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STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 5		
25	Monday Dec 8	Monday Dec 15	Monday Dec 22
26	Monday Dec 15	Monday Dec 22	Monday Dec 29
27	Monday Dec 22	Monday Dec 29	Monday Jan 5
28	Monday Dec 29	Monday Jan 5	Monday Jan 12

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

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

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

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

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

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NOTICE

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

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION. Such notices are published in the OFFICIAL NOTICES section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative lisitngs of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

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Issues 14-25, inclusive
Issue 26, cumulative for 1-26
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PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, 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 seven 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 modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven 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 § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Public Hearings on Agency Rules
December 15-19, 1980

Date	Agency and Rule Matter	Time & Place
Dec. 23	Board of Examiners for Nursing Home Administrators Waiver of Certain Licensure Requirements; Repeal of NHA 22 and 23 Hearing Examiner: Jon Lunde	9:30 a.m., Room 105, MN Dept. of Health Bldg., 717 Deleware St., Minneapolis, MN

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.

Department of Commerce
Insurance Division

Proposed Rules Relating to the Issuance and Sale of Variable Life Insurance (Pursuant to Minn. Stat. §§ 61A.13-21)

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the Insurance Division of the Department of Commerce proposes to adopt the above-captioned rules, without a public hearing, pursuant to Minn. Stat. § 15.0412, subd. 4h.

These rules are proposed pursuant to the authority vested in the Insurance Commissioner by the provision of Minn. Stat. § 61A.20.

The proposed rules if adopted would establish standards and procedures by which the issuance of variable life insurance policies could be regulated in Minnesota. The adoption of these proposed rules would further implement the provisions of Minn. Stat. §§ 61A.13-21, relating to the sale and issuance of variable life policies in Minnesota. Specifically, the proposed rules would set forth (a) the qualification of insurers to issue variable life insurance in Minnesota, (b) the variable life insurance policy requirements and the filing of such policies with the Insurance Commissioner of the State of Minnesota, (c) the establishment of reserve liabilities for the variable life insurance, (d) the establishment and administration of separate accounts for variable life insurance, (e) the information to be furnished to applicants for variable life insurance, (f) the form and content of applications for variable life insurance, (g) the reports that must be given periodically to variable life insurance policyholders, and (h) the qualifications of agents to sell variable life insurance.

Variable life insurance is authorized to be written in Minnesota pursuant to Minn. Stat. §§ 61A.13-21. Variable life insurance is life insurance that varies in terms of both the death benefit and cash values. Premiums remain fixed and level. Variable life insurance combines traditional life insurance protection with the potential growth of equity investments. The major differences between variable life insurance and traditional fixed life insurance are as follows: Under variable life insurance policies, assets supporting policy benefits are held in a separate account and invested primarily in common stocks and other equity type securities. The death benefit increases or decreases depending on investment results of the separate account. In no event, however, will the death benefit fall below a guaranteed minimum equal to the face amount of insurance specified in the policy. Under the traditional fixed life insurance policy, the death benefit is determined and fixed at the time the policy is purchased and issued. Cash values under variable life insurance policies will increase or decrease depending on investment results of the separate account, but there is no guaranteed minimum cash value, as with fixed life insurance policies.

All interested persons may submit written comment or data on these proposed rules, within 30 days of the publication of these proposed rules in the *State Register* to:

John Ingrassia
Supervisor of the Life and Health Section
Insurance Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101
Telephone: (612) 296-2202

No public hearing will be held unless seven or more persons make a written request for hearing within the 30-day comment period. Such written request must be filed with John Ingrassia of the Minnesota Insurance Division.

The proposed rules may be modified if the modifications are supported by the data and views submitted. A copy of the rules and statement of need and reasonableness is available for review, without charge, by making a written or telephone request to John Ingrassia at the above-referenced address.

Any person who desires to be informed when these proposed rules are submitted to the Attorney General for approval may do so by writing to Mr. Ingrassia.

November 24, 1980.

Michael D. Markman
Commissioner of Insurance

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4 MCAR § 1.9401 Authority and scope. The following regulations are applicable to all variable life insurance policies issued in this state, and are promulgated under the authority of Minn. Stat. § 61A.20.

4 MCAR § 1.9402 Definitions. As used in this regulation:

A. "Assumed investment rate" means the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

B. "Benefit base" means the amount, not less than the amount specified under 4 MCAR § 1.9406 B.2. specified by the terms of the variable life insurance policy to which the difference between the net investment return and the assumed investment rate is applied in determining the variable benefits of the policy.

C. "General account" means all assets of the insurer other than assets in separate accounts established pursuant to Minn. Stat. § 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

D. "Incidental insurance benefit" means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including accidental death and dismemberment benefits, disability income benefits, guaranteed insurability options, family income, or fixed benefit term riders.

E. "Minimum death benefit" means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.

F. "Net investment return" means the rate of investment return in a separate account to be applied to the benefit base after deduction of charges for taxes, investment expenses and mortality and expense guarantees in accordance with the terms of the policy.

G. "Separate account" means a separate account established for variable life insurance pursuant to Minn. Stat. § 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

H. "Variable death benefit" means the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of the minimum death benefit.

I. "Variable life insurance policy" means any individual policy which provides for life insurance which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such policy, pursuant to Minn. Stat. § 61A.14, or pursuant to the corresponding section of the Insurance Laws of the state of domicile of a foreign or alien insurer.

J. "Securities Act of 1933" means the Federal Securities Act of 1933, 15 U.S.C., § 77a *et seq.*

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K. "Securities Exchange Act of 1934" means the Federal Securities Exchange Act of 1934, 15 U.S.C., § 78a *et seq.*

L. "Investment Company Act of 1940" means the Federal Investment Company Act of 1940, 15 U.S.C., § 80a-l *et seq.*

M. "Employee Retirement Income Security Act of 1974" means the Federal Employee Retirement Income Security Act of 1974, 29 U.S.C., § 1001 *et seq.*

4 MCAR § 1.9403 Qualification of insurer to issue variable life insurance.

A. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless it has complied with Minn. Stat. §§ 61A.13 to 61A.21 and 4 MCAR §§ 1.9401-1.9412, and the commissioner has granted the insurer the authority to issue variable life insurance policies in the State of Minnesota pursuant to § 61A.20.

B. Before any insurer shall deliver or issue for delivery any variable life insurance policy in this state, it must file with the commissioner the following information for the consideration of the commissioner in making the determination required by Minn. Stat. § 61A.19.

1. copies of and a general description of the variable life insurance policies it intends to issue;

2. a general description of the methods of operation of the variable life insurance business of the insurer;

3. with respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the insurer intends to follow for the investment of the assets held in such separate account, and a statement of the procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objective and orientation intended for the separate account.

4 MCAR § 1.9404 Insurance policy requirements.

A. The commissioner shall not accept the filing of any variable life insurance policy form unless it conforms to the requirements of 4 MCAR § 1.9404 and Minn. Stat. ch. 61A.

B. Mandatory policy benefit and design requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements:

1. Coverage shall be provided for the lifetime of the insured with the mortality and expense risk borne by the insurer.

2. Gross premiums for death benefits shall be a level amount for the duration of the premium payment period, but this subdivision shall not be construed to prohibit temporary or permanent additional premiums for incidental insurance benefits or substandard risks. This subdivision shall not be deemed to prohibit the use of fixed benefit preliminary term insurance for a period not to exceed 120 days from the date of the application for a variable life insurance policy. The premium rate for such preliminary term insurance shall be stated separately in the application or receipt.

3. A minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of 4 MCAR § 1.904 C.2.).

4. The policy shall provide that the variable death benefit shall reflect the investment experience of the variable life insurance separate account established and maintained by the insurer and that the excess, positive or negative, of the net investment return over the assumed investment rate, as applied to the benefit base of each variable life insurance policy, shall be used to provide either:

a. fully paid-up variable life insurance providing coverage for the same period as the basic insurance under the policy or fully paid-up term insurance amounts for a term of annual periods of not less than one year nor more than five years, positive or negative, as the case may be, or a combination thereof; or

b. variable life insurance amounts, positive or negative, as the case may be, so that the reserve maintains the same percentage relationship to the variable death benefit as it would have on a corresponding fixed benefit policy.

5. Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

6. Changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

7. The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other non-forfeiture benefits, as described either in the policy or in a statement filed with the commissioner of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by Minn. Stat. § 61A.24 (Standard Non-Forfeiture Law) for a fixed benefit policy with such

premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Standard Non-Forfeiture law of this state. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

8. The computation of values required for each variable life insurance policy may be based upon reasonable and necessary approximations.

9. In determining the net investment return to be applied to the benefit base the insurer may deduct only the charges described in 4 MCAR § 1.9406 G.1.a., b., d., and e.

C. Mandatory policy provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

1. the cover page or pages corresponding to the cover page of each such policy shall contain:

a. a prominent statement in either contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision on that page, that the death benefit may be variable or fixed under specified conditions;

b. a prominent statement in either contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision on that page that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

c. a statement that the minimum death benefit will be at least equal to the initial face amount at the date of issue if premiums are duly paid and if there are no outstanding policy loans, partial withdrawals, or partial surrenders;

d. the rule, or a reference to the policy provision, which describes the method for determining the variable amount of insurance payable at death;

e. a captioned provision or endorsement to the policy which provides that the policyholder may cancel the variable life insurance policy by delivering or mailing a written notice or sending a telegram to the insurer and by returning the policy before midnight of the tenth day after the date the policyholder receives the policy, or before midnight of the forty-fifth day after the date of the execution of the application, whichever is later. Notice given by mail and return of the policy are effective on being postmarked properly addressed and postage prepaid. The insurer must return all payments made for the policy within ten days after it receives notice of cancellation and the returned policy.

f. such other items as are currently required by Minn. Stat. ch. 61A.

2. a provision for a grace period of not less than thirty-one days from the premium due date which shall provide that where the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date;

3. a provision that the policy will be reinstated at any time within three years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

a. all overdue premiums with interest at a rate not exceeding eight (8%) percent per annum compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding eight (8%) percent per annum compounded annually; or

b. 110% of the increase in cash surrender value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding eight (8%) percent per annum compounded annually.

4. a full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;

5. a provision designating the separate account to be used and stating that:

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.

a. such separate account shall be used to fund only variable life insurance benefits;

b. the assets of such separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account; and

c. the assets of such separate account shall be valued at least as often as any policy benefits vary but at least monthly.

6. a provision stating that the approval process for a change in the investment policy of the separate account is on file with the commissioner;

7. a provision that payment of variable death benefits in excess of the minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:

a. for up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account, or

b. otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical.

8. settlement options which shall be provided on a fixed basis only;

9. a description of the basis for computing the cash surrender value under the policy shall be included. Such surrender value may be expressed as either:

a. a schedule of cash value amounts per one thousand dollars of variable face amount at each attained age or policy year for at least 20 years from issue, or for the premium paying period, if less than 20 years; or

b. one cash value schedule as described in paragraph (1) for the death benefit, or for each one thousand dollars of death benefit, which would be in effect if the net investment return is always equal to the assumed investment rate and a second schedule applicable to any adjustments to the death benefit (disregarding the minimum death benefit guarantee and team insurance amounts) if the net investment return does not equal the assumed investment rate at each age for at least 20 years from issue, or for the premium paying period if it is less than 20 years.

10. premiums for incidental insurance benefits shall be stated separately.

D. Non-forfeiture, partial withdrawal, policy loan, and partial surrender provisions. Every variable life insurance policy delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholder than the following:

1. A provision for non-forfeiture insurance benefits so that at least one such benefit is offered on a fixed basis from the due date of the premium in default.

a. Variable extended term insurance may not be offered.

b. A given non-forfeiture option need not be offered on both a fixed and a variable basis.

c. The insurer may establish a reasonable minimum cash surrender value below which any such non-forfeiture insurance options will not be available.

2. A provision for policy loans after three full years' premiums have been paid (which may at the option of the insurer be entitled and referred to as a partial withdrawal provision) not less favorable to the policyholder than the following:

a. Up to 75% but if the loan is made from the general account not more than 90% of the policy's cash value may be borrowed;

b. The amount borrowed, or any repayment thereof, shall not affect the amount of the premium payable under the policy;

c. The amount borrowed shall bear interest at a rate not to exceed 8% per year compounded annually;

d. Any indebtedness shall be deducted from the proceeds payable on death;

e. Any indebtedness shall be deducted from the cash value upon surrender or in determining any non-forfeiture benefit;

f. Whenever the indebtedness exceeds the cash value, the insurer shall give notice of intent to cancel the policy if the excess indebtedness is not repaid within thirty-one days after the date of mailing of such notice;

g. The policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit

up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110% of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request;

h. In addition to the foregoing, the policy may contain a partial surrender provision; however, any such provision shall provide that the policyholder may request part of the cash value and both the variable and minimum death benefits will be reduced in proportion to the percentage of the cash value received by the policyholder and the premium for the remaining amount of insurance will also be reduced to the appropriate rates for the reduced amount of insurance. The policy may provide that a partial surrender provision shall not require the insurer to reduce the amount of the minimum death benefit to less than the lowest amount of minimum death benefit which would have been issued to the insured under the insurance plans of the insurer at the time the policy was issued. The policy must clearly provide that the policyholder has the option of electing to exercise the cash value privileges of the policy loan or partial withdrawal provision rather than the partial surrender provision;

i. All policy loan, partial withdrawal, or partial surrender provisions shall be constructed so that variable life insurance policyholders who have not exercised such provision are not disadvantaged by the exercise thereof;

j. Monies paid to the policyholders upon the exercise of any policy loan, partial withdrawal, or partial surrender provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the monies for policy loans from the general account.

E. Other policy provisions.

1. Incidental insurance benefits, if offered, shall be on a fixed basis only;

2. Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options:

a. the amount of the dividend may be credited against premium payments;

b. the amount of the dividend may be applied to provide paid-up amounts of additional fixed benefit whole life insurance;

c. the amount of the dividend may be applied to provide paid-up amounts of additional variable life insurance;

d. the amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

e. the amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance.

3. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans or partial withdrawals under 4 MCAR § 1.9404 C., except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed.

4 MCAR § 1.9405 Reserve liabilities for variable life insurance.

A. Reserve liabilities for variable life insurance policies shall be established under the Standard Valuation Law, Minn. Stat. § 61A.25, in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

B. Reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and shall be not less than the greater of the following minimum reserves:

1. The aggregate total of the term costs, if any, covering a period of one full year from the valuation date, of the guarantee on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment rate; or

2. The aggregate total of the "attained age level" reserves on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall equal the "residue," as described in paragraph a. below, of the prior year's "attained age level" reserve on the contract, with any such "residue," increased or decreased by a payment computed on an attained age basis as described in paragraph b. below.

a. the "residue" of the prior year's "attained age level" reserve on each variable life insurance contract shall not be

less than zero and shall be determined by adding interest at the valuation interest rate to such prior year's reserve, deducting the tabular claims based on the "excess," if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

b. the payment referred to in 4 MCAR § 1.9405 B.2. shall be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (C) is any "residue," as described in paragraph a. above, of the prior year's "attained age level" reserve on such variable life insurance contract. If the contract is paid-up, the payment shall equal (A) minus (B) minus (C). The amounts of future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate and/or the valuation interest rate but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

3. The valuation interest rate and mortality table used in computing the two minimum reserves described in paragraphs 1. and 2. above shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

C. Reserve liabilities for all fixed incidental insurance benefits shall be maintained in the general account in amounts determined in accordance with the actuarial procedures appropriate to such benefit.

4 MCAR § 1.9406 Separate accounts. The following requirements apply to the establishment and administration of variable life insurance separate accounts:

A. Establishment and administration of separate accounts. An insurer issuing variable life insurance in this state shall establish and administer one or more separate accounts pursuant to Minn. Stat. § 61A.14.

1. All persons with access to the cash, securities, or other assets of the separate account shall be under bond in an amount not less than $3,000,000.

2. If an insurer establishes more than one separate account for variable life insurance, justification for the establishment of each additional separate account shall also be filed with the commissioner. The creation of additional separate accounts to avoid lower maximum charges against the separate account is prohibited.

3. The assets of such separate accounts established for variable life insurance policies shall be valued at least as often as variable benefits are determined but in any event at least monthly.

4. A separate account exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940 because of the tax qualified status of the policies funded thereby shall not be used to fund other variable life insurance policies.

5. Except for separate accounts exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940, variable life insurance separate accounts shall not be used for variable annuities or for the investment of funds corresponding to dividend accumulations or other policyholder liabilities not involving life contingencies.

B. Amounts in the separate account.

1. The insurer shall maintain in each variable life insurance separate account assets with a fair market value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for such policies.

2. The benefit base of any variable life insurance policy as of the beginning of any valuation period shall not be less than the sum of the following factors after deducting amounts of any indebtedness pursuant to 4 MCAR § 1.9404 C.2.:

a. the valuation net premium for such period, for the variable portion of the policy, minus the discounted cost of term insurance for such period, based on the tabular mortality and interest rates used in determining valuation reserves; and

b. the valuation terminal reserve, for the variable portion of the policy, at the end of the immediately preceding valuation period adjusted for the net investment return of such preceding period.

3. In lieu of the minimum benefit base requirement specified above, an insurer may otherwise qualify under 4 MCAR § 1.9406 B. if the policy benefits obtained over a 20-year period from the date of issue by the use of the insurer's benefit base are at least substantially equivalent in value to the benefits obtained by the use of the minimum benefit base specified above.

4. Notwithstanding the actual reserve basis used for policies that do not meet standard underwriting requirements, the benefit base for such policies may be the same as for corresponding policies which do meet standard underwriting requirements.

C. Investments by the separate account.

1. Assets allocated to a variable life insurance separate account shall be held in cash or investments having a reasonably ascertainable market price. For purposes of this subdivision, only the following shall be considered "investments having a reasonably ascertainable market price":

a. liens in favor of the insurer against separate account policy reserves resulting from use by policyholders of cash values;

b. securities listed and traded on the New York Stock Exchange, the American Stock Exchange, or regional stock exchanges or successors to such exchanges having the same or similar qualifications;

c. securities listed on the National Association of Securities Dealers Automated Quotations System (hereinafter referred to as the "NASDAQ System");

d. shares of an investment company registered pursuant to the Investment Company Act of 1940. Where such an investment company issues book shares in lieu of share certificates, such book shares shall be deemed to be adequate evidence of ownership;

e. obligations of or guaranteed by the United States Government, the Canadian Government, any state, or municipality or governmental subdivision of a state;

f. commercial paper issued by business corporations when the total of such paper issued by the corporation does not exceed in value a guaranteed short line of credit by a bank;

g. certificates of deposit issued by financial institutions, the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation; and

h. new bond or debt issues which may reasonably be expected to be listed on an exchange regulated by the Securities Exchange Act of 1934.

2. Assets allocated to a variable life insurance separate account shall not be invested in:

a. commodities or commodity contracts;

b. put and call options or combinations of such options;

c. short sales;

d. purchases on margins;

e. letter or restricted stock;

f. units or other evidences of ownership of a separate account of another insurer, except those registered under the Investment Company Act of 1940; or

g. real estate other than shares of a real estate investment trust listed as described in 4 MCAR § 1.9406 C.1.b.

D. Limitations on ownership.

1. A variable life insurance separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by this regulation, would exceed 10% of the value of the assets of the separate account. The commissioner shall waive this limitation in writing if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

2. No separate account shall purchase or otherwise acquire the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts, in the aggregate, will own more than 10% of the total issued and outstanding voting securities of such issuer. The commissioner shall waive this limitation in writing if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of such securities.

3. The percentage limitation specified in 4 MCAR § 1.9406 D.1. shall not be construed to preclude the investment of the

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assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 if the investments and investment policies of such investment companies comply substantially with the provisions of 4 MCAR § 1.9406 C. and other applicable portions of this regulation.

E. Valuation of assets of a variable life insurance separate account.

1. Investments of the separate account shall be valued at their market value on the date of valuation.

a. Market value for investments traded on the recognized exchanges means the last reported sale price on the date of valuation. If there has been no sale on that date, the market value means the last reported bid quotation on the date of valuation.

b. Market value for investments listed on the NASDAQ System means the last representative bid quotation on the valuation date. If an investment ceases to be listed but continues to be traded over the counter, it shall be valued at the lowest bid quotation as it appears on the National Quotation Bureau sheets.

c. If the valuation date referred to in paragraphs a. and b. above is a day when the exchange or the NASDAQ System is not open for business, the valuation date shall be the last date when the exchange or the NASDAQ System was open for business.

2. If an investment ceases to be traded, it shall be valued at fair value as determined in good faith by or at the direction of the Board of Directors of the insurer but not in excess of the last reported bid quotation.

3. Notification of cessation of trading of any investment shall be reported by the insurer to the Commissioner within thirty days thereof.

F. Separate account investment policy. The investment policy of a separate account operated by a domestic insurer filed under 4 MCAR § 1.9403 B.3. shall not be changed without filing the change with the commissioner.

1. The commissioner shall have sixty days after the date the change is filed with him to notify the insurer of his determination that the proposed change is a material change in the insurer's investment policy.

2. If the change is deemed material by the commissioner he shall hold a public hearing to determine whether the change is detrimental to the interests of the policyholders of the insurer.

3. At least thirty days prior to any public hearing under paragraph 2. above, the insurer shall mail a notice to each policyholder and to the insurance commissioner of each state in which the affected variable life insurance policies are being sold. Such notice shall describe the proposed change in investment policy, list the reasons therefor, designate the date and place of the public hearing, inform the policyholder of the procedures to be followed in commenting on the change, and describe the conduct of the meeting.

4. Within sixty days after such public hearing, the commissioner shall notify the insurer of his determination, and if it is that the change is detrimental to the interests of the policyholders of the insurer, the insurer shall not be allowed to make such change.

5. Should any policyholder object to the proposed change and the change is allowed by the commissioner the objecting policyholder shall be given the option within sixty days of notification to the policyholder of the allowance by the commissioner of such change, of converting, without evidence of insurability, under one of the following options, to a fixed benefit life insurance policy issued by the insurer or an affiliate:

a. If the policy is in force on a premium paying basis, either:

(1) conversion as of the original issue age to a substantially comparable permanent form of fixed benefit life insurance, based on the insurer's premium rates for fixed benefit life insurance at the original issue age, for an amount of insurance not exceeding the death benefit of the variable life insurance policy on the date of conversion.

(2) conversion as of the attained age to a substantially comparable permanent form of fixed benefit life insurance for an amount of insurance not exceeding the excess of the death benefit of the variable life insurance policy on the date of conversion over:

(a) its cash value on the date of conversion if the policyholder elects to surrender the variable life policy for its cash value, or

(b) the death benefit payable under any paid-up insurance option of the policyholder elects such nonforfeiture option under the variable life policy.

b. If the policy is in force as paid-up variable life insurance, then conversion will be to a substantially comparable paid-up fixed benefit life insurance policy for an amount of insurance not exceeding the death benefit of the variable life insurance policy on the date of conversion.

If conversion is made pursuant to paragraphs a.(1) or b. above, then (1) if the cash value of the variable life insurance policy

exceeds the cash value of the fixed benefit life insurance policy, the difference shall be paid to the policyholder; (2) if the cash value of the fixed benefit life insurance policy exceeds the cash value of the variable life insurance policy, the difference shall be paid by the policyholder; and (3) any indebtedness under the variable life insurance policy shall become indebtedness under the fixed benefit policy, provided that any excess of such indebtedness over the cash value of the fixed benefit policy on the date the conversion shall be deducted from any amount otherwise payable to the policyholder.

G. Charges against a variable life insurance separate account.

1. The insurer may deduct only the following from the separate account:

a. taxes or reserves for taxes attributable to investment gains and income of the separate account:

b. actual cost of reasonable brokerage fees and similar direct acquisition and sales costs incurred in the purchase or sale of separate account assets.

c. actuarially determined costs of insurance (tabular costs) and the release of reserves and benefit base consistent with the release of separate account liabilities.

d. charges for investment management expenses, including internal costs attributable to the investment management of assets of the separate account, not exceeding the following percentages, on an annual basis, of the average net value of the separate account as of the dates of valuation under 4 MCAR § 1.9406 A.3.:

(1) .75% of that portion of separate account assets valued at or under $75,000,000; and

(2) .50% of that portion of separate account assets valued in excess of $75,000,000 but less than $150,000,000; and

(3) .40% of that portion of separate account assets valued in excess of $150,000,000 but less than $400,000,000; and

(4) .35% of that portion of separate account assets valued in excess of $400,000,000 but less than $800,000,000; and

(5) .30% of that portion of separate account assets valued in excess of $800,000,000.

e. a charge, at a rate specified in the policy, not to exceed .50% per year of the average net asset value of the separate account as of the dates of valuation under 4 MCAR § 1.9406 A.3., for mortality and expense guarantees.

f. Any amounts in excess of those required to be held in the separate account.

2. Any charges against the separate account made by either an affiliate of the insurer or an unaffiliated fund shall be considered part of the charges limited by 4 MCAR § 1.9406 G.1.d. and e. Any charge against the separate account, excluding taxes, shall not vary in accordance with the difference between the investment performance of the separate account and any index of securities prices or other measure of investment performance.

4 MCAR § 1.9407. Information furnished to applicants. An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from such applicant coincident with or prior to the execution of the application, the following information. The requirements of 4 MCAR § 1.9407 shall be deemed to have been satisfied to the extent that a disclosure containing information required by 4 MCAR § 1.9407 is delivered, either in the form of (1) a prospectus included in a registration statement relating to the policies which satisfies the requirements of the Securities Act of 1933 and which was declared effective by the Securities and Exchange Commission; or (2) all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to section 3(a)(2) thereof.

A. a summary explanation, in non-technical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include notices of the provision required by 4 MCAR § 1.9404 B.1.e. and Minn. Stat. § 61A.03(3).

B. a statement of the investment policy of the separate account, including:

1. a description of the investment objective and orientation intended for the separate account and the principal types of investments intended to be made; and

2. any restriction or limitations on the manner in which the operations of the separate account are intended to be conducted.

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C. a statement of the net investment return of the separate account for each of the last ten years for which the separate account was in existence;

D. a statement describing, as an approximate percentage of an annual gross premium for each year and for the life of the policy all commission or equivalent payments to be paid to all agents or other persons as a result of the proposed sale for each year of the policy for which such payments are to be made. As used in this section, "commissions" means all monies and other valuable consideration, including but not limited to prizes, bonuses paid directly or indirectly to, for, or on behalf of the selling agent as compensation for services in the sale of variable life insurance;

E. a statement of the annual taxes, brokerage fees, and similar costs, and the charges, expressed as an annual percentage, levied against the separate account during the previous year;

F. a summary of the method to be used in valuing assets held by the separate account;

G. a summary of the federal income tax liabilities of the policy applicable to the insured, the policy owner, and the beneficiary;

H. if the applicant is furnished illustrations of benefits payable under any variable life insurance contract, such illustrations shall be prepared by the insurer and shall not include projections of past investment experience into the future or attempted predictions of future investment experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that such assumed rates are hypothetical only;

I. a prominent statement either in contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision on the page, providing in substance the following information:

1. The purpose of this variable life insurance policy is to provide insurance protection for the beneficiary named therein.

2. No claim is made that this variable life insurance policy is in any way similar or comparable to a systematic investment plan of a mutual fund.

4 MCAR § 1.9408 Applications. The application for a variable life insurance policy shall contain:

A. a prominent statement that the death benefit may be variable or fixed under specified conditions;

B. a prominent statement that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees);

C. questions designed to elicit information which enables the insurer to determine the suitability of variable life insurance for the applicant.

4 MCAR § 1.9409. Reports to policyholders. Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at his or her last known address the following reports:

A. Within thirty days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, and any optional payments allowed pursuant to 4 MCAR § 1.9404 C. under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within thirty days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than forty-five days prior to the mailing of such notice. This statement shall state in contrasting color or distinctive type that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by 4 MCAR § 1.9409. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement, the statement shall be modified to so indicate.

B. Annually, a statement or statements including:

1. a summary of the financial statement of the separate account based on the annual statement last filed with the Commissioner;

2. the net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of five years when available;

3. a list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the Commissioner;

4. any charges, taxes, and brokerage fees determined on an accrual basis payable by the separate account during the previous year, each expressed as a dollar amount and a percentage and the total expressed as a dollar amount and as a percentage of the assets of the separate account;

5. a statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment adviser of the separate account;

6. the names and principal occupations of each principal executive officer and each director of the insurer; and

7. the names of all parents of the insurer and the basis of control of the insurer, and the name of any person who is known to own, of record or beneficially, 10% or more of the outstanding voting securities of the company.

4 MCAR § 1.9410 Foreign companies. If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially greater than that provided by this regulation, the commissioner shall consider compliance with such law or regulation as compliance with this regulation.

4 MCAR § 1.9411 Qualification of agents for the sale of variable life insurance. Any person who holds a valid license to solicit and sell life insurance in this state and has filed with the commissioner evidence of compliance with all applicable state and federal securities laws shall be qualified pursuant to Minn. Stat. § 60A.17, subd. 13(1) to sell or offer for sale variable life insurance policies in this state.

4 MCAR §§ 1.9412 to 1.9415. Reserved for future use.

State Board of Education
Department of Education
Special and Compensatory Education Division

Proposed Amendment of A Rule Governing Standards and Procedures of Special Education Instruction and Services for Children and Youth Who Are Handicapped (5 MCAR § 1.0127 A.5.e.(3))

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the State Board of Education proposes to amend the above-entitled rule without a public hearing. The board has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

Rule 5 MCAR § 1.0127 A.5.e.(3) is proposed to be amended to bring it into compliance with the Federal Education for All Handicapped Children Act (20 U.S.C. § 1401, *et seq.*) and the corresponding federal regulations, 45 C.F.R. part 121a, as presently interpreted. The proposed amendment is necessary in order to enable the State of Minnesota and its public school districts to obtain federal money available under the federal law. If 5 MCAR § 1.0127 A.5.e.(3) is not amended, the U.S. Department of Education has advised the Minnesota Department of Education that the State of Minnesota and its public school districts may not receive such federal money.

Rule 5 MCAR § 1.0127 A.5.e.(3) governs the procedure by which a conciliation conference and due process hearing are commenced to determine whether an independent assessment requested by the parents will be at public expense. The current language of the rule is not acceptable to the U.S. Department of Education and the provision must be changed in order to make federal money under the Education for All Handicapped Children Act available to Minnesota public school districts. The State Board of Education proposes to amend 5 MCAR § 1.0127 A.5.e.(3) to bring it into compliance with federal law particularly 45 C.F.R. § 121a.503(b). Therefore, 5 MCAR § 1.0127 A.5.e.(3) is proposed to be amended as set forth herewith.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f.

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

Wayne A. Erickson
Manager, Special Education Section
802 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Telephone (612) 296-4163

Authority for the adoption of these rules is contained in Minn. Stat. § 120.17, subd. 3. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Wayne A. Erickson upon request.

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

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

Copies of this notice and the proposed rules are available and may be obtained by contacting Wayne A. Erickson.

Howard B. Casmey
Commissioner of Education

Amendments As Proposed

Chapter Seven: Standards and Procedures for the Provision of Special Education Instruction And Services for Children And Youth Who Are Handicapped

5 MCAR § 1.0127 Formal notice to parents.

A. General notice provisions.

5. All notices must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action and contain a full explanation of all of the procedural safeguards available to parents under the provision of these rules. All notices must:

e. inform the parents that they may:

(1) obtain an independent assessment at their own expense;

(2) request from the district information about where an independent assessment may be obtained;

(3) ~~request that~~ obtain an independent assessment ~~be conducted~~ at public expense. ~~in which case the district has the option of denying such a request. When a district denies such a request, the parents may request a conciliation conference and due process hearing to resolve the disagreement.~~ However, a district may initiate a due process hearing to show that its assessment is appropriate. If the final decision is that its assessment is appropriate, the parents still have the right to an independent assessment, but not at public expense.

Department of Public Welfare
Income Maintenance Bureau

Proposed Rule Governing the Surveillance and Utilization Review Program (12 MCAR § 2.064)

Notice of Hearing

A public hearing concerning the above-entitled matter will be held at the Minnesota Veterans Home, East 51st Street and Minnehaha, Building 15, Chapel Auditorium Building, Minneapolis, Minnesota, on January 14, 1981, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard. The proposed rule may be modified as a result of the

hearing process. Therefore, if you are affected in any manner by the proposed rule, 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 ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon L. Lunde, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone 612/296-5938, either before the hearing or within five working days after the public hearing ends. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Department of Public Welfare and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all evidence and argument which the Department of Public Welfare anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Proposed rule 12 MCAR § 2.064 sets standards for the Surveillance and Utilization Review (SUR) program. The Surveillance and Utilization Review Division is responsible for identifying and investigating suspected fraud, theft, abuse and inappropriate utilization of services by eligible recipients and enrolled providers in the Medical Assistance, General Assistance Medical Care, and Catastrophic Health Expense Protection Program programs of the Department of Public Welfare. Through its computer generated exception reports and referrals, SUR identifies patterns of provision and utilization of medical services, equipment and supplies which may be indicative of fraud and abuse. SUR then conducts investigations to verify this information and determine if corrective actions are required. SUR is authorized to sanction providers and recipients as appropriate for documented abuse, misutilization, fraud, and violation of federal regulations, state law, or agency rules. SUR has a range of possible sanctions which may be imposed, including recovery of overpayments, suspension, termination, referral for peer review, restriction, and civil or criminal actions.

Proposed rule 12 MCAR § 2.064 is divided into several subsections. Subsection A. contains the introduction which explains the scope of the rule and its statutory basis. Subsection B. contains several definitions of terms used throughout the rule. Subsection C. explains the purposes for which and the methods whereby records are examined by authorized state agency personnel. Subsection D. describes the process of identification and investigation of suspected fraud, theft or abuse of the programs by enrolled health care providers. This section further describes the grounds for monetary recovery and sanctions, as well as the range of corrective actions, which may be imposed against an abberant provider. Subsection E. describes the process of identification and investigation of suspected fraud, theft or abuse of the programs by eligible recipients. This section further describes grounds for monetary recovery and sanctions, as well as the range of corrective actions, which may be imposed against a recipient. Subsection F. outlines the appeal process available to recipients and providers in the event that a corrective action is imposed by the department.

The agency's authority to promulgate the proposed rule is contained in Minn. Stat. § 256B.04, subd. 10 as amended by Minn. Laws of 1980, ch. 349, Minn. Stat. § 256D.03, subd. 3 as amended by Minn. Laws of 1980, ch. 349, and Minn. Stat. § 62E.53, subd. 3 as amended by Minn. Laws of 1980, ch. 349.

The Department of Public Welfare estimates that there will be no cost to local public bodies in the state to implement the rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Larry Woods, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-9943. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule, contact Larry Woods at (612) 296-9943.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rule for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

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.

Minn. Stat. ch. 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 Minn. Stat. § 10A.01, subd. 11 (1979 Supp.), as any individual:

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

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

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

November 19, 1980

Arthur E. Noot
Commissioner of Public Welfare

Rules as Proposed (all new material)

12 MCAR § 2.064 Surveillance and Utilization Review Program.

A. Introduction.

1. This rule governs procedures to be used by the Surveillance and Utilization Review (SUR) Section, Minnesota Department of Public Welfare in the identification and investigation of suspected fraud, theft, abuse, presentment of false or duplicate claims, presentment of claims for services not medically necessary, or false statement or representation of material facts by a provider or recipient of health care in the Minnesota Medical Assistance, General Assistance Medical Care and/or Catastrophic Health Expense Protection Programs.

2. The provisions of this rule are to be read in conjunction with Titles XVIII and XIX of the Federal Social Security Act; Title 42 of the Code of Federal Regulations; Minn. Stat., ch. 62E, 256, 256B, 256D and 609; Minnesota Laws of 1980, ch. 349; and other rules of the Minnesota Department of Public Welfare.

3. The Minnesota Department of Public Welfare, as the state agency responsible for the administration of the Minnesota Medical Assistance, General Assistance Medical Care and Catastrophic Health Expense Protection programs, will issue instructional bulletins, manual materials and forms as necessary to assist others in the interpretation of this rule. Such publications do not have the force and effect of law; however, they do contain the state agency's interpretation of this rule.

4. The provisions of this rule are binding on all county welfare boards (hereinafter referred to as local welfare agencies) in the State of Minnesota administering the programs, on all providers of health care participating in the programs, on all recipients under the programs, and on the state agency.

B. Definitions. For the purposes of this rule, the following terms shall be defined as indicated.

1. "Abuse." A pattern of practice by a provider, or a pattern of health care utilization by a recipient which is characterized by, but not limited to, the presence of one of the following conditions:

a. The repeated submission of claims by a provider from which required data is missing or incorrect. Examples include but are not limited to: incorrect or missing procedure or diagnosis codes, false mathematical entries, incorrect or missing third party liability information, incorrect use of procedure code modifiers.

b. The repeated submission of claims by a provider presenting procedure codes which overstate the level or amount of health care provided.

c. The repeated submission of claims by a provider for health care which is not reimbursable under the programs.

d. Failure of a provider to develop and maintain patient care records which document the nature, extent, and evidence of the medical necessity of health care provided.

e. Failure of a provider to use generally accepted accounting principles unless otherwise indicated by federal or state law or rule.

f. The repeated submission of claims by a provider for health care that is contrary to the generally accepted standards of practice of a provider's field of practice or specialty.

g. The repeated submission of claims by a provider for health care which exceeds that requested or agreed to by the recipient or his responsible relative or guardian or that otherwise required by federal or state law or rule.

h. The recipient permitting the use of his/her medical identification card by any unauthorized individual for the purpose of obtaining health care through any of the programs.

i. Obtaining unneeded equipment, supplies or pharmaceuticals by a recipient for the purpose of resale.

j. Obtaining duplicate services by a recipient, from a multiple number of providers, for the same health care condition excluding confirmation for diagnosis, evaluation or assessment.

2. "Commissioner." The Commissioner of Public Welfare or his designee.

3. "Health care." Services, equipment, or supplies provided by any individual, organization or entity that participates in the Medical Assistance, General Assistance Medical Care and/or Catastrophic Health Expense Protection programs.

4. "Health care record." Written documentation of the nature, extent and evidence of the medical necessity of health care provided to the program recipients by a provider other than a medical doctor and billed to the programs.

5. "Medicaid Management Information System." (MMIS) A centralized automated processing and payment system certified by the United States Department of Health and Human Services and implemented in Minnesota to administer the Title XIX program.

6. "Medical record." Written documentation of the nature, extent and evidence of the medical necessity of health care provided to program recipients by or under the authority of a medical doctor and billed to the programs.

7. "Medically necessary." Health care that is within the generally accepted standards of practice of a provider's field of practice or specialty and is:

a. Provided to maintain at least the minimum level of care required for certification and licensure of a long term care facility by the Minnesota Department of Health, or

b. Provided in response to life threatening conditions, or

c. Provided in response to pain, or

d. Provided to treat injuries, illness, or infections, or

e. Provided as periodic examination and diagnosis, or

f. Provided as preventive health care.

8. "Pattern." An identifiable series of events or activities.

9. "Programs." The Minnesota Medical Assistance program, the General Assistance Medical Care program and/or Catastrophic Health Expense Protection program.

10. "Provider." An individual, organization, or entity that has entered into an agreement with the state agency to be reimbursed by Minnesota Medical Assistance, General Assistance Medical Care and/or Catastrophic Health Expense Protection programs for health care provided to a recipient(s).

11. "Recipient." An individual who has established eligibility to receive health care paid by Minnesota Medical Assistance, General Assistance Medical Care and/or Catastrophic Health Expense Protection programs.

12. "Records." Medical, health care and financial records pertaining to health care provided program recipients and billed to the programs.

13. "State agency." The Minnesota Department of Public Welfare.

14. "Surveillance and Utilization Review." (SUR) The section of the Department of Public Welfare responsible for the identification and investigation of suspected fraud and abuse by providers and recipients participating in the programs. For the purpose of this rule, this definition specifically excludes the utilization control activity of the SUR section.

15. "Suspending participation." Making a provider ineligible for reimbursement by the programs for a stated period of time.

16. "Suspension of payments." Stoppage of any or all program payments for services billed by a provider pending resolution of the matter(s) in dispute between the provider and the state agency.

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17. "Terminating participation." Making a provider permanently ineligible for reimbursement by the programs.

18. "Utilization control." The activity within the state agency responsible for the ongoing evaluation of the necessity for and the quality and timeliness of services provided in long term care facilities not under the responsibility of a Professional Standards Review Organization.

19. "Withholding of payments." A reduction or adjustment of the amounts paid to a provider for purposes of offsetting overpayments previously made to the provider, or of recovering payments made to a provider for services not documented in the recipient's medical or health care record.

C. Records.

1. Medical and health care records.

a. Medical and health care records must be developed and maintained as a condition for reimbursement by the programs. Program funds paid for health care not documented in the medical and health care record shall be subject to monetary recovery.

b. Medical and health care records shall be legible throughout to at least the individuals providing care.

c. Medical and health care records shall contain the following information:

(1) Each page of the record shall name or otherwise identify the patient.

(2) Each entry in the record shall be signed and dated by the individual providing health care. Record entries for health care provided by an individual under the supervision of a licensed provider, and which is billed directly to the programs by the provider, shall be countersigned by the provider.

(3) Initial and final diagnoses, assessments or evaluations.

(4) The patient case history and results of oral or physical examination.

(5) The plan of treatment or patient care plan shall be entered in the physical record or shall be otherwise available on-site.

(6) Quantities and dosages of any prescribed drugs ordered and/or administered shall be entered in the record.

(7) The results of all diagnostic tests and examinations.

(8) The record shall indicate the patient's progress, response to treatment, any change in treatment, and any change in diagnosis.

(9) Copies of consultation reports relating to a particular recipient.

(10) Dates of hospitalization relating to service provided by a particular provider.

(11) A copy of the summary of surgical procedures billed to the programs by the provider.

d. The requirements of C.1.c. of this rule shall not apply to pharmacies, laboratories, ambulance services and medical transportation providers, or suppliers of medical equipment and nondurable supplies. For the purpose of this rule provider groups mentioned in this section shall develop and maintain the following records:

(1) Pharmacies.

(a) Prescriptions or equivalent computer record.

(b) This rule shall not require the development and maintenance of a recipient drug profile; however, if available, the state agency shall be authorized to review such a record.

(2) Laboratories.

(a) Documentation of provider orders for laboratory tests or procedures.

(b) Documentation of test results.

(3) Ambulance service and medical transportation providers.

(a) Documentation of physician authorization for medical transportation.

(b) Trip tickets.

(c) Documentation of durable and nondurable supplies expended on a recipient.

(4) Suppliers of medical equipment and nondurable supplies.

(a) Prescriptions.

(b) Documentation of physician orders related to the provision of equipment and supplies.

2. Financial records.

a. Financial records pertaining to the provider's costs and charges for health care provided to program recipients shall be developed and maintained.

b. Financial records for all providers, other than nursing homes and board and care homes certified by the Minnesota Department of Health, shall include:

(1) Purchase invoices.

(2) All accounting records including, but not limited to, payroll ledgers, cancelled checks, and bank deposit slips.

(3) All contracts for supplies and services which relate to the providers cost and charges for health care billed to the programs.

(4) Evidence of the providers usual and customary charges and written evidence of charges to non-recipient patients without violating non-recipient patient rights to confidentiality.

(5) Records of other third-party claims, charges and payments.

c. Financial records for nursing homes and board and care homes certified by the Minnesota Department of Health, shall include:

(1) All records identified in C.2.b. of this rule.

(2) Records of deposits and expenditures for patient personal needs allowance accounts.

3. For the purposes of this rule, as set forth in A.1., providers shall grant the state agency access during regular business hours to examine medical, health care and financial records related to health care billed to the programs. The SUR section shall notify the provider at least 24 hours before gaining access to such records. Upon the request of the provider, the SUR section shall present a copy of the recipient's written authorization to examine personal medical records unless the provider already has received written authorization from the recipient. A provider's refusal to grant the state agency access to examine records when authorized shall be grounds for sanction. Nothing in this section shall be construed as applying to the Utilization Control Unit of the SUR section of the state agency.

4. The state agency is authorized to photocopy or otherwise duplicate any medical or financial record which it is authorized to examine.

5. Providers shall retain all records for at least five (5) years.

6. In the event of a change of ownership of a facility or practice all records generated prior to the change shall be retained by the provider assuming responsibility for the health care of recipients. Nothing in this provision shall have the effect of making either party involved in a change of ownership liable for the actions of the other party.

7. In the event a provider withdraws or is terminated from the programs, all records developed during participation in the programs, and not subject to the provisions of item 6 of this section, shall be retained by the provider for a period of five (5) years and shall be available for review by the state agency.

8. A recipient's consent to the state agency's review of his or her medical or health care records shall be presumed competent if given in conjunction with an application for coverage under the programs. This presumption shall exist regardless of whether the application was signed by a recipient, a guardian, next of kin, friend, or other person.

D. Provider Surveillance and Utilization Review.

1. Identification of suspected fraud and abuse.

a. SUR shall be responsible for the detection and identification of suspected fraud, theft, abuse, presentment of false or duplicate claims, presentment of claims for services not medically necessary, or false statement or representation of material facts by providers who have billed the programs for health care rendered to a recipient.

b. For the purposes of this rule, SUR shall be authorized to utilize information from sources which shall include, but not be limited to:

(1) Computer reports generated by MMIS, using claim data to develop profiles on the provision and utilization of

health care reimbursed by the programs. The profiles compare data on a peer group basis, and identify providers and recipients who appear exceptional when compared to group norms.

(2) Units of local, state and federal government.

(3) Other third-party payers including health insurance carriers.

(4) Professional Standards Review Organizations.

(5) Citizens, including recipients.

(6) Providers, professional associations, and health care professionals.

c. In assessing questions of medical necessity, SUR shall utilize health care professionals either employed by or serving as consultants to the state agency.

2. Investigation of suspected fraud or abuse.

a. SUR shall be responsible for the investigation of suspected fraud and abuse identified pursuant to D.1. of this rule. An investigation shall be conducted for the purposes of determining one or more of the following:

(1) Whether the suspected aberrant activity of a provider is the result of a legitimate condition of practice.

(2) Whether suspected fraud and abuse exists and can be documented.

(3) Whether sufficient evidence can be developed to support administrative, civil or criminal action as to such fraud and abuse.

b. A SUR investigation may include, but is not limited to:

(1) Examination of records pursuant to C. of this rule.

(2) Interviews of providers, their associates and employees.

(3) Interviews of program recipients.

(4) Verification of the professional credentials of providers, their associates and employees.

(5) Examination of any equipment, stock, materials or other items used in or for the treatment of program recipients.

(6) Examination of prescriptions written for program recipients.

(7) Determination of whether the health care provided was medically necessary.

c. Following the completion of an investigation SUR shall take one or more of the following actions:

(1) Determine that no further action is warranted and so notify the provider.

(2) Impose administrative sanctions against a provider in accordance with D.3. of this rule.

(3) Seek monetary recovery from a provider as set forth in D.3. of this rule.

(4) Refer the case in writing to the Attorney General for possible civil or criminal legal action.

3. Monetary recovery and sanctions. The commissioner shall be authorized to seek monetary recovery or impose administrative sanctions to protect the public welfare and the interests of the program. Monetary recovery and sanctions implemented by the commissioner shall be based upon documentation of fraud and abuse as set forth in D.1. and D.2. of this rule.

a. Grounds for monetary recovery and sanctions.

(1) The commissioner may seek monetary recovery against providers for any of the following:

(a) Fraud, theft, or abuse in connection with health care services billed to the programs.

(b) Presentment of false or duplicate claims, or claims for services not medically necessary.

(c) False statement of material facts for the purpose of obtaining greater compensation than that to which the provider is legally entitled.

(2) The commissioner may impose administrative sanctions against providers for any of the following:

(a) Fraud, theft, or abuse in connection with health care services billed to the program.

(b) A pattern of presentment of false or duplicate claims or claims for services not medically necessary.

(c) A pattern of making false statement of material facts for the purpose of obtaining greater compensation than that to which the provider is legally entitled.

(d) Refusal to grant the state agency access to records pursuant to C.3. of this rule.

(3) The commissioner shall suspend or terminate any provider who has been suspended or terminated from participation in the Medicare program because of fraud or abuse in connection with the Title XVIII of the Social Security Act.

b. The commissioner shall make monetary recovery from providers of monies erroneously paid due to violations described in D.3.a.(1) of this rule by the following means:

(1) Permitting voluntary repayment by the provider of monies erroneously paid, either in lump sum payment or installment payments.

(2) Withholding of payments.

(3) Debiting from program payments, monies determined to have been erroneously paid.

(4) Using any legal process to collect such monies.

c. For the purpose of D.3.b. of this rule, the commissioner shall be authorized to make monetary recovery from providers of monies erroneously paid, based upon extrapolation from a random, unbiased sample of claims billed to the programs by a provider, for a specific procedure code. The sampling method shall adhere to generally accepted statistical procedures regarding sample size, sample selection, and extrapolation from the results of the sample.

d. The commissioner may impose any of the following sanctions for the conduct described in D.3.a.(2) of this rule:

(1) Referral to the appropriate state regulatory agency.

(2) Referral to the appropriate peer review mechanism.

(3) Transfer to a provider agreement of limited duration not to exceed 12 months.

(4) Transfer to a provider agreement which stipulates specific conditions of participation.

(5) Suspending or terminating participation.

e. Notice to providers.

(1) The state agency shall notify providers in writing of any recovery of money or sanction it intends to impose.

(2) The notice shall state:

(a) The factual basis for alleging discrepancies or violations;

(b) The dollar value to such discrepancies or violations;

(c) How such dollar value was computed;

(d) What actions the state agency intends to take;

(e) The provider's right to dispute the state agency's factual allegations and to provide evidence to support the provider's position; and

(f) The provider's right to appeal the state agency's proposed action pursuant to F. of this rule.

(3) The effective date of the proposed monetary recovery or sanction shall be at least 20 calendar days following receipt of certified mail notifying the provider of the proposed action. If the provider appeals pursuant to F. of this rule, the action shall not be implemented until the commissioner's order is issued following the hearing on appeal, provided that the suspending or withholding of payment shall be effective on the date the notice is received, if in the commissioner's opinion such action is necessary to protect the public welfare and interests of the program. However, the commissioner shall not order a prehearing suspension or withholding of payments to a nursing home or board and care home. Implementation of a proposed action following the hearing on appeal may be postponed if in the opinion of the commissioner the delayed action is necessary to protect the welfare or interests of program recipients.

f. The decision as to the sanction to be imposed against a provider, pursuant to subsection D.3.a.(2) of this rule, shall be at the discretion of the commissioner. The following factors shall be considered in determining the sanctions to be imposed:

(1) Nature and extent of offenses or violations;

(2) History of prior violations;

(3) Provider's willingness to obey program rules; and

(4) Actions taken or recommended by other state regulatory agencies.

g. Suspension or termination from participation shall preclude a provider from submitting any claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association for any health care provided under the programs, except for health care provided prior to the suspension or termination.

h. No clinic, group, corporation, or other association which is a provider of services shall submit any claim for payment for any health care provided by an individual provider within such organization who has been suspended or terminated from participation in the programs, except for health care provided prior to the suspension or termination. The state agency shall seek monetary recovery of such claims. Knowing submission of such claims shall be a ground for administrative sanction.

i. When a provider has been sanctioned in accordance with subsection D.3.c. of this rule, the state agency shall notify the appropriate professional society, board of registration or licensure, and federal or state agencies of the findings made, sanctions imposed, appeals made and the results of any subsequent appeal.

4. Nothing in this rule shall prevent the commissioner from simultaneously seeking monetary recovery and imposing sanction against a provider.

5. Nothing in this rule shall prohibit SUR from conducting random, routine audits of providers in order to monitor compliance with program requirements.

6. The commissioner is authorized to suspend or withhold payments to a provider prior to a hearing, if:

a. There is a substantial likelihood of prevailing in an action pursuant to D.3. of this rule.

b. There is a substantial likelihood that the provider's pattern of practice which prompted a SUR investigation, will continue in the future.

c. There is reasonable cause to doubt a provider's financial ability to refund any amounts determined to be due the program.

7. To the extent that federal law or regulation mandates sanctions against providers or recipients which conflict with provisions of this rule, such federal law or regulation shall prevail.

E. Recipient Surveillance and Utilization Review.

1. Identification of suspected fraud and abuse.

a. SUR shall be responsible for the detection and investigation of suspected fraud, theft or abuse by recipients of the programs.

b. For the purpose of this rule, SUR shall be authorized to utilize at least the sources of information identified in D.1.b. of this rule.

c. In assessing the question of medical necessity, SUR shall utilize health care professionals either employed by or serving as consultants to the state agency.

2. Investigation of suspected fraud and abuse.

a. SUR shall be responsible for the investigation of suspected fraud and abuse identified pursuant to E.1. of this rule. A SUR investigation shall be conducted for the purpose of determining:

(1) Whether suspected fraud, theft, or abuse exists and can be documented.

(2) Whether sufficient evidence can be developed to support restricting recipient participation in the programs in accordance with E.3. of this rule.

(3) Whether sufficient evidence exists to support the imposition of other sanctions in accordance with E.3. of this rule.

3. Sanctions.

a. Grounds for sanctions. SUR may impose administrative sanctions against program recipients for any of the following:

(1) Altering or duplicating the medical identification card in any manner.

(2) Permitting the use of his or her medical identification card by any unauthorized individual for the purpose of obtaining health care through the programs.

(3) Using a medical identification card that belongs to another person.

(4) Using the medical identification card to assist any unauthorized individual in obtaining health care for which the programs are billed.

(5) Duplicating or altering prescriptions.

(6) Knowingly misrepresenting material facts as to physical symptoms for the purpose of obtaining equipment, supplies, or drugs.

(7) Knowingly furnishing incorrect eligibility status or information to a provider.

(8) Knowingly furnishing false information to a provider in connection with health care previously rendered which the recipient has obtained and for which the programs have been billed.

(9) Knowingly obtaining health care in excess of established program limitations, or knowingly obtaining health care which is clearly not medically necessary.

(10) Knowingly obtaining duplicate services from a multiple number of providers for the same health care condition, excluding confirmation of diagnosis.

(11) Otherwise obtaining health care by false pretenses.

b. Sanctions against program recipients. SUR may impose any of the following sanctions for the conduct described in E.3.a. of this rule:

(1) Referring the recipient for appropriate health counseling in order to correct inappropriate or dangerous utilization of health care.

(2) Restricting the recipients participation in a program to receiving health care from a provider(s) whom the recipient has had the opportunity to select. The restriction shall be for a specified period of time and all changes in the designation of a provider(s) during the restriction period shall be approved by the state agency. Reimbursement for non-emergency health care shall be limited to the designated provider(s).

(3) Recovery from recipients, to the extent permitted by law all amounts incorrectly paid by the programs.

(4) Terminating participation for that period during which a potential recipient refuses to sign a consent for release of records.

(5) Referring the recipient to the Attorney General for possible criminal or civil legal action.

c. Notice to recipients.

(1) The state agency shall cause the recipients to be notified in writing of any sanction it intends to impose.

(2) The notice shall state:

(a) The factual basis for alleging discrepancies or violations;

(b) The dollar value to such discrepancies or violations;

(c) How such dollar amount was computed;

(d) What actions the state agency intends to take;

(e) The recipient's right to dispute the state agency's factual allegations; and

(f) The recipient's right to appeal the state agency's proposed action pursuant to F. of this rule.

d. Emergency health care provided a restricted recipient by any provider shall be eligible for reimbursement by the programs if the claim for reimbursement is accompanied by a full explanation of the emergency circumstances.

e. The programs shall pay for specialized health care provided a restricted recipient if a copy of the written referral by the recipient's chosen provider is sent to the SUR section.

f. The fact that a recipient is restricted shall be clearly indicated on the medical card.

F. Appeal.

1. A provider may appeal the state agency's proposed administrative sanction, proposed suspension or withholding of

payment, or demand for monetary recovery against a provider pursuant to the provisions of Minn. Stat. § 15.0418 pertaining to contested cases. An appeal shall be considered timely if written notice of appeal is received by the commissioner within 20 days of the date notice is received pursuant to D.3.e. of this rule.

2. A recipient may appeal any sanction proposed by the state agency pursuant to the provisions of Minn. Stat. § 256.045.

3. Nothing in this rule shall prevent a provider or recipient, upon receipt of a notice of intended sanction, from meeting with the commissioner to informally discuss the matter in dispute, so long as a Chapter 15 contested case has not been commenced.

4. Generally, the state agency shall have the burden of proving the facts in dispute by a preponderance of the evidence. However, when the state agency only seeks to make a monetary recovery, the burden of proof shall shift to the provider or recipient after the state agency has established a prima facie case.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *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 strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Natural Resources

Adopted Amendments to the Boat and Water Safety Rules

The rules proposed and published at *State Register*, Volume 5, Number 8, pp. 271-277, August 25, 1980 (5 S.R. 271) are now adopted with the following amendments:

Amendments as Adopted

NR 200 Licensing of watercraft.

(b) Display of license certificate. No person shall operate or use a watercraft, except a non-motorized canoe, kayak, sailboat, sailboard or rowing shell required to be licensed unless the license certificate for such watercraft is on board and available for inspection by authorized enforcement officers. Owners of non-motorized canoes, kayaks, sailboats, sailboards, or rowing shells shall produce the license certificate for such watercraft within a reasonable time upon request of authorized enforcement officers. The owner of rental watercraft may keep the license certificate available for inspection on the premises from which the watercraft is rented, provided that the owner's business is legibly printed on the rear half and on both sides of the watercraft in the same size and manner as required for the license number in NR 200, Section (c).

(c) Display of license number & validation decal on motorized watercraft. The license number, on all watercraft, except non-motorized canoes, kayaks, sailboats, sailboards and rowing shells shall be securely affixed on each side of the forward half of the watercraft for which it was issued in such a position as to provide clear and legible identification. The letters and numerals must be of a color that contrasts with the background and may be reflectorized decals or metal or may be painted. The letters and numerals shall read from left to right and shall not be less than 3 inches in height, of block type, of a stroke not less than ½ inch or more than ¾ inch in width, not including a border. The license number shall be maintained so that it is clearly visible and legible, and the letter groups must be separated from the numeral groups by a space of not less than 3 inches nor more than 4 inches. Adjacent letters and numerals within each group must be spaced not less than ½ inch nor more than ¾ inch apart. A state validation decal for the current license period must be affixed toward the stern of the boat and not more than 4 inches from the first or last letter of the license number on each side of the boat.

(e) Marking of non-motorized sailboats and sailboards. All non-motorized sailboats and sailboards shall display the decals furnished by the Department of Natural Resources for such watercraft. These decals shall be securely affixed on each side of the forward half of the watercraft for which it was issued, in such a position as to provide clear and legible identification. If it is

impossible to display such decals on the forward half of such watercraft so as to provide clear and legible identification both decals must then be affixed to the stern of such watercraft.

(g) Other insignia. No person shall operate any watercraft, except a non-motorized canoe, kayak, rowing shell, sailboard or sailboat, which has any number, letter, design or insignia displayed on either side thereof which is closer than 24 inches to any part of the watercraft license number of validation decal.

(j) Enforcement pennant. The pennant required under Minn. Stat. § 361.215 shall be triangular in shape and of the following dimensions: Four (4) inches in depth at the staff and one foot in length. The pennant shall be of a blue background and bear a three (3) inch replica of the Minnesota State Seal.

NR 201 Rental of watercraft.

(a) Condition and equipment of rented watercraft.

(8) The owner of a business which rents, leases, or hires out watercraft shall provide for each person on board the watercraft a lifesaving device required by law or these rules, as well as all other required safety equipment for each watercraft.

(b) Persons to whom watercraft may be rented. No watercraft shall be knowingly rented or offered for rent to any person who is under the influence of alcohol or a controlled substance.

NR 202 Navigation of watercraft on the waters of the state; safety equipment.

(a) General rules of the road.

(4) A non-motorized watercraft has right-of-way over a motor-powered watercraft except when it is the overtaking watercraft. Non-motorized watercraft should not insist on this right-of-way when approaching large commercial vessels. Motor-powered watercraft should always keep clear and pass astern of ~~such~~ non-motorized watercraft.

(5) All watercraft shall yield the right-of-way to enforcement or other authorized emergency watercraft displaying a red or blue flashing light.

(b) General mode of operation of watercraft.

(3) No person shall operate a watercraft within 150 feet of a diver's warning flag (described in Minn. Stat. § 361.085).

(4) The operator of any watercraft, when signaled to do so by a conservation officer, sheriff or sheriff's deputy shall bring the watercraft to a stop or maneuver it in a manner which will allow the officer to come alongside.

(c) Personal flotation (lifesaving) devices.

(1) Every person on board a watercraft shall wear or have readily accessible a U.S. Coast Guard approved Type I, II, III or IV personal flotation device.

(2) A Coast Guard approved Type V personal flotation device may be carried in lieu of the Type I, II, III or IV personal flotation device required in this regulation, if the Type V personal flotation device is approved for the activity in which the watercraft is being used.

(3) Persons being towed by a watercraft on water skis, or other devices shall be considered to be on board the towing watercraft, for the purpose of personal flotation device requirements. A U.S. Coast Guard approved personal flotation device must be either carried in the towing watercraft or worn by the person being towed.

(4) All personal flotation devices required by these rules shall be:

(aa) Approved by the United States Coast Guard.

(bb) Legibly marked with the approval number issued by the United States Coast Guard.

(cc) In serviceable condition.

(dd) Either readily accessible or worn.

(ee) Of the appropriate size for the intended wearer, if the device is designed to be worn.

(d) Sound producing devices.

(1) All motorboats 16 feet or more in overall length shall carry a power, hand or mouth-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one-half mile.

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(2) All motorboats 26 feet but less than 40 feet in overall length shall be equipped with a hand or power-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one mile.

(3) All motorboats 40 feet or more in length shall be equipped with a power-operated horn or whistle capable of producing a sound for at least two seconds which is audible for at least one mile.

(e) Fire extinguishers.

(1) All motorboats less than 26 feet in length with construction permitting the entrapment of explosive or flammable gases or vapors must have at least one B-I type hand portable U.S. Coast Guard approved fire extinguisher fully charged and in serviceable condition on board and readily accessible.

(2) All motorboats 26 feet to less than 40 feet in length must have at least two B-I U.S. Coast Guard approved hand portable fire extinguishers, or at least one B-II type U.S. Coast Guard approved hand portable fire extinguisher on board in serviceable condition, fully charged and readily accessible.

(3) All motorboats 40 feet to not more than 65 feet in length must have at least three B-I type U.S. Coast Guard approved fire extinguishers; or at least one B-I type plus one B-II type approved hand portable fire extinguisher on board. These fire extinguishers must be fully-charged, in serviceable condition and readily accessible.

(4) All motorboats over 65 feet in length must have at least three B-II type U.S. Coast Guard approved fire extinguishers on board. These fire extinguishers must be fully-charged, in serviceable condition and readily accessible.

(5) When a motorboat is equipped with a U.S. Coast Guard approved fixed fire extinguishing system installed in the engine compartment, one less B-I extinguisher is required. The fixed system must be in serviceable condition and fully-charged.

(f) Ventilation equipment.

(g) Lighting equipment.

(7) All watercraft over 65 feet in length must display the lights required by NR 202 (g)(4).

(8) All non-motorized watercraft when under way or anchored, between sunset and sunrise, shall carry aboard but not necessarily fixed to any part of the watercraft a minimum of one lantern or flashlight capable of showing a white light visible all around the horizon at a distance of two miles or more. Such light or lantern shall be displayed in sufficient time to avoid collision with another watercraft.

(9) When a watercraft is moored to a buoy authorized by a permit issued under NR 207 it shall not be required to display the 32-point anchor light required in NR 202 (g)(4) through (8).

NR 203 Capacity plate information requirements.

(a) For watercraft constructed from January 1, 1972 through July 31, 1980:

(1) Information required. The manufacturer's capacity plate required by law shall contain the following information:

(aa) Safe maximum horsepower;

(bb) Maximum number of persons at 150 pounds per person;

(cc) Properly located maximum weight in pounds of persons, motor and gear.

(2) Formula for determining maximum weight. The formula for determining the maximum weight for watercraft manufactured for sale in Minnesota, 19 feet and under, except canoes, kayaks, and sailboats, shall be the recommended practices for watercraft load capacity Project H-5 (adopted) or Project H-5a (proposed) contained in the American Boat and Yacht Council Incorporated publication "Safety Standards for Small Craft 1971-72."

(3) Formula for determining maximum horsepower. The formula for determining the maximum horsepower for watercraft manufactured for sale in Minnesota, 19 feet and under, shall be the "recommended Practices and Standards Covering Safe Powering of Small Craft" Project P-11 (proposed) contained in the American Boat and Yacht Council, Incorporated publication "Safety Standards for Small Craft 1971-72."

(b) For watercraft constructed on or after August 1, 1980:

(1) Information required. The manufacturer's capacity plate required by law shall contain the following information:

(aa) For outboard boats

Maximum persons capacity in pounds or persons

Maximum weight capacity (persons, motor and gear) in pounds

Maximum motor horsepower or maximum horsepower with and without remote steering

(bb) For inboard, inboard/outdrive and boats without mechanical propulsion

Maximum persons capacity in pounds or persons

Maximum weight capacity (persons and gear) in pounds

(2) The method used for determining capacity information shall comply with the U.S. Coast Guard Safe Loading and Powering Standards as set forth in 33 CFR Part 183.

(c) The terms "safe power capacity" and "safe carrying capacity" used in Minn. Stat. § 361.05 (4) shall be that capacity displayed on the manufacturer's capacity plate. If no such plate exists, the method referred to in either NR 203 (a)(2) & (3) or NR 203 (b)(2) shall be used to determine the capacity.

NR 204 Waterway markers.

(b) Channel marker buoys.

(1) Every channel marker buoy shall have the external form of a cylinder having a circular transverse cross-section not less than 9 inches in diameter. All such markers must extend at least 36 inches above the water.

(3) To indicate a watercraft should pass to south or west, where there is no well-defined channel, a buoy shall have the top surface and upper 5 inches colored red and the remainder colored white. If the buoy is reflectorized, it shall be done with a white strip, no less than 4 inches in width, that completely encircles the buoy and it shall be placed directly under the red top. A white quick-flashing light shall be used if the buoy is lighted.

(c) Other navigational buoys. A buoy indicating that a watercraft should not pass between it and the nearest shore shall have a circular transverse cross section measuring not less than 9 inches in diameter and shall extend at least 36 inches above the surface of the water. Each such buoy shall be marked with alternating vertical red and white stripes. White reflectorization may be used on a minimum of the upper four inches of the white vertical stripe. Red reflectorization may be used on a minimum of the upper four inches of the red vertical stripes. A white quick-flashing light shall be used if the buoy is lighted.

(d) Mooring buoys. Every buoy placed in the waters of the state for use in anchoring or mooring watercraft may be of any practicable size or shape, but must have at least 8 inches extending above the waterline. No anchoring buoy may have a diameter of over 24 inches if circular or a width of more than 24 inches if some other shape. No mooring or anchor buoy may be placed in any public water if it obstructs access to any public or private property or creates a navigational hazard. No mooring or anchor buoy may be placed in or upon the water of the state except by public authority or under a permit issued by the sheriff of the county. Every such buoy shall be colored white and shall be encircled by a visible blue band at least one inch wide. Mooring buoys must have a minimum total of 16 square inches of white reflectorization, part of which must be visible from any direction. Mooring buoys, if lighted, shall show a flashing white light.

(e) Regulatory and information signs and buoys.

(1) No regulatory or informational signs or buoys may be placed in or upon the waters of this state, except by public authority or under a permit issued by the sheriff of the county. All such signs and buoys shall be colored white except as hereinafter provided.

When a buoy is used as a regulatory or informational marker (except in private swimming areas), it shall have two orange-colored horizontal bands completely around the buoy's circumference, one such band at the top, and the other just above the waterline. The appropriate geometric shape(s) indicating the buoy's purpose and any lettering or numerals shall be placed between these horizontal bands. The buoy itself shall have a circular transverse cross section of at least 9 inches and shall extend at least 36 inches above the surface of the water.

(2) Every sign or buoy giving information for the convenience of watercraft operators shall bear a two-inch wide orange-colored band forming an upright rectangle measuring at least 14 inches in height outside dimensions.

(3) Signs or buoys indicating danger to watercraft shall bear an orange-colored band of two-inch width forming an upright diamond at least 14 inches in outside height, and such signs shall bear a printed statement of the source of danger.

(4) Signs or buoys indicating controlled water areas in which boating, fishing, waterskiing, skin diving, or other water activities are restricted, limited or otherwise subjected to special rules or regulations shall bear a two-inch wide band forming a circle at least 12 inches in outside diameter. The limitation, restriction, prohibition or regulation effective within a controlled area shall be printed inside of the orange-colored circle when possible.

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Signs or buoys designating State Game Refuges, Wildlife Management Areas or spawning areas shall not be subject to the provisions of this order.

(5) Signs or buoys directing all watercraft to keep out of a specific water area shall bear a two-inch orange-colored band forming an upright diamond at least 14 inches in outside height, dissected vertically and horizontally by an orange-colored strip two inches wide.

Signs or buoys designating State Game Refuges, Wildlife Management Areas or spawning areas shall not be subject to the provisions of this order.

(6) Signs indicated winter ice dangers to persons, motor vehicles, snowmobiles, all-terrain vehicles, ice boats, or any other conveyance used to transport persons over the ice on public waters of the state shall bear a two-inch wide orange-colored band forming an upright diamond at least 14 inches in outside height and such signs shall bear a printed statement of the source of danger.

Where used, except for the marking of aeration systems operating under a permit from the Commissioner of Natural Resources, these signs shall completely line the perimeter of the ice hazard at intervals not exceeding 75 feet and shall be at least 48 inches above the ice. When a permit is issued for an aeration system, the commissioner shall specify the marking requirements for each system as a part of the permit.

(7) No person shall operate any motor vehicle, snowmobile, all-terrain vehicle, ice boat, or any other conveyance used to transport persons over the ice on public waters of the state within 150 feet of a diver's warning flag described in Minn. Stat. § 361.085.

(8) Written material on any waterway marker sign or buoy shall be printed with black letters at least 2 inches in height, on a white background.

NR 205 Marking of legally designated swimming areas.

(b) Other areas.

(1) The entire perimeter of the water area shall be marked with white marking buoys no less than 9 inches in diameter and extending no less than 36 inches above the surface of the water. Each marking buoy must contain two horizontal bands of orange, one such band at the top, and the other just above the waterline. Each marking buoy must also contain two diamond shapes with crosses which means "boats keep out." These diamond shapes must have a vertical diagonal of not less than 14 inches. The borders of the diamond and cross outline shall not be less than 2 inches in width. The color of these borders shall be orange. The diamonds shall be placed midway between the horizontal bands. The words "swim area" should also appear on each marker in no less than two-inch letters.

NR 206 Water skiers.

Length of ski tow ropes. No person being towed on water skis, aquaplane, saucer or other device shall be towed with a rope, wire, cable or other towing device extending more than 150 feet from the towing watercraft without obtaining a permit from the local sheriff.

NR 207 Placement of temporary structures and buoys in the waters of the state.

(a) Generally. No person shall leave any temporary structure not extending from shore, or any buoy or sign in the waters of this state between the hours of sunset and sunrise without first obtaining a permit in writing therefor from the sheriff of the county. Mooring buoys must be placed as provided in NR 204(d). Swimming area markers must be placed as provided in NR 205.

NR 210 Reimbursement of county sheriffs for search and rescue operations.

(b) Reimbursement by state. A sheriff claiming reimbursement shall submit in duplicate an itemized invoice, verified by the county auditor, together with a statement showing that the operation qualified for reimbursement to the Department of Natural Resources. All claims will be subject to audit by the state.

NR 211 Penalties. Any person who shall violate any of the provisions of these regulations shall be guilty of a misdemeanor ~~and be punished by a fine of not more than $300, or by imprisonment for not more than 90 days or both~~. [Note: This section was not in the proposed rules, but appears here because of an oversight of a 1977 statute changing the penalty for a misdemeanor, and a recommendation by the hearing examiner. It does not constitute a substantial change in these rules.]

Department of Public Welfare
Social Services Bureau

Adopted Rule Governing Subsidized Adoption

The proposed rule 12 MCAR § 2.200 published at *State Register*, Volume 5, Number 10, p. 384-390, September 8, 1980, (5 S.R. 384) is adopted with the following amendments:

Amendments as Adopted

12 MCAR § 2.200 A.2.j. Placing agency: The Minnesota licensed child placing agency which has guardianship of a child from a Minnesota court or the local social service agency which has financial responsibility for a ward of the Commissioner of Public Welfare. The placing agency retains adoptive planning responsibility for the child even though another agency is supervising.

12 MCAR § 2.200 C.4.e.(1)(a)(ii) Notify the commissioner in writing within thirty (30) days in the event of change in status and its effect on the expenses covered by the subsidy.

12 MCAR § 2.200 C.4.e.(1)(a)(iii) Notify the commissioner in writing within thirty (30) days of any change which may affect the duration or amount of the subsidy needed.

12 MCAR § 2.200 C.4.e.(1)(a)(iv) Notify the commissioner in writing within thirty (30) days of a change in address to ensure proper mailing of payments.

12 MCAR § 2.200 C.4.e.(1)(a)(v) Participate in and use health insurance and financial programs available for the child.

12 MCAR § 2.200 C.4.e.(1)(a)(vi) Notify the commissioner in writing at least thirty (30) days before a planned medical or special expense is incurred to ensure prompt payment after expense statements are submitted to the commissioner.

12 MCAR § 2.200 C.4.e.(1)(a)(vii) Notify the commissioner in writing soon after an emergency of the anticipated cost so that the commissioner may begin to budget for that expense.

12 MCAR § 2.200 C.4.e.(1)(b)(ii) Assist the adoptive parent(s), subsequent guardian or conservator in the review or modification of the agreement.

12 MCAR § 2.200 C.4.e.(1)(c)(iv) Payments may be terminated at the written request of the adoptive parents, subsequent guardian or conservator.

12 MCAR § 2.200 C.4.e.(6) The adoptive parents, subsequent guardian or conservator may request modification or termination of agreement at any time by a written contact with the placing agency or the commissioner.

12 MCAR § 2.200 C.4.e.(7) The adoptive parents, subsequent guardian or conservator have the right to appeal to the commissioner pursuant to Minn. Stat. § 256.045, when the commissioner denies, discontinues, or modifies the agreement. The appeal shall be initiated by a written request to the commissioner within thirty (30) days after receiving written notice of the action or decision from the Commissioner or within ninety (90) days if the parent(s) show good cause why the request was not submitted within the thirty (30) day time limit.

12 MCAR § 2.200 C.4.g.(4) The placing agency shall submit purchase of service agreements to the commissioner for approval and for review of anticipated expenses.

Department of Public Welfare
Social Services Bureau

Adopted Rule Governing the Administration of Public Social Services

The rule proposed and published at *State Register*, Volume 4, Number 45, pp. 1756-1766, May 12, 1980 (4 S.R. 1756) is adopted with the following amendments:

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.

Amendments as Adopted:

12 MCAR § 2.160 A.6.p. Mandatory services means services required by agency rule, state law or federal regulations to be made available by the county board of commissioners or human services board.

12 MCAR § 2.160 C.2.h. Protective services for children—including ~~MR~~ mental retardation guardianship and conservatorship services.

12 MCAR § 2.160 E.3. Before an applicant's signature is requested on any forms, each applicant shall be given a complete and comprehensive written statement of his rights and responsibilities on the form prescribed by the state agency. For those individuals who cannot make use of or understand the written statement for any reason, the agency representative shall read out loud or interpret (if foreign language interpreting capability is available) and explain the written statement to the individual or to a responsible person acting on behalf of the individual. The agency representative also shall respond to any questions the applicant or his representative may have. For deaf and hard of hearing individuals who rely on visual language reception as their primary mode of communication, the local agency shall have access to interpreting services (sign language) so that the applicant may receive the same quality of direct services as provided "hearing" clients.

12 MCAR § 2.160 E.7.b. The local social services agency shall give the social services recipient timely, advance notice of any proposed agency action which may adversely affect the recipient. This notice shall be in writing and shall inform the recipient of the right to appeal the action, the right to be represented by an attorney or other interested party at the hearing, and the conditions under which social services may be continued. Furthermore, the letter shall cite the specific rule upon which the reduction or termination of services is based. The local social services agency shall mail the notice to the recipient at least ten days before the action becomes effective. However, when the local social services agency learns that social services should be discontinued, reduced or terminated because of probable fraud of the recipient, and, where possible, such facts have been verified through collateral sources, notice of agency action shall be considered timely if mailed at least five days before the action becomes effective.

12 MCAR § 2.160 H.7.c.(8) A minor child regardless of living arrangement who receives family planning services as specified in H. ~~7.~~ 6. of this rule.

12 MCAR § 2.160 H.10.c.(5)(6) Each local social services agency within the area served by a community mental health board authorized by ~~M.S.~~ Minn. Stat. §§ 245.61-245.69 may contract directly with the board; however, if a local social services agency outside of the geographic area served by the board wishes to purchase services, the host county policy applies.

Department of Public Welfare
Department of Health
Department of Public Safety
Executive Divisions

Adopted Rules of the Minnesota Merit System Governing the Compensation Plan; Salary Adjustments and Increases; and Leaves of Absence

The rules proposed and published at *State Register*, Volume 5, Number 13, pp. 484-538, September 29, 1980 (5 S.R. 484) are adopted as proposed.

Department of Revenue
Petroleum Tax Division

Adopted Amendments and Additions to Rules Relating to Taxation and Inspection of Petroleum Products

The rules proposed and published at *State Register*, Volume 5, Number 12, pp. 460-467, September 22, 1980 (5 S.R. 460) are now adopted with the following amendments:

Amendments as Adopted

13 MCAR § 1.4007 **Other taxable products.** Material used as stove or lamp gasoline, and naphtha, toluol, benzol or any like product used in blending to produce gasoline, shall be reported and the Minnesota gasoline tax paid thereon.

13 MCAR § 1.4012 ~~Gas Tax 12~~ Refunds and credits.

B.7. Filing requirements. A claim for credit or refund of the Minnesota tax on gasoline or special fuel shall be filed only once per calendar or fiscal year. The due date for filing such a claim shall be the same as the due date specified in Minn. Stat. § 290.42 for filing an income or excise tax return. For purposes of determining the due date for filing a claim, cities, counties, school districts and other organizations classified as exempt from income and excise taxes under Minn. Stat. § 290.05, subd. 1 ~~(m)~~ shall be treated as if they were corporations.

13 MCAR § 1.4013 Road tax.

D. Reports of motor carriers and payment of tax. All motor carriers are required to file a road tax report each calender quarter. The motor carrier's report shall be for a complete three-month period and is due to be filed by the last day of April, July, October and January. The report shall be on a form prescribed and furnished by the Commissioner of Revenue. All reports must be accompanied by a remittance for the full amount of the tax shown to be due on the report. If no travel takes place in Minnesota during any quarter, a report must still be filed, with the word "None" written in the appropriate column on line 4 of the return. The person who is responsible for the payment of the motor fuel used in the vehicle is liable for the filing of the report whether the vehicle is owned or leased by him.

SUPREME COURT

Decisions Filed Friday, December 5, 1980

Compiled by John McCarthy, Clerk

51257/Sp. Benedictine Sisters Benevolent Association, d.b.a. St. Mary's Hospital, Duluth, Minnesota, petitioner, vs. George R. Pettersen, M.D., State of Minnesota, Commissioner of Health, Minnesota Department of Health, Appellant. Hennepin County.

The requirement of Minn. Stat. § 145.838, subd. 1 (Supp. 1979), prescribing the time in which the Commissioner of Health shall issue a decision on an application for a certificate of need is directory only, and his decision is valid whether or not issued within that period.

Reversed. Otis, J.

51345/Sp. State of Minnesota vs. Ronald Lee Palm, Appellant. Cottonwood County.

Evidence on the issue of identification was not, as defendant contends, legally insufficient.

Trial court did not err in denying motion to suppress, which was based on claim that police should have given defendant a *Miranda* warning before they questioned him at his house.

Affirmed. Otis, J. Took no part, Sheran, C. J.

50943/Sp. The Mediterranean, Inc., vs. The City of Bloomington, et al, Appellants. Hennepin County.

Claims for refund of liquor license fees are governed by the city code's specific liquor license refund provision rather than the provision governing refunds for license fees generally. By failing to qualify under the specific refund provision, respondent is not entitled to recover previously-paid liquor license fees.

Reversed. Yetka, J.

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OFFICIAL NOTICES

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

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

Energy Agency
Data and Analysis Division

Notice of Intent to Solicit Outside Opinion Regarding Rules on Annual Electric Utility Information Reported Annually

Notice is hereby given that the Minnesota Energy Agency (hereinafter the "agency") is extending the deadline from November 1, 1980 to January 15, 1981 for the submission of statements and comments from sources outside the agency regarding the amending of rules governing the contents of the annual report and forecast submitted by electric utilities.

The original Notice to Solicit Outside Opinion was published in the September 22, 1980 issue of the *State Register* at 5 S.R. 471.

December 8, 1980

Dan Quillin
Energy Specialist Intermediate

Department of Commerce
Insurance Division

Petition by the Workers' Compensation Insurers Rating Association of Minnesota for Changes in the Basic Manual for Workers' Compensation and Employers' Liability Insurance

Notice of and Order for Hearing

On October 22, 1980, the Workers' Compensation Insurers Rating Association of Minnesota (hereinafter "WCIRA") filed a Petition to amend the Basic Manual for Workers' Compensation and Employers' Liability Insurance (hereinafter "Basic Manual"). The Basic Manual contains rules governing the issuing, underwriting, classification and auditing of workers' compensation insurance risks and policies within the state of Minnesota. The proposed amendments to the Basic Manual, as alleged in the petition of the WCIRA, would consist primarily of a rewriting of the existing form of the Basic Manual, a reorganization of the existing Basic Manual, a restatement of certain rules of practice, an implementation of certain changes in rules, an elimination of all references to gender, and an inclusion of references to endorsements. The Petition for Hearing sets forth sufficient facts and information indicating the need for amendment to the Basic Manual.

It is hereby ordered that pursuant to Minn. Stat. §§ 79.076, subd. 2(2), 79.071 and 79.072, a hearing shall be held to consider the facts and issues raised by the Petition for Hearing of WCIRA. The hearing shall be conducted before Hearing Examiner Jon Lunde, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-6910, a Hearing Examiner duly appointed by the Chief Hearing Examiner of the State of Minnesota.

The hearing in this matter will be held for the purpose of providing the Petitioner WCIRA with an opportunity to present evidence in support of the amendments to the Basic Manual requested in its Petition. The hearing will be conducted as a contested case hearing according to the procedures set forth in Minn. Stat. §§ 15.0411-15.052, 79.076, subd. 2(2), 79.071, 79.072 and pursuant to the Rules of Contested Case Procedures adopted by the Office of Administrative Hearings, 9 MCAR §§ 2.201-2.299.

Throughout the proceedings in this matter, interested parties may be represented by legal counsel or by a person or representative of their choice, if not otherwise prohibited as the unauthorized practice of law. Questions concerning the hearing should be directed to the hearing examiner. Questions concerning this order, concerning discovery or concerning an informal disposition of this matter may be directed to the hearing examiner or to Alberto Quintella, 1100 Bremer Tower, 7th and Minnesota Street, St. Paul, Minnesota 55101, telephone (612) 296-9412.

Notice is hereby given that a prehearing conference will be held at 1:30 p.m. on the 19th day of January, 1981, at 500 Metro Square Building, 7th and Robert Street, St. Paul, Minnesota, before the Hearing Examiner. This prehearing conference will be held for the purpose of establishing a hearing date for this matter, and to consider any pretrial motions properly raised before the

Hearing Examiner regarding discovery, witnesses, or intervention of parties pursuant to the Rules of the Office of Administrative Hearings (9 MCAR § 2.213) which rules govern prehearing procedures.

Any person or organization who intends to appear at the hearing must file a Notice of Appearance with the hearing examiner within 20 days of the publication or service of this Notice of and Order for Hearing. If no person or organization contests the proposals or the petition, they may be deemed true. In the event the proposals are taken as true or the issues are deemed proven, it is possible that the proposed amendments to the Basic Manual requested by the WCIRA will be granted.

Copies of the proposed amendments to the Basic Manual may be obtained from the Workers' Compensation Insurers Rating Association of Minnesota, 510 Marquette Avenue, Minneapolis, Minnesota 55402, telephone (612) 338-4500. In addition, copies may be inspected during regular business hours at the Minnesota Insurance Division, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101, telephone (612) 296-2488.

November 26, 1980

Michael D. Markman
Commissioner of Insurance

Department of Economic Security Unemployment Insurance Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules for the Unemployment Insurance Program

Notice is hereby given that the Department of Economic Security is drafting amendments to existing rules and new rules pertaining to the administration of the Unemployment Insurance Program. The rules are authorized by Minn. Stat. § 268.12, subd. 3 and other provisions in §§ 268.03 to 268.24.

It is the intent of these rules to provide comprehensive procedures and policies governing the administration of the Unemployment Insurance Program including but not limited to employer liability, employer accounts, employer contributions, benefit payments, disqualification for benefits, eligibility for benefits, benefits under reciprocal benefit agreements, extended benefits, appellate procedures, overpayment procedures and other provisions.

The department invites all interested persons or groups to provide information, comments, advice or opinions to:

James Connolly
Unemployment Insurance Division
390 North Robert Street
St. Paul, MN 55101
(612) 296-3568

All statements of information or comment must be received by January 19, 1981. Any written material received by the Department will become part of the public hearing record.

State Board of Investment

Notice of Investment Advisory Council Meeting

The Investment Advisory Council will meet Tuesday, December 16, at 7:30 a.m. at the St. Paul Companies, 385 Washington Avenue, Saint Paul.

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155; (612) 296-7876. **Application deadline is January 6, 1981.**

COUNCIL FOR THE HANDICAPPED has one vacancy open immediately for a public member. The council advises the governor, legislature, service-providing agencies and the public on the needs and potentials of disabled people. Members are appointed by the Governor, and receive $35 per diem. For specific information, contact Council for the Handicapped, Suite 208 Metro Square Bldg., St. Paul 55101; (612) 296-6785.

CRIME CONTROL PLANNING BOARD has one vacancy open immediately. The board provides comprehensive planning for improvement of crime control and administers the Omnibus Crime Control and Safe Streets Act and the Juvenile Justice and Delinquency Prevention Act. Members are appointed by the Governor and confirmed by the Senate, and receive $35 per diem plus expenses. For specific information, contact Crime Control Planning Board, 444 Lafayette Rd., St. Paul 55101; (612) 296-3133.

MERIT SYSTEM COUNCIL has one vacancy open immediately. The council hears personnel appeals, sets policy for administration of examinations, and reviews classification and compensation plans. Members are appointed by the Governor, and receive $50 per meeting. No member may have held political office, been a member of a political organization, an employee of a state agency, or a member of a county welfare board for 1 year preceding appointment. For specific information, contact Merit System Council, 4th Floor, Centennial Bldg., St. Paul 55155; (612) 296-3996.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Economic Development Development Resources Division

Notice of Request for Proposals for a Feasibility Study of Establishing A Direct Reduction Demonstration Plant

Proposals are being accepted for a feasibility study to establish a semi-commercial, direct reduction demonstration plant in Minnesota.

The study will examine the technical feasibility and institutional constraints of the development of such a plant. A significant portion of the study will be devoted to a financial and economic analysis of the proposed development. The findings will be reported to the Minnesota Legislature on or before March 15, 1981.

Proposals must be submitted no later than 4:00 p.m., January 5, 1981. Copies of the Request for Proposal is available by calling Victoria Kostohyrz (612) 297-2242 or writing Department of Economic Development, 480 Cedar Street, St. Paul, Minnesota 55101.

Housing Finance Agency

Notice of Availability of Contract for Auditing Services

The Minnesota Housing Finance Agency intends to engage the services of a certified public accounting firm to audit its Section 8 Federal Housing Assistance Payments Program for the two-year period ending December 31, 1980. Proposals must be received in writing by the agency no later than 4:30 p.m., Friday, January 16, 1981. For detailed information, please contact:

Mr. Alan L. Hans, Director of Finance
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
Saint Paul, Minnesota 55101
(612) 296-9813

Metropolitan Transit Commission in Cooperation with the Department of Transportation, Office of State Aid

Notice of Invitation to Engineering/Architecture Firms for Submittal of Qualification and Requests for Consideration in An Anticipated Contract for Preliminary Engineering, Project Development and Design Services for A Transportation Center (Phase I)

The Metropolitan Transit Commission (MTC) in cooperation with the office of State Aid, Minnesota Department of Transportation will require services of a qualified consultant to perform feasibility and preliminary engineering services on a Transportation Center in the southern area of Hennepin County.

The purpose of the Transportation Center is to provide a focal point for present and future transit service and a coordinated transfer point for transit patrons in the South Hennepin area.

The work will consist of conducting project development studies in accordance with Metropolitan Transit Commission and Federal Highway Administration policies and procedures. Services may include data collection and analysis, location study reports, design study reports, and any auxiliary reports as may be necessary. The work period for this initial phase is expected to be not more than six months.

Following review of each firm's qualifications, the MTC will establish a list of firms from whom technical proposals will be separately solicited. It is anticipated that a contract for Phase I will be awarded about March 1, 1981, and that further phases through construction will be advertised at a later date.

Candidate firms must have expertise in architecture, engineering, transportation planning and design, including cost estimating. Interested firms should also have the capability to manage all facets of a construction project.

The cost for these services is limited to $28,500.

Firms desiring consideration shall express their interest and submit their current Federal Forms 254 and 255 to the Metropolitan Transit Commission by January 12, 1981.

This is not a request for proposals. Please direct questions and expressions of interest together with your firm's qualifications and experience to:

David R. Jessup, P.E.
Manager of Civil Engineering
Metropolitan Transit Commission
801 American Center Building
St. Paul, MN 55101
Phone: (612) 221-0939

Office of the State Public Defender

Notice of Availability of Contract for Legal Services

The Office of the State Public Defender requires the services of experienced attorneys to perform legal services to indigents.

The legal services will include the following:

1. Prepare post-conviction proceedings.
2. Prepare and attend parole revocation hearings.
3. Prepare appellant briefs and do legal research.
4. Prepare and lecture at training schools.

The estimated range for these services is $750-$1,050 per month. Attorneys in the State of Minnesota are to be given first consideration. Experience required.

Attorneys desiring consideration should submit a resume of their work immediately. The decision will be made in the month of December 1980. Send your response to:

C. Paul Jones
State Public Defender
95 Law Building, University of Minnesota
Minneapolis, Minnesota 55455
(612) 373-5725

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

506 Rice Street
St. Paul, Minnesota 55103
(612) 296-8239

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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:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.