnesota's Title XIX home and community based waiver for individuals who are 65 years of age or older as required by federal regulations (42 CFR 441.303 (g)), and the Home and Community-Based State Program for non-Medicaid clients and to make recommendations to the Department of Human Services about improving program effectiveness. The assessment must evaluate the quality of care provided, access to care, and cost effectiveness of the ACG Program.

The cost of the assessment of the ACG Program may not exceed \$45,000.00. The assessment must evaluate at least the first 48 months of the ACG Program (July 23, 1988 through July 22, 1992).

Proposals must be submitted to Wally Goettl, Long Term Care Management Division at the address below. Three copies of the proposal must be submitted in a sealed mailing envelope or package having the responder's name and address clearly marked on the outside and a postmark of no later than June 1, 1990.

Each copy of the proposal must be signed by an authorized member of the contracting firm. Prices and terms of the proposal as stated by the respondent must be valid for the length of the project.

For a copy of a more detailed explanation of this request for proposal, contact:

Lynn Glockner
Long Term Care Management Division
Minnesota Department of Human Services
5th Floor, Space Center
444 Lafayette Road
St. Paul, Minnesota 55155-3844
612/297-4669

Department of Human Services

Division for Persons with Developmental Disabilities

Request for Proposals to Evaluate Total Costs for Persons Receiving Services under the Mental Retardation and Related Conditions (MR/RC) Waiver (Excluding Acute Care Costs)

This is a request for proposal (RFP) to do an independent audit of one major metro county's administration of services provided under the Home and Community-Based Waiver for persons with mental retardation or related conditions. This county currently serves approximately 400 persons in their waiver (MR/RC) program. The audit must evaluate financial and contractual practices of the county with regard to cost effectiveness and compliance with Minnesota Statutes and Rules. The audit should also include specific recommendations to improve the administration and financial management of this program.

The audit will review information covering a time period of two years (January 1, 1988 to January 1, 1990). The cost of the assessment may not exceed \$40,000.

Proposals must be submitted to Robert Meyer, Division for Persons with Developmental Disabilities at the address listed below. Three copies of the proposal must be submitted and sealed in a mailing envelope or package with the responder's name and address clearly marked on the outside and postmarked no later than February 16, 1990.

Each copy of the proposal must be signed by an authorized member of the contracting firm. Prices and terms of the proposal as stated by the respondent must be valid for the length of the project.

Professional, Technical & Consulting Contracts

For a more detailed explanation of this request for proposals, contact:

Robert Meyer
Division for Persons with Developmental Disabilities
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155-3825
612/296-2160

Department of Human Services

Long Term Care Management Division

Request for Proposals to Provide Training and Develop Training Materials Regarding Department of Human Services Adopted Rules which Establish Procedures for Determining the Total Payment Rate for ICFs/MR, Minnesota Rules 9553.0010 to 9553.0080 (Rule 53)

This is a request for proposal (RFP) to develop training materials and provide training to county case managers and staff of intermediate care facilities for persons with mental retardation or related conditions (ICFs/MR) participating in the medical assistance program, except intermediate care facilities in state owned hospitals. Products to be developed under this contract include related training materials (i.e., suggestions and sample forms for effective documentation, overhead transparencies, etc.). The packet of training materials must include: 1) a copy of the rule; 2) cost reporting procedures; and 3) other materials developed to give providers and case managers a thorough understanding of the requirements of the new reimbursement rule. The packet of training materials must be suitable for distribution to service providers and case managers by May 15, 1990.

In addition, a minimum of 12 training sessions must be conducted throughout Minnesota. Each training session must consist of at least six hours of instruction on the provisions of Rule 53.

Furthermore, thirty days of post-training session consultation will be available on-site to service providers.

The cost of training and development of training materials may not exceed \$25,000.

Proposals must be submitted to Patty Fazzone, Long Term Care Management Division, at the address below. Three copies of the proposal must be submitted and sealed in a mailing envelope or package with the responders' name and address clearly marked on the outside and postmarked no later than March 12, 1990.

Each copy of the proposal must be signed by an authorized member of the contracting firm. Prices and terms of the proposal as stated by the respondent must be valid for the length of the project.

For a more detailed explanation of this request for proposal, contact:

Patty Fazzone
Long Term Care Management Division
Minnesota Department of Human Services
444 Lafayette Road
Saint Paul, Minnesota 55155-3844

Department of Transportation

Technical Services Division Research Administration and Development

Notice of Availability of Contract for Implementation of Research Findings

The Department of Transportation, acting as the agent for the Local Road Research Board, requires the services of a consultant for implementation of research findings applicable to county highway and municipal streets in Minnesota. This contract involves the review and evaluation of selected state-of-the-practice technology and research findings and the performance of effective implementation activities. The impetus of this contract is the application of that information to the management of roads and streets at the county and municipal level. The consultant will be guided by an Advisory Committee which has chosen topics for implementation. Concurrent activity on implementation tasks may be anticipated.

A seasoned professional or team with engineering and educational experience, familiar with design, construction and maintenance practices and problems on Minnesota streets and highways, as well as national research trends, is desired.

The Local Road Research Board has budgeted a maximum of \$100,000.00 per calendar year for this two year contract. Interested bidders should note that the Board may extend this project for an additional two years if they should decide to continue the project beyond the initial two year period.

Those interested may obtain a Request for Proposal from:

John Hale, Technical Transfer Specialist
Research and Development Administration
Minnesota Department of Transportation
Materials and Research Laboratory
1400 Gervais Avenue
Maplewood, MN 55109
Telephone: (612) 779-5514

Request for Proposal forms will be available through 4:00 P.M., February 9, 1990. All proposals will be due no later than 4:00 p.m., March 2, 1990.

Non-State Public Contracts

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector.

It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of project and tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact the editor for further details.

North Shore Management Board

Citizen Advisory Committee

Request for Credentials for Technical Consulting Services to the North Shore Management Board's Citizens Advisory Committee in the Conduct of the North Shore Harbors Study

The Citizens Advisory Committee to the North Shore Management Board is issuing a Request For Credentials to identify prospective consultants who are willing, able and qualified to provide technical assistance in the following service areas:

- a. Environmental, Social and Aesthetic Impacts of Harbor Development
- b. Projected and Existing Usage of North Shore Harbors
- c. Economic Development Impacts of Harbor Development

Non-State Public Contracts

d. Public/Private Partnership Opportunities for the Financing, Development and Operation of Recreational Boating Harbors and Related Facilities.

Process: A proposal is *not* requested at this time. All qualified prospective consultants will be initially reviewed and ranked by the Citizens Advisory Committee. Qualifying consultants will be invited to discuss the project in greater detail for a complete understanding of the project and its objectives. The scope of services to be provided, the timeline for achieving the given objectives, and the cost of those services will then be developed by the consultant and provided to the Citizens Advisory Committee.

Eligibility: Individuals or firms with demonstrated ability to perform the required technical work elements and can satisfactorily complete the project prior to June 30, 1990.

Funding: Funding for all work elements will not exceed \$30,000.

Submission Date: Credentials must be received no later than 4:30 p.m. February 1, 1990. Project award(s) will be made no later than April 1, 1990.

Contact: Copies of the Call for Credentials are available on request by writing or calling:

Michael Hambrock or Cheryl Erickson
North Shore Management Board
330 Canal Park Drive
Duluth, Minnesota 55802
218-722-5546

Metropolitan Council

Notice of Request for Proposals for Aerial Photography Consulting Services for the Metropolitan Council of the Twin Cities

NOTICE IS HEREBY GIVEN that the Metropolitan Council is requesting proposals for the performance of aerial photography of the seven county metropolitan area.

The consultant shall provide Spring 1990 photography of the entire seven county metropolitan area. Flying shall be completed prior to the emergence of spring foliage. The same identifying coordinates should be used as were used in the Council's 1980, 1984 and 1987 photos. The consultant shall deliver reproducible enlargements on stable base material and a set of continuous tone, double weight prints of the seven county metropolitan area.

The overall project should be completed by September 30, 1990 with the photographs being taken no later than April 1, 1990, before spring foliage emerges. All proposals must be received no later than 3:00 p.m. on February 12, 1990. Proposal should be sent in three copies to Cindy Fish, Transportation Division.

Copies of the Request for Proposals may be obtained from the Metropolitan Council, Mears Park Centre, 230 East Fifth Street, St. Paul, Minnesota 55101. Inquiries should be directed to Cindy Fish, (612) 291-6339 or Marlin Gilhousen, (612) 291-6329.

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 Corrections

Notice of Availability of Funds for Development of Pilot Programs for Treatment of Sex Offenders

The Minnesota Department of Corrections, Community Services Division, announces the availability of grant funds for development of pilot programs for the treatment of sex offenders.

Supreme Court Decisions, Opinions & Rules

A total of \$1,000,000.00 is available for programs to treat adult and juvenile sex offenders who are sentenced by the court to incarceration in a local correctional facility or to sex offender treatment as a condition of probation, and for juveniles found delinquent or receiving a stay of adjudication for whom the juvenile court has ordered sex offender treatment. The funds will be available for a one year period, July 1, 1990 through June 30, 1991.

There is no assurance of continued funding for following fiscal years.

To be eligible to apply, an applicant organization must be a public human services or community corrections agency. (Laws of 1989, Chap 290, Art 4, Sec 1, Subd 5) The deadline for grant proposal submission is Friday, March 16, 1990, 4:30 p.m. To receive a request for proposal which describes in detail how to apply for this funding and the requirements of the legislation, contact Ethel Jackman, Minnesota Department of Corrections, Community Services Division, 300 Bigelow Building, 450 North Syndicate, St. Paul, Minnesota, 55104. Telephone (612) 642-0235.

Dated: 22 January 1990

State Board of Vocational Technical Education

Requests for Proposals for JTPA (Job Training Partnership Act) Education Coordination Funds

JTPA/Education Coordination activities are authorized under Section 123 of the Job Training Partnership Act. The Act appropriates funds to be utilized "to provide services to eligible participants through cooperative agreements."

In 1990, the education coordination funds will be used to serve special needs groups through cooperative agreements between Service Delivery Areas (SDAs) and education agencies. Specifically, this solicitation seeks service delivery areas, education agencies and special needs/community groups interested in joint efforts to provide better and more comprehensive educational and training services. Funds will be available statewide to operate projects from July 1, 1990 until June 30, 1991. Funds requests should not exceed \$50,000. It is estimated that \$300,000.00 will be available under this request. Approximately 10-15 awards will be made.

Bidders Conferences will be held in February 1990.

To obtain a copy of the Education Coordination Proposal application form or to obtain further information on the Bidder's Conferences, please contact Bruce Nauth, State Board of Vocational Technical Education (612/296-8493) or Charles Robinson, State Job Training Office (612/297-1054).

Proposals must be *received* by Arthur Vadnais, State Board of Vocational Technical Education, Suite 130 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, by *4:30 p.m., Monday, March 5, 1990.*

Supreme Court Decisions, Opinions & Rules

Decisions Filed 19 January 1990

C5-89-345, C7-89-346 *Mary J. DeNardo v. Divine Redeemer Memorial Hospital and St. Paul Fire & Marine Insurance Company, Respondents (C5-89-345), Relators (C7-89-346) and Samaritan Hospital and Chubb Group Insurance Company, Relators (C5-89-345), Respondents (C7-89-346) and Minnesota Department of Jobs & Training/DVR, intervenor and Group Health, Inc., intervenor. Workers' Compensation Court of Appeals.*

1. Equitable apportionment, as it has been established by judicial decision, is unaffected by *Minnesota Statutes* § 176.101, subd. 4a (1988), and the existing apportionment principles are applicable regardless of whether successive injuries extend across "old" and "new" law.

2. An award of ongoing temporary partial disability benefits is not manifestly contrary to the evidence when the employee was able to obtain only a part-time position.

Affirmed. Popovich, C.J.

C7-88-2507 *Dianna Schultz, Relator v. Trevilla Nursing Home and Ideal Mutual Insurance Company and Chisago Lakes Hospital and DCA for Minnesota Assigned Risk Plan. Workers' Compensation Court of Appeals.*

While the Workers' Compensation Court of Appeals properly affirmed the compensation judge's determination as to the extent of the employee's permanent impairment, it improperly reversed a liability determination that was governed by either a prior decision of Workers' Compensation Court of Appeals that had become the law of the case or a stipulation of the parties.

Affirmed in part and reversed in part. Popovich, C.J.

Supreme Court Decisions, Opinions & Rules

C8-88-2483 Ruth D. Kulp v. Sheraton Ritz Hotel and INA/Aetna, and Howard Johnson's Motel and The Travelers Insurance Company, Relators. Workers' Compensation Court of Appeals.

1. The Workers' Compensation Court of Appeals did not exceed its authority in reversing a liability determination.
2. The Workers' Compensation Court of Appeals erroneously applied *Minnesota Statutes* § 176.101, subd. 4a (1988), in affirming the denial of a claim for contribution and/or reimbursement with respect to temporary disability and other benefits.

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

C5-89-1477 Montgomery Ward & Co., Inc., Relator v. County of Hennepin. Minnesota Tax Court.

1. A party does not waive its right to seek discovery of information by failing to make repetitive motions following a trial court's informal ruling on the party's previous motion to compel discovery which had been taken under advisement by the trial court.
2. The tax court abused its discretion in refusing to apply the two-part test, mandated by *Minnesota Statutes* § 13.03, subd. 6 (1988), to a taxpayers' motion to compel discovery of property value data contained in government files.
3. Relevant valuation data contained in government files must be made available, subject to an appropriate protective order, to a taxpayer who petitions for review of the government's property tax assessment on the taxpayer's property.
4. There was insufficient evidence to support the tax court's finding that the relator failed to prove that the assessor's estimated market value exceeded the actual fair market value of the property.

Reversed and remanded. Yetka, J.

C5-88-1789 Therese M. Smith, et al., petitioners, Appellants v. The City of Owatonna. Court of Appeals.

The City's actions in requiring plaintiffs to pay for their service lines to the City's new, upgraded gas distribution system do not violate constitutional due process, nor constitute a "taking", nor are they a denial of equal protection of the law.

Affirmed. Simonett, J.

Dissenting, Yetka, J., Popovich, C.J., and Wahl, J.

C3-88-2343 In Re the Marriage of Steven Maxfield, petitioner, Appellant v. Diane Maxfield. Court of Appeals.

In this case, the best interests analysis directs custody of the three youngest children to the mother. Determination of custody of the oldest child is remanded to the trial court.

Affirmed. Simonett, J.

Dissenting, Yetka, J., Popovich, C.J., and Kelley, J.

C7-89-766 State of Minnesota, Plaintiff v. Sean Patrick Merrill. Olmsted County.

The fetal homicide statutes enacted in 1986 do not, with respect to defendant, offend the Equal Protection Clause; nor are the statutes void for vagueness under the Due Process Clause.

Certified questions answered. Simonett, J.

Concurring in part, dissenting in part, Kelley, J.

Dissenting, Wahl & Keith, JJ.

C0-88-2283 In re Petition for Disciplinary Action against Wendy Alison Nora, an Attorney at Law of the State of Minnesota.

Indefinitely suspended. Per Curiam.

Orders

C4-89-2152 In Re Petition for Disciplinary Action against James H. O'Hagan, an Attorney at Law of the State of Minnesota.

Disbarred. Popovich, C.J.

Order CX-84-1651 In re Membership State Board of Legal Certification

WHEREAS, Howard Guthmann and Patricia Maloney were previously appointed to the State Board of Legal Certification for terms ending January 1, 1990, and

WHEREAS, this Court believes their continued service on the Board will benefit the State of Minnesota, and

WHEREAS, Mr. Guthmann and Ms. Maloney have agreed to continue serving on said board,

Supreme Court Decisions, Opinions & Rules

NOW, THEREFORE, IT IS ORDERED that Howard Guthmann and Patricia Maloney be, and hereby are, reappointed to the State Board of Legal Certification for three-year terms commencing January 1, 1990.

Dated: 11 January 1990

BY THE COURT,

Peter S. Popovich, Chief Justice

Order C1-84-2137 In re Membership Advisory Committee on Rules of Criminal Procedure

WHEREAS, the Honorable Bruce C. Stone, Retired Judge of District Court, has resigned from the Supreme Court Advisory Committee on Rules of Criminal Procedure, and

WHEREAS, this Court has directed the Advisory Committee to continue to monitor rules and recent amendments and to hear and accept comments for further changes, and

WHEREAS, this Court believes the appointment of Paul R. Kempainen, Assistant Attorney General, would benefit the work of the Advisory Committee,

NOW, THEREFORE, IT IS ORDERED that Paul R. Kempainen be, and hereby is, appointed to the Supreme Court Advisory Committee on Rules of Criminal Procedure for a three-year term ending December 31, 1992.

Dated: 11 January 1990

BY THE COURT,

Peter S. Popovich, Chief Justice

Order C6-89-2248 Appointing Criminal Courts Study Commission Member

WHEREAS, by Supreme Court order dated December 29, 1989, the Criminal Courts Study Commission was established and its members appointed, and

WHEREAS, a vacancy has occurred as a result of the Honorable Michael J. Davis' resignation from the Commission; and

WHEREAS, the Honorable Charles A. Porter, Judge of the Fourth Judicial District, has expressed a willingness to serve;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Honorable Charles A. Porter is appointed to serve on the Criminal Courts Study Commission.

Dated: 8 January 1990

BY THE COURT,

Peter S. Popovich
Chief Justice

Order Reappointment of C. Paul Jones to the Minnesota Commission on the Bicentennial of the United States Constitution

WHEREAS, 1987 marked the two-hundredth anniversary of the United States Constitution, and

WHEREAS, former Chief Justice Douglas K. Amdahl, by orders dated February 21, 1986, May 5, 1986, July 1, 1986, January 15, 1988 and April 6, 1988, appointed members and chairpersons to the Constitutional Bicentennial Commission of the State of Minnesota, and

WHEREAS, the term of appointment for C. Paul Jones has expired, and

WHEREAS, C. Paul Jones has made significant contributions to the work of the Commission, and

WHEREAS, C. Paul Jones has agreed to continue serving on the Commission,

NOW, THEREFORE, IT IS ORDERED that C. Paul Jones be, and hereby is, reappointed effective this date to the Constitutional Bicentennial Commission of the State of Minnesota.

Dated: 10 January 1990

Peter S. Popovich, Chief Justice

Announcements

State University Board will meet on Tuesday, Jan. 30, at 9:30 a.m. in the conference rooms of the State University System, 230 Park Office Bldg., 555 Park Street, St. Paul, MN. Call (612) 296-4404 for more information. The next meeting is scheduled for Mar. 7 in St. Paul.

Judicial Merit Advisory Commission members were appointed by Governor Rudy Perpich to help determine finalists for upcoming judicial vacancies in state District Court. **Kelton Gage** will serve as a special member for the Fifth Judicial District to review applications for vacancies that will be created later this year by the retirement of Judge Noah Rosenbloom, New Ulm, and Judge Wayne Farnberg, Redwood Falls. **Sonja Berg** of St. Cloud will serve as a special member for the Seventh Judicial District opening in Foley created by the retirement of Judge Rainer L. Weis in April. **Kimball Mattson** will participate as a special member to the Judicial Merit Advisory Commission to review applications for the vacancy in the Ninth Judicial District in Roseau created by the retirement of Judge Donald E. Shanahan at the end of last year.

Moorhead Revenue Office, unlike previous years, will be open one day per week. According to Maggie Anderson, regional audit office manager, due to a reduction in personnel, the office will be open to the public on Mondays only between the hours of 8 a.m. to 4:30 p.m. "Since the office was open five days per week last year, we don't want anyone to be disappointed or make an unnecessary trip only to find the doors locked," she added. The office remains located at Townsite Center, Room 200, Moorhead.

Arts Board Deadlines are approaching for a number of Arts Board programs; artists and arts organizations should request applications as soon as possible for the following January and February deadlines. • **The Headlands Project**, deadline Jan. 26, is a new residency program for Minnesota's visual, literary, and performing artists, offering opportunities to live and work for several months at the Headlands Center for the Arts near San Francisco. Participating artists will be offered housing, studio space, travel subsidy, and a monthly living stipend. • **The Percent for Art Registry**, deadline Feb. 1, is a collection of slides and information on visual artists interested in purchase or commission of work for placement in new or renovated state building sites. The Registry is open to artists nationwide, and is used to select artists for numerous projects throughout the state. The program accepts submissions to the registry twice each year. • **Career Opportunity Grants**, deadline Feb. 2, are designed to fund impending, concrete opportunities that will have a significant impact on an artist's work or career. Minnesota residents who are professional, independent artists working in the visual, literary, or performing arts may apply. Applicants may request grants in variable amounts from \$100 to \$1,000. • **The Folk Artists Directory**, deadline Feb. 16, is a juried list of Minnesota folk artists interested in public performance opportunities. Applications are accepted from folk artists and groups working in all traditions, including singing, music, dance, storytelling, needlework, and various craft traditions. The Directory is distributed upon request to organizations interested in presenting folk arts performances and demonstrations.

Metropolitan Council reported that Carol Flynn, Minneapolis, was elected vice chair of the council, replacing Joan Campbell, who resigned from the council after being elected to the Minneapolis City Council. Flynn represents Council District 4, which includes central and eastern Minneapolis. Also elected as officers of the Council were Dirk deVries, Minnetonka (District 13), second vice-chair; Pat Scully, Hastings (District 16), treasurer; and Sandi Lindstrom, secretary. Gertrude Ulrich, Richfield (District 12), was named chair of the Council's Metropolitan and Community Development Committee, which oversees comprehensive planning and local assistance, research, and human services activities at the Council. Ulrich replaces Campbell as chair. Other committee chairs who continue in their duties this year include Mike McLaughlin, St. Paul (District 2), Environmental Resources Committee; Flynn, Systems Committee; and Scully, Management Committee. • In other action, the council named nine new members to its **Advisory Committee On Aging**. Named to the committee were: Doreen Day and Todd Monson, Minneapolis; Jewell Moore and Dwaine Glasenapp, St. Paul; Joanne Knoll, North St. Paul; Judith Nelson, Oak Grove Twp.; Joanne Gerrish, Eden Prairie; Anna Lawler, Mendota Heights; and Bernadette Bloom, Randolph. Their terms expire in January 1992. The 25-member committee recommends policies to the Council regarding needs of the Metropolitan Area's older population. It also makes recommendations for distributing federal grant funds available under Title III of the Older Americans Act. • Jack Kemp, U.S. Secretary of Housing and Urban Development (HUD), will be the keynote speaker at the **Metropolitan Council's 1990 State of the Region** event March 7 in Minneapolis. Housing, a new priority for the Council's work in 1990, will be the focus of the event. Kemp and other speakers will address new housing issues and trends in the 1990s. The secretary will outline HUD's national agenda for the '90s. The event will be held at the Minneapolis Hyatt Regency Hotel, 1300 Nicollet Mall, from 1:30 to 7:30 p.m. The cost, which includes an evening meal and a new Council report summarizing recent regional housing studies, is \$40. To register and for more information, call Bernadine Scott at the Council, 291-6500.

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