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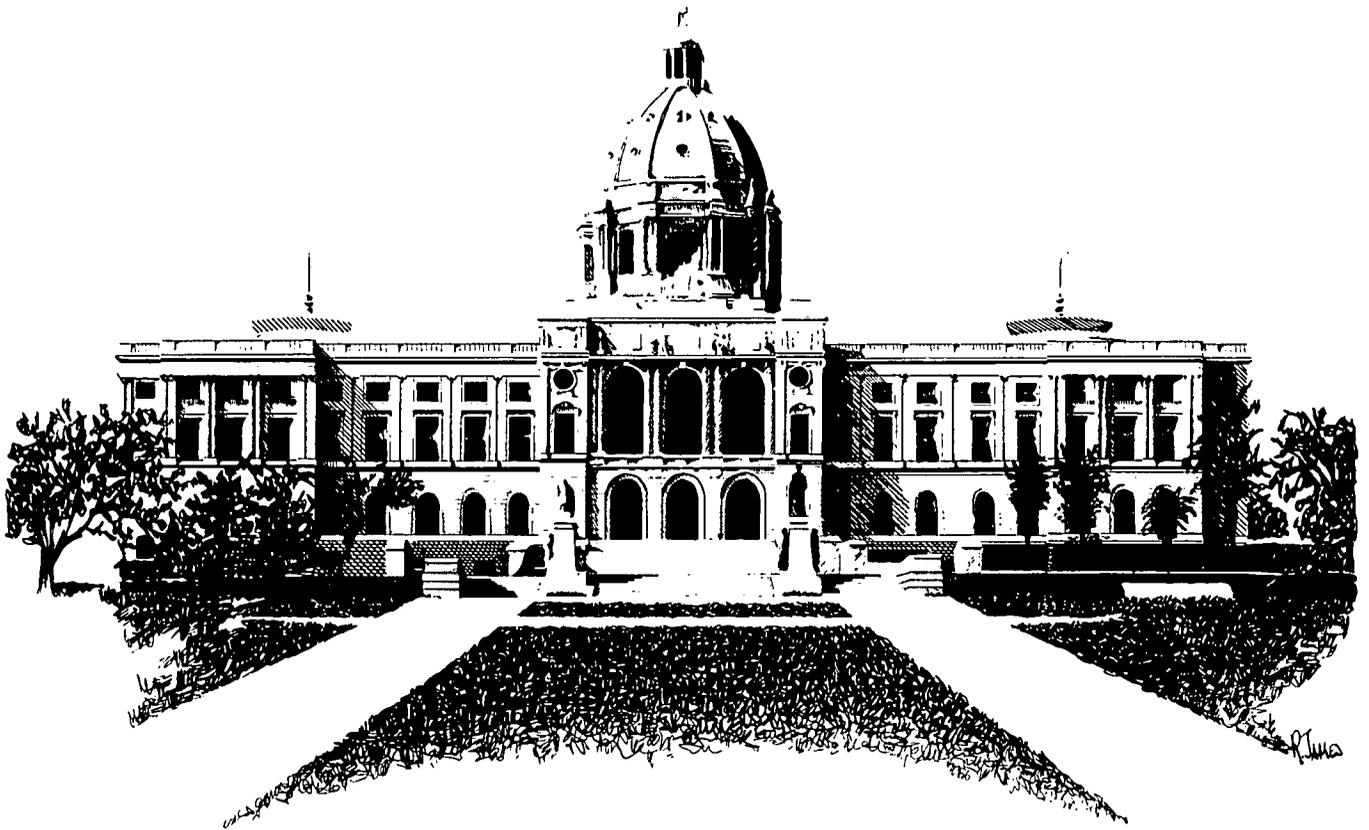
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STATE OF MINNESOTA



VOLUME 6, NUMBER 12

September 21, 1981

Pages 473-500



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 6			
13	Monday Sept 14	Monday Sept 21	Monday Sept 28
14	Monday Sept 21	Monday Sept 28	Monday Oct 5
15	Monday Sept 28	Monday Oct 5	Monday Oct 12
16	Monday Oct 5	Monday Oct 12	Monday Oct 19

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

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

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

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

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

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION**. 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 listings of rule action in the **MCAR AMENDMENTS AND ADDITIONS** list on the following schedule:

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

Department of Public Welfare Mental Health Bureau

Proposed Temporary Rule Relating to Grants for Services to Adult Mentally Ill Persons in Residential Facilities

Request for Public Comment

The State Department of Public Welfare proposes to adopt the above entitled temporary rule, as directed by Laws of 1981, ch. 360, § 14.

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

PROPOSED RULES

Persons interested in this rule have until October 12, 1981 to submit comments. The proposed temporary rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language. Comments should be sent to:

John Zakelj
Mental Health Bureau, DPW
Centennial Office Building
St. Paul, MN 55155
612/296-4426

Upon adoption of the temporary rule, the proposed rule, this notice, all written comments received, and the adopted temporary rule will be delivered to the Attorney General and to the Revisor of Statutes for review as to form and legality, including the issue of substantial change. The adopted temporary rule will not become effective without the Attorney General's approval and the Revisor of Statute's certification of the rule's form. Persons who wish to be advised of the submission of this material, or who wish to receive a copy of the adopted temporary rule, should submit a written request to John Zakelj.

As required by the Administrative Procedures Act, this temporary rule will be effective for not more than 180 days. The department will initiate the process for a permanent rule as soon as possible.

The proposed temporary rule will govern grant applications, approval of applications, allocation of grants, and maintenance of service and financial records. The grants will be made to county boards to help residential facilities meet licensing standards. This new grant program was authorized by the 1981 Legislature because most residential facilities for adult mentally ill persons do not have sufficient funding to provide services which are required under the licensing rule, 12 MCAR § 2.036.

Proposed 12 MCAR § 2.001 (Temporary) is the same rule which had been referred to as proposed temporary rule 12 MCAR § 2.012 in the Notice of Intent to Solicit Outside Opinion, published in the *State Register*, 6 S.R. 119, dated July 27, 1981. The number 12 MCAR § 2.012, or DPW Rule 12, will be the number used for this rule when it is proposed for promulgation as a permanent rule early next year.

The estimated cost to the state for the implementation of this rule and a similar permanent rule for the fiscal year ending June 30, 1981 is \$1,062,624, and, for the fiscal year ending June 30, 1982, \$3,821,000. These are the amounts appropriated for this purpose by Laws of 1981, ch. 360, § 2, subd. 5.

Since Laws of 1981, ch. 360, § 14 requires a local match of 25%, the estimated cost to the counties for the fiscal year ending June 30, 1982 is \$354,208; and, for the fiscal year ending June 30, 1983, \$1,273,667. This is a permissive statute; therefore, the obligations in this rule apply only if a county elects to apply for a grant under this rule.

Copies of this notice and the proposed temporary rule may be obtained by contacting John Zakelj (612/296-4426).

Arthur E. Noot
Commissioner of Public Welfare

FISCAL STATEMENT — Temporary Rule 1

Methodology used to arrive at dollar projections

The purpose of grants under Temporary Rule 1 will be to fund the costs required to meet licensing under Rule 36.

There are currently 301 beds in community residential facilities which would come under Rule 36 Category I (intensive treatment/rehabilitation services) and 1,996 beds which would come under Rule 36 Category II (semi-independent living). It is estimated that projected reduction in hospitalization and provision of residential services to mentally ill persons who are now in the community but not receiving the residential care they need will require 1,100 Category I beds and 3,800 Category II beds by 1985.

Since the department has decided not to require licensure of facilities in the nursing care category under Rule 36, this budget does not include approximately 14,500 mentally ill persons residing in nursing care facilities; it also excludes certain other categories of MI residential care, e.g. psychiatric hospitals, which would not come under Rule 36.

MI residential care in State Hospitals will be covered by Rule 36, but not by temporary Rule 1 because the state hospital budget is included elsewhere in the department's budget.

Category I

Projected program need over four years is 1,100 beds. There presently exists 301 beds. For the purpose of this cost projection, upgrading the existing 301 beds will cost the same as establishing new beds.

PROPOSED RULES

Since the following figures are based on phasing in these beds over a 4 year period, bed days will be calculated by halving the total bed days being funded for the initial phase-in year.

1,100 beds are needed over 4 years, $1,100 \div 4$ or 275 are the number of beds to be phased in each year. In the first year of the biennium, the per diem rate applied is \$8.21. In the second year of the biennium, the per diem rate applied is \$9.44. Below are the calculations:

1st Year 275 beds \times 365 days = 100,375 bed days
 $100,375 \times \frac{1}{2}$ (phase-in calculation) = 50,188 bed days
 $50,188 \times \$8.21$ (per diem) = \$412,039
 $\$412,039 + 20\%$ fringe of \$82,408 = \$494,447 (Total 1st Year Costs)

2nd Year 275 beds \times 365 days = 100,375 bed days (carried over from 1st year)
 $100,375 \times 1$ (phase-in complete by beginning of 2nd year) = 100,375 bed days
 $100,375 \times 9.44$ (2nd year per diem) = \$947,540
 $947,540 + 20\%$ fringe = \$1,137,046
 275 beds \times 365 days = 100,375 bed days
 $100,375 \times \frac{1}{2}$ (phase-in of 2nd 275 beds calculation) = 50,188 bed days
 $50,188 \times 9.44$ (2nd year per diem) = \$473,770
 $\$473,770 + 20\%$ fringe of \$94,754 = \$568,524
 Total 2nd Year Costs = $1,137,048 + 568,524 = \$1,705,572$

Category II

Projected program need over four years is 3,800 beds. There presently exist 2,000 beds. Since 3,800 beds are needed over 4 years, $3,800 \div 4$ (or 950) are the number of beds to be phased in each year. In the first year of the biennium, the per diem rate applied is 4.72. In the second year the per diem rate applied is 5.43. Below are the calculations:

1st Year 950 beds \times 365 days = 346,750 bed days
 $346,750 \times \frac{1}{2}$ (phase-in calculation) = 173,375 bed days
 $173,375 \times 4.72 = \$818,330$
 $\$818,330 + 20\%$ fringe = \$981,996 (Total 1st Year Costs)

2nd Year 950 beds \times 365 days = 346,750 days (carried over from 1st year)
 $346,750 \times 1$ (Phase-in of 1st 950 beds complete by beginning of 2nd yr) = 346,750 bed days
 $346,750 \times 5.43$ (2nd year per diem) = \$1,882,853
 $1,882,853 + 20\%$ fringe = \$2,259,424
 950 beds \times 365 days = 346,750 bed days
 $346,750 \times \frac{1}{2}$ (phase-in of 2nd 950 beds calculation) = 173,375 bed days
 $173,375 \times 5.43$ (2nd year per diem) = \$941,426
 $941,426 + 20\%$ fringe = \$1,129,711
 Total 2nd Year Costs = $2,259,424 + 1,129,711 = \$3,389,135$

	Summary	
	First Year*	Second Year
Category I	494,447	1,705,572
Category II	981,996	3,389,135
Total Year Cost	1,476,443	5,094,707
Total Biennium Cost	\$6,571,150	
	First Year	Second Year
Local Share (25%)	369,111	1,273,677
State Share (75%)	1,107,332	3,821,030
Total State \$ for 1981-83 biennium	\$4,928,362	

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PROPOSED RULES

Summary of Rule 36 Funding Projections Over Five Years (Figures do not include an inflation factor after year 2)

	<u>Category I</u>	<u>Category II</u>	<u>Total</u>	<u>State Share (75%)</u>	<u>Local Share (25%)</u>
1st year	494,447	981,996	1,476,443	1,107,332	369,110
2nd year	1,705,572	3,389,135	5,094,707	3,821,030	1,273,676
3rd year	2,842,620	5,648,559	8,491,179	6,386,385	2,122,794
4th year	3,979,668	7,907,983	11,887,651	8,915,738	2,971,912
5th year	4,548,192	9,037,694	13,585,886	10,189,414	3,396,471

*As of 9/1/81 the first year estimates are reduced to \$1,416,832 for total cost, \$354,208 for local share and \$1,062,624 for state share. This is due to a reduction in the final appropriation and to a 2 week delay in the projected implementation date.

**All per diem rates are projected averages. Actual payments will vary depending on individual situations.

Temporary Rule as Proposed (all new material)

12 MCAR § 2.001 (Temporary) Grants for services to adult mentally ill persons in residential facilities.

A. Scope. This rule applies to county boards which apply individually or jointly to the Commissioner of Public Welfare for a grant under Laws of 1981, ch. 360, § 14 for eligible expenditures to be incurred by the county, by any eligible residential facility with which the county board contracts, or by any public or private organization or any combination of these with which the eligible residential facility contracts.

B. Definitions.

1. "Adult" means a person age 18 and over.
2. "Commissioner" means the Commissioner of the Department of Public Welfare or a duly designated representative.
3. "County board" means the county board of commissioners or a duly designated representative.
4. "Mentally ill person" means a person who has been diagnosed by a physician, a licensed consulting psychologist, or by a clinic or center approved under 12 MCAR § 2.029 as having a mental illness condition. Mental illness is a condition with physiological, psychological or social components, which results in an inability to interpret the environment realistically and in impaired functioning in primary aspects of daily living such as personal relations, living arrangements, work and recreation.

C. Allocation priorities.

1. In response to applications and budgets which meet the requirements of this rule, the commissioner shall allocate grants to county boards for specific eligible facilities. If the appropriation is not sufficient to fund all applications, the commissioner shall use in descending order of priority the following priority categories, and all approved applications and budgets for facilities in a higher category shall be funded before a grant is provided for facilities in a lower category.

- a. Facilities operating on July 1, 1980;
- b. Facilities operating at the deadline for applications under this rule, to be set by the commissioner; if there is more than one cycle of applications under this rule, this refers to the deadline for the cycle in which application is made;
- c. New facilities opening after the deadline for applications under this rule and planning to provide a Category I program, as defined in 12 MCAR § 2.036;
- d. New facilities opening after the deadline for applications under this rule and planning to provide a Category II program, as defined in 12 MCAR § 2.036.

2. In each priority category, the commissioner shall give first consideration to facilities within the Rochester State Hospital catchment area counties of Dakota, Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha, and Winona.

3. If two or more eligible facilities fall within the same priority category and if the appropriation is not sufficient to fund all facilities within that category, the commissioner shall allocate grants for those facilities which he or she deems most appropriate within the statewide continuum of care for adult mentally ill persons.

D. Eligible facilities. The commissioner shall limit grants to facilities which can show that they will submit a completed application for a license under 12 MCAR § 2.036 within three months of the effective date of the grant award, will attain at least a provisional license under 12 MCAR § 2.036 within six months of the effective date of the grant award and will maintain the license for the remainder of the grant period. Facilities may qualify these objectives for unforeseeable circumstances beyond their control.

E. Content of applications. If two or more counties apply jointly for an award, the chairpersons of all participating county boards shall sign the application.

Six completed copies of the application and budget must be received by the commissioner. Applications must contain at least the information specified in 1.-5., in a form separately identifiable for each facility for which a grant is requested.

1. A description of persons to be served under the grant.
2. A statement of the measureable time-limited outcomes to be accomplished with a grant under this rule. The objectives must relate to compliance with D.
3. A statement as to:
 - a. How the requirements of 12 MCAR § 2.036 will be complied with;
 - b. How the proposed services will fit into the local continuum of care; and
 - c. The proposed sites and providers to be used.
4. Documentation that alternative service and funding resources, including public school community education programs, will be used to the maximum extent possible in meeting requirements of 12 MCAR § 2.036.
5. A statement as to how the county board will determine the effectiveness of the services in helping adult mentally ill persons remain and function in their own communities.

F. Content of budgets; eligible expenditures.

1. A budget must accompany the application, completed on budget forms provided by the commissioner. For each facility for which a grant is requested a separate budget must be submitted showing the total projected income and expenditures for that facility. Except for depreciation, the budget must represent projected cash transactions by the county, the facility and the subcontractors. Straight-line depreciation, calculated according to generally accepted accounting principles, may be included if the purchase of the item being depreciated is not included as an expenditure under this rule.
2. Each budget must separate expenditures according to the following categories, as further defined in 3.-6.:
 - a. Room and board costs;
 - b. Program costs separated into previously funded program costs and new program costs, with new program costs further separated into new direct service costs and other new program costs; and
 - c. Other costs including program costs for residents who are not adult or not mentally ill.
3. "Room and board costs" shall include a reasonable allocation of salaries and other costs related to the costs in a.-d.; however, any of the costs which are new since June 1, 1981, and are required by 12 MCAR § 2.036 shall be considered as other new program costs and not as room and board costs.
 - a. All directly identifiable costs of normal and special diet food preparation and service;
 - b. All directly identifiable costs of linen, bedding, laundering and laundry supplies;
 - c. All directly identifiable costs of housekeeping, including cleaning and lavatory supplies; and
 - d. All directly identifiable costs for maintenance and operation of the building and grounds, including fuel, electricity, water, supplies and parts and tools to repair and maintain equipment and facilities.
4. "Previously funded program costs" shall include costs for any services provided before June 1, 1981, at least at the level of funding used for those services during May, 1981.
5. Within the limits in 1.1., "new direct service costs" are the only costs which may be paid with state funds under this rule. New direct service costs may include the following if the costs are required by 12 MCAR § 2.036 and if the costs are new since June 1, 1981:
 - a. Salaries and related expenses (including payroll taxes, health insurance, telephone, personal liability insurance, postage, recruitment and in-state travel) of personnel providing services directly to adult mentally ill residents including support personnel to the extent they perform client related duties such as client recordkeeping, individual program planning and on-site program supervision;

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PROPOSED RULES

b. Consumable supplies used by the personnel described in a. in performing client related duties and by clients in carrying out program activities; and

c. Other expenditures which are shown by the county board to be relatively minor, essential for the facility to meet requirements of 12 MCAR § 2.036 and which cannot be paid for from local funds.

6. "Other new program costs" shall include all new program costs other than those already included in new direct service costs. This shall include, but not be limited to, renovation, construction or rent of buildings, purchase or lease of vehicles or equipment, if these costs are new since June 1, 1981, and are required by 12 MCAR § 2.036.

7. The application shall include an explanation of the allocation of indirect costs to the various budget categories.

8. If there has been a state or federal decision to reduce the previous level of funding for an existing program, expenditures which would otherwise be included under previously funded program costs may be included under new direct service costs or other new program costs. The type of expenditure would determine which of the new cost categories would be appropriate. An application must include documentation of the elimination or reduction in funds by the state or federal government. If the previous funding was from a block grant type of funding source, the percentage reduction used for this exception must not exceed the average percentage reduction for all other services funded by the applicant county board from that funding source.

9. The dollar amounts for the various items included in the budget must not exceed:

a. The prevailing cost of like items in the local county; and

b. The costs that prudent and cost-conscious management would pay for a given item or service.

10. The budget shall relate to a time period beginning on a date set by the county board, but not before the effective date of this rule, and ending June 30, 1983.

11. The budget shall include the projected number of client-days of service per facility and the projected cost per client-day.

G. Approval of applications and budgets. The commissioner shall base his approval of applications and budgets on the applications' and budgets' compliance with this rule and on the availability of funds within the allocation priorities in C.

H. Lines of accountability and flow of funds.

1. The county board shall be the primary local entity responsible to the commissioner for use of all funds paid to it under this rule. Subject to the other requirements of this rule, the commissioner shall pay funds under this rule solely to the county board receiving the award. Payments shall be in the form of an initial advance, with subsequent quarterly payments contingent upon receipt of a completed quarterly financial report from the county board on forms provided by the commissioner.

2. If a county board elects to apply for a grant under this rule, it shall, before submission of the application and budget to the commissioner:

a. Determine which facilities shall be included in the application and budget; and

b. Review and approve the completed application and budget.

3. Payment from the county board to the residential facility must be based on a contract between the county board and the facility. If this contract and the requirements of this rule are complied with, the county board shall, except as provided in 6.b., pay to the facility all funds received by the county board for that facility. The county board shall determine the method of payment to the facility.

4. The contract between the county board and the facility shall specify:

a. How the county board will monitor the facility's compliance with this rule; and

b. How the county board and the facility will monitor subcontractors' compliance with this rule.

5. If two or more county boards apply jointly for a grant, they shall designate a host county board which will carry out the responsibilities in 1. and 3.-4. The assignment of these responsibilities must be agreed to in a contract between the host county board and the other counties.

6. If funds under this rule are to be used by a service provider other than the contracting facility in 3., then:

a. The amount and planned use of those funds must be identified in the application and budget for the facility whose residents will receive the service;

b. Payments to the service provider must be based on a subcontract between the facility and the service provider. This subcontract shall include an agreement by the service provider to comply with this rule. If the county board and the facility agree, payments may be made directly from the county board to the service provider.

I. State and local shares.

1. The commissioner shall, after approval of an application and budget, award a grant equal to the lesser of:
 - a. Seventy five percent of the new program costs as defined in F.2.b.; or
 - b. The new direct service costs, as defined in F.5.
2. A county board which applies for a grant for more than one facility may request varying percentages of state and local funds for each facility. The commissioner shall approve the request if the total request for all facilities for that county complies with 1. and if state funds are used only for new direct service costs.
3. The commissioner's award shall specify the amounts awarded for each facility.
4. The 25 percent local share must consist of funds committed specifically for the objectives proposed in the application. Fee income may be counted as part of the local share.
5. If the county board, the facility or the subcontractor receive any income other than county funds as a reimbursement for costs also funded through state or local matching funds under this rule, then:
 - a. Except as provided in c., the commissioner shall consider this income to be applied first to the local share;
 - b. If the income exceeds the local share of the approved new program costs, the commissioner shall reduce the state grant by whatever amount the income exceeds the local share; and
 - c. If the income is from state grants under 12 MCAR § 2.014 or 12 MCAR § 2.022 the commissioner shall reduce the state grant under this rule. The amount of the reduction shall equal the amount by which those other state grants are paying for costs which are also funded by state or local matching funds under this rule.

J. Reporting and maintenance of records.

1. The county board, its contracting facilities and subcontractors shall maintain records to document compliance with this rule and with the objectives in the approved application.
2. The county board shall use forms provided by the commissioner to report the use of funds under this rule, including the number and kinds of persons served, the cost of providing each service, results achieved and other data deemed necessary by the commissioner. Wherever possible the commissioner shall use the same data which is required for reporting under 12 MCAR § 2.036 and under the Community Social Services Act, Minn. Stat. ch. 256E. The commissioner shall use these reports and the evaluation from the county board to develop the report to the Legislature required by Laws of 1981, ch. 360, § 14, subd. 4.
3. The county board, its contracting facilities and subcontractors, shall maintain financial records, using generally accepted accounting principles, in a way so that expenditures can be easily compared with the approved budget, that all sources of income can be readily identified and that documentation is available for all expenditures.

K. Budget revision procedures.

1. After a grant award is made and as long as state funds are used for eligible expenditures under this rule, budget revisions, including transfers between approved facilities within a county, totaling up to ten percent of a facility's approved new program costs may be made with county board approval only. Revisions totaling in excess of that amount require both county board and commissioner's approval.
2. The county board may delegate its approval of budget revisions if the delegation is specified in the county board minutes.
3. All requests for budget revision approval must include the reason for the revision and a statement as to how the revision will affect program objectives. The commissioner shall not grant approval for budget revisions unless the revisions are consistent with the provisions of this rule.

L. Withdrawal of a grant.

1. If the commissioner determines that funds are not needed to implement the approved application, and if the county board agrees the funds are not needed, all or part of the grant may be withdrawn immediately.

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PROPOSED RULES

2. If the commissioner determines that funds are not being used according to the approved application and budget, all or part of the grant may be withdrawn upon 30 days notice to the affected county board and to the affected facility. Opportunity for hearing pursuant to the Administrative Procedures Act, Minn. Stat. ch. 15, shall be provided before funds are withdrawn.

3. The commissioner may use the funds withdrawn under 1. or 2. to make new awards for other applications and budgets approved under this rule.

M. Other applicable laws and rules.

1. To the extent that the county board, its contracting facilities and subcontractors are also subject to other laws and rules, they shall also meet the standards of those laws and rules to be eligible for a grant under this rule.

2. If the commissioner determines that this rule cannot be met immediately, he or she may approve the application if the county board provides a definite, reasonable plan to meet all applicable laws and rules within three months of the date otherwise required by this rule.

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 Public Welfare Income Maintenance Bureau

Adopted Rule Governing the Surveillance and Utilization Review Program

The rule proposed and published at *State Register*, Volume 5, Number 24, pp. 972-982, December 15, 1980 (5 S.R. 972) are now adopted with the following amendments.

Rule as Adopted

12 MCAR § 2.064 A.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~~ to assist others in complying with this rule.

12 MCAR § 2.064 B.1. "Abuse." A pattern of practice by a provider, or a pattern of health care utilization by a recipient which is inconsistent with sound fiscal, business, or medical practices, and results in unnecessary costs to the programs, or in reimbursements for services that are not medically necessary or that fail to meet professionally recognized standards for health care. Abuse 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 material data is missing or incorrect. Examples include but are not limited to: incorrect or missing procedure or diagnosis codes, ~~false incorrect~~ 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, or the repeated submission of duplicate claims.

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, or other accounting methods which relate entries on the medical or health care record to corresponding entries on the billing invoice, 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 which is not medically necessary, or which is of an unacceptable quality.

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; services, prescriptions or devices deemed unnecessary or excessive under the generally accepted practice of providers of such services, prescriptions or devices is abusive.

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 or the disposal of equipment, supplies or pharmaceuticals obtained with program monies without authorization of the local welfare agency.

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.

12 MCAR § 2.064 B.4. "Health care record." Written or diagrammed 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.

12 MCAR § 2.064 B.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 which is rendered pursuant to the provider's authority under state law and within the scope of his/her license, if any, 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~~

~~e- b. Provided in response to pain, or~~

~~d- c. Provided to treat injuries, illness, or infections, or~~

~~e. Provided as periodic examination and diagnosis, or~~

~~f. Provided as preventive health care.~~

d. Provided in compliance with the provisions of 12 MCAR §§ 2.047, 2.058 or 2.060 regarding services reimbursable under the programs.

12 MCAR § 2.064 B.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)~~ recipient.

12 MCAR § 2.064 B.16. "Suspension of payments." Stoppage of any or all program payments for services billed by a provider pending resolution of the ~~matter(s)~~ matter in dispute between the provider and the state agency.

12 MCAR § 2.064 B.17. "Terminating participation." Making a provider ~~permanently~~ ineligible for reimbursement by the programs.

12 MCAR § 2.064 C.1.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

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ADOPTED RULES

provided by an individual under the supervision of ~~a~~ an individual licensed provider, and which is billed directly to the programs by the provider, shall be countersigned by the provider. Institutional providers shall not be required to countersign record entries for health care provided in the facility by an individual provider; however, the institutional providers shall be responsible for monitoring the provision of such health care.

- (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.

12 MCAR § 2.064 C.1.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 non-emergency 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.

12 MCAR § 2.064 C.2.a. Financial records pertaining to the provider's costs (if the provider is reimbursed on a cost basis) and charges for health care provided to program recipients shall be developed and maintained.

12 MCAR § 2.064 C.2.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~~ provider's costs and charges for health care billed to the programs.
- (4) Evidence of the ~~providers~~ provider's 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 Evidence of claims for reimbursement, payments, settlements, or denials resulting from claims submitted to other third party payers of health care. For the purposes of this rule, third parties shall include other governmental programs, insurance companies, no-fault auto insurers and other payers of health care who may be financially responsible for services rendered a recipient.

12 MCAR § 2.064 C.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. Access to a recipients' personal medical and health care record shall be for the purpose of investigating whether or not a provider has submitted a claim for reimbursement, a cost report or a rate application which may be false in whole or in part or whether or not the health care was medically necessary. 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.~~

12 MCAR § 2.064 C.4. The state agency, at its own expense, is authorized to photocopy or otherwise duplicate any medical or financial record which it is authorized to examine. Photocopying shall be limited to the provider's premises unless removal is specifically permitted by the provider.

12 MCAR § 2.064 C.5. Providers shall retain all records for at least five (5) years. Records may be microfilmed after the third year.

12 MCAR § 2.064 C.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~~ the seller, unless otherwise provided by law or by written agreement, shall be responsible for maintaining and preserving all records generated prior to the date of sale. Responsibility for making records available for inspection after the date of sale is on the seller and the seller must take reasonable steps by contract or otherwise to maintain a right of access to those records which is necessary to substantiate his billings, cost reports, or rate applications.

12 MCAR § 2.064 C.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. Providers must retain records for at least 5 years after the date of billing.

12 MCAR § 2.064 C.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 be rebuttable, and shall exist regardless of whether the application was signed by a recipient, or a guardian, next of kin, friend, or other person.

12 MCAR § 2.064 D.1.c. In assessing questions of abuse or medical necessity, SUR shall ~~utilize health care professionals either employed by or serving as consultants to the state agency~~ consult with a review organization as defined in Minn. Stat. § 145.61 or other provider advisory committees as appointed by the commissioner.

12 MCAR § 2.064 D.3.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~~ systematic random samples of claims submitted by a provider and paid by the programs.

(1) The decision to use sampling and extrapolation in calculating a monetary recovery shall be at the discretion of the Director of the SUR Section. The following criteria shall apply in determining whether the sampling technique will be used:

- (a) The claims to be sampled represent services to 50 or more recipients; or
- (b) There are more than 1,000 claims to be sampled; or
- (c) The claims to be sampled constitute charges to the Department of more than \$2,000.

(2) The following factors shall apply in determining recovery by sampling and extrapolation:

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(a) Samples shall be selected such that every claim to be sampled has an equal and independent chance of being chosen for the sample;

(b) Samples shall only be selected from claims within a time period which coincides with the duration of the violations for which recovery will be made;

(c) The sampling method, to include sample size, sample selection and extrapolation from the results of the sample, shall be in accordance with statistical procedures published in the following texts: L. Kish, Survey Sampling, John Wiley and Sons, New York (1965), or W. Cochran, Sampling Techniques, John Wiley and Sons, New York 3rd Ed. (1977).

(d) Samples shall be selected at the 95% confidence level, such that, the overall monetary recovery amount determined by extrapolation from the sample recovery amount will be within 5% of the amount which would be recovered by a complete audit, 95% of the time. The department will recover the extrapolated amount less the 5% factor.

(3) The department shall notify the provider of its intent to use sampling and extrapolation. The notice shall state:

(a) the nature of claims to be sampled;

(b) the sample size;

(c) the sample selection method; and

(d) the formulas and calculators to be used in extrapolation.

(4) The monetary recovery proposed by the department, based upon the use of sampling and extrapolation is rebuttable. The provider may present, at a conference with the SUR director, material to rebut the sample size and design, the facts and conclusions drawn from each sample used, and the calculations used to extrapolate the sample findings to all services furnished for the period of time reviewed. The costs of gathering and presenting the information will be met by the provider. Alternatively, the provider, at his expense, may conduct a complete audit and use the results to rebut the department's findings.

(5) If the department does not accept the provider's rebuttal, the provider may appeal under procedures cited at F. of this rule.

12 MCAR § 2.064 D.3.i. When a provider has been sanctioned in accordance with subsection D.3.c. of this rule, after all appeals have been exhausted or the time in which to file an appeal has elapsed, 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.

12 MCAR § 2.064 D.5. Nothing in this rule shall prohibit SUR from conducting ~~random~~, routine audits of providers in order to monitor compliance with program requirements.

12 MCAR § 2.064 D.6. The commissioner is authorized to suspend or withhold payments to a provider prior to a hearing, as provided in Part D.3.e.(3), if:

- a. There is a substantial likelihood of prevailing in an action pursuant to D.3. of this rule, or
- b. There is a substantial likelihood that the provider's pattern of practice which prompted a SUR investigation, will continue in the future, or
- c. There is reasonable cause to doubt a provider's financial ability to refund any amounts determined to be due the program.

12 MCAR § 2.064 E.1.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~~ consult with a review organization as defined in Minn. Stat. § 145.61 or other provider advisory committees as appointed by the commissioner.

12 MCAR § 2.064 E.3.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~~ recipient's participation in a program to receiving health care from a ~~provider(s)~~ provider 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)~~ provider 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)~~ provider.

- (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.

12 MCAR § 2.064 F.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 an appeal has not been commenced.

12 MCAR § 2.064 F.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.~~

SUPREME COURT**Decisions Filed Friday, September 11, 1981****Compiled by John McCarthy, Clerk**

51266/Sp. Herman Koenig and Sharon Koenig, husband and wife, v. Marvin Wachholz and Gloria Wachholz, husband and wife, Appellants, 1st Carver Realty and Development Corporation of Waconia, Minnesota, *et al.* Carver County.

Although the evidence does not support a finding of fraudulent misrepresentation on the part of sellers, the evidence is conclusive that the parties contracted under a mutual mistake as to the quantity of land to be conveyed, for which buyers are entitled to proportionate restitution.

Affirmed. Otis, J.

50237 State of Minnesota v. Robert Wayne Loebach, Appellant. Wabasha County.

Evidence that suggests a defendant fits within the profile of a "battering parent" is character evidence that cannot be admitted in a criminal proceeding unless the defendant first places his character in issue. Minn. R. Evid. 404(a).

Admission of "battering parent" evidence was not sufficiently prejudicial to justify a reversal of appellant's conviction.

A pretrial *Spreigl* notice of the state's intent to use "battered child syndrome" evidence is not required.

The prosecutor did not examine an adverse witness improperly.

The trial court did not err when charging the jury.

Affirmed. Yetka, J.

51996/18 Calvin Finch, Appellant, v. Sharon Wemlinger, Acting Director of the Minnesota Governor's Manpower Office, *et al.* Ramsey County.

An unclassified state employee serving in the executive branch of the state government is an "employee" for purposes of Minn. Stat. § 179.63, subd. 7 (1980).

The Public Employees' Labor Relations Act (PELRA), Minn. Stat. §§ 179.61 to 179.76 (1980), and in particular § 179.61, do not confer additional rights of expression or communication on public employees but rather were intended to convey the idea that PELRA in no way limits rights already in existence outside of the Act.

The federal standard of qualified immunity applies in actions under 42 U.S.C. § 1983 (1980) brought in state court.

The burdens of pleading and proof of the defense of qualified immunity rest with defendants in a section 1983 action.

Affirmed in part and remanded. Wahl, J.

51346/Sp. George Jacobs, *et al.*, Appellants, v. Rosemount Dodge-Winnebago South, Midas-International Corporation, General Motors Corporation-Chevrolet Motors Division. Dakota County.

The exclusive remedy of the manufacturer's warranty failed in its essential purpose, making available to the buyers of a defective motorhome the other remedies of the Uniform Commercial Code, including revocation and damages.

The evidence supports a finding that appellants, buyers of a defective motorhome, properly revoked their acceptance and did not reaccept the motorhome by their actions after revocation.

SUPREME COURT

Appellants are entitled to recover incidental and consequential damages, including loss-of-use damages, under Minn. Stat. § 336.2-715, in the amount found by the jury.

Appellants are entitled to recover attorney's fees under the Minnesota consumer protection act, Minn. Stat. §§ 325.79 and 325.907.

The buyer of a defective motorhome is entitled to look for relief to the warrantor, the manufacturer responsible for the defects in this case. The trial court properly denied the manufacturer indemnity from the dealer. The dealer, a mere conduit in the chain of distribution, is entitled to indemnity from the manufacturer.

Affirmed in part, reversed in part, and remanded for entry of judgment consistent with this opinion. Wahl, J.

52001/Sp. *Sunstar Foods, Inc., Relator, v. Donna Uhlendorf, et al., Commissioner of Economic Security. Department of Economic Security.*

Reduction of wages of 21-26 percent, unilaterally imposed by the employer, is a condition of employment so unreasonable as to constitute a lockout, not disqualifying claimants from unemployment compensation benefits.

Affirmed. Wahl, J.

Decision Filed Friday, September 4, 1981

49802/98 (1980) *State of Minnesota v. Gerald Arnold Lubenow, Appellant. Douglas County.*

The victim's nonverbal responses to questions put to her in the hospital by police were improperly admitted as dying declarations where there was an insufficient showing that the victim believed that her death was imminent.

The arrows seized from defendant's car were not relevant and were improperly admitted into evidence at trial.

The evidence at trial was consistent with defendant's innocence and was insufficient to sustain defendant's conviction of second-degree murder.

The rereading of certain testimony to the jury by the trial court and comments made by the prosecution during final argument were errors which, considered cumulatively, served to deny defendant a fair trial.

Reversed. Todd, J.

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.

Office of the Legislative Auditor

Notice of Request for Proposals for Computer Operations Evaluation

The Program Evaluation Division of the Office of the Legislative Auditor is conducting an evaluation of the State Department of Education Information System (SDE-IS). In connection with this study, one or more consultants is sought to evaluate the appropriateness of the overall design of the SDE-IS, the adequacy of documentation of the system, current and projected hardware utilization, and related questions. The Program Evaluation Division has prepared an RFP which describes a study to be performed within two or three months. The cost of the study is estimated to be \$30,000. For a copy of the RFP, please contact:

Elliot Long
Program Evaluation Division
Office of the Legislative Auditor
122 Veterans Service Building
St. Paul, MN 55155
(612) 296-1226

Final submission date for completed proposals is October 16, 1981.

OFFICIAL NOTICES

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

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

**Department of Commerce
Insurance Division****Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing
Self-insurance of Workers' Compensation Liability by Pools of Political Subdivisions**

Notice is hereby given that the Insurance Division is seeking information and opinions from sources outside the agency in preparing to promulgate rules governing self-insurance of workers' compensation liability by pools of political subdivisions as authorized by Minn. Stat. § 471.982, Subd. 2. This statute permits the agency to provide standards or guidelines governing the formation, operation, administration, disolution of political subdivision self-insurance pools.

The Insurance Division requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit information on this subject. Written or oral information and comments should be addressed to:

William R. Howard
(612) 297-2852
Insurance Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Information to be considered should be received by the Insurance Division no later than November 1, 1981. Any written material received by the Insurance Division shall become part of the record in the event that the rules are promulgated.

William Howard
Assistant Commissioner of Insurance

**Department of Commerce
Insurance Division****Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules
Relating to Proxies, Consents and Authorizations Used for Equity Securities of
Domestic Stock Insurance Companies**

Notice is hereby given that the Insurance Division is seeking information and opinions from sources outside the agency in preparing to promulgate amendments to rules relating to proxies, consents and authorizations used for equity securities of domestic stock insurers as authorized by Minn. Stat. § 60A.22.

OFFICIAL NOTICES

The Insurance Division requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit information on this subject. Written or oral information and comments should be addressed to:

William R. Howard
(612) 297-2852
Insurance Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Information to be considered should be received by the Insurance Division no later than October 16, 1981. Any written material received by the Insurance Division shall become part of the record in the event that the rules are promulgated.

William Howard
Assistant Commissioner of Insurance

Department of Health Emergency Medical Services Section

Notice of application for Licensure to Operate a Basic Life Support Transportation Service at Hoffman, Minnesota

As of September 21, 1981, a complete application submitted by Wanda Kaplor was on file with the Department of Health for a license to operate a basic life support transportation service, with base of operation located at the City Offices, Hoffman, Minnesota 56339, and proposed name of service to be the Hoffman Volunteer Ambulance Service.

This notice is given pursuant to Minnesota Statutes, Section 144.802 (1979), which requires that the Commissioner of Health shall publish the notice in the *State Register* at the applicant's expense, and in a newspaper in the municipality in which the service will be provided, or if no newspaper is published in the municipality, or if the service would be provided in more than one municipality, in a newspaper published at the county seat of the county or counties in which the service would be provided. Each municipality, county, community health services agency, and any other interested person wishing to comment on this application may submit comments to the Min-Dak Health Systems Agency, 1721 South University Drive, Fargo, North Dakota 58103, before the close of business on October 21, 1981.

After a public hearing has been held in one of the municipalities in which the service is to be provided, the Min-Dak Health Systems Agency shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The Min-Dak Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of receipt of the Min-Dak Health Systems Agency recommendation, the Commissioner of Health shall grant or deny the license to the applicant.

Notice of Application for Licensure to Operate a Basic Life Support Transportation Service at Pembina, North Dakota

As of September 21, 1981, a complete application submitted by Clinton Littlefield was on file with the Department of Health for a license to operate a basic life support transportation service, with a base of operation located at the Fire Department, Pembina, North Dakota 58291, and proposed name of service to be the Pembina Ambulance Service.

This notice is given pursuant to Minnesota Statutes, Section 144.802 (1979), which requires that the Commissioner of Health shall publish the notice in the *State Register* at the applicant's expense, and in a newspaper in the municipality in which the service will be provided, or if no newspaper is published in the municipality, or if the service would be provided in more than one municipality, in a newspaper published at the county seat of the county or counties in which the service would be provided. Each municipality, county, community health services agency, and any other interested person wishing to comment on this application may submit comments to the Agassiz Health Systems Agency, 31 So. Third St., Box 129, Grand Forks, N.D. 58201, before the close of business on October 21, 1981.

After a public hearing has been held in one of the municipalities in which the service is to be provided, the Agassiz Health Systems Agency shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The Agassiz Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of receipt of the Agassiz Health Systems Agency recommendation, the Commissioner of Health shall grant or deny the license to this applicant.

Notice of Application for Licensure to Operate a Basic Life Support Transportation Service at Freeborn, Minnesota

As of September 21, 1981, a complete application submitted by Dale Ladlie was on file with the Department of Health for a license to operate a basic life support transportation service, with base of operation located at the Fire Department, Box 98, Freeborn, Minnesota 56032, and proposed name of service to be the Freeborn Fire Department.

This notice is given pursuant to Minnesota Statutes, Section 144.802 (1979), which requires that the Commissioner of Health shall publish the notice in the *State Register* at the applicant's expense, and in a newspaper in the municipality in which the service will be provided, or if no newspaper is published in the municipality, or if the service would be provided in more than one municipality, in a newspaper published at the county seat of the county or counties in which the service would be provided. Each municipality, county, community health services agency, and any other interested person wishing to comment on this application may submit comments to the Southeastern Minnesota Health Systems Agency, 303 Marquette Bank Building, South Broadway and Second Street S.E., Rochester, Minnesota 55901, before the close of business on October 21, 1981.

After a public hearing has been held in one of the municipalities in which the service is to be provided, the Southeastern Minnesota Health Systems Agency shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The Southeastern Minnesota Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of receipt of the Southeastern Minnesota Health Systems Agency recommendation, the Commissioner of Health shall grant or deny the license to this applicant.

State Board of Investment

Notice of Special Meeting

The State Board of Investment will meet on Tuesday, September 22, 1981, at 3:00 p.m. in the State Capitol, Room 130, St. Paul.

Minnesota Pollution Control Agency

Notice of Intent to Act on a Proposed Offset Rule for New Major Emission Facilities and Expanded Facilities in Nonattainment Areas and Proposed Amendments to 6 MCAR § 4.0033, a Rule Governing Coal Handling Facilities in Designated Areas

Notice is hereby given that the Minnesota Pollution Control Agency Board will consider adoption of a proposed offset rule and will consider submittal of the offset rule and amendments to 6 MCAR § 4.0033, a rule governing coal handling facilities in designated areas, to the U.S. Environmental Protection Agency (EPA) as part of its State Implementation Plan. These actions will be considered during the agency's regular monthly meeting on October 27, 1981, in the agency offices at 1935 West County Road B2, Roseville, Minnesota 55113. The agency meeting begins at 9:00 a.m. An agenda will be issued by October 16, 1981, and interested persons are invited to contact Jayne M. Stilwell of the agency staff at the agency offices noted above or at (612) 296-7280 for the time at which the offset rule and amendments to the coal handling rule will be discussed. Copies of the offset rule and amendments to the coal handling rule are available on request.

The public is hereby invited to attend the board meeting on October 27, 1981, and to comment on adoption of the proposed offset rule and submittal of the offset rule and amendments to the coal handling rule to EPA. Written comments may be submitted prior to the meeting and should be mailed to Douglas M. Benson at the address noted above.

The purpose of the offset rule is to establish requirements to be used by the agency in issuing permits to major new or expanded emission facilities in nonattainment areas in accordance with the requirements of Minn. Statute § 116.07, subd. 4a; Rule APC 3; and the Clean Air Act, Part D. As such, this rule shall be known as the offset rule. Issuance of permits for facilities that would be subject to this rule is prohibited unless and until Part D of the Clean Air Act is satisfied. The offset rule will aid in bringing nonattainment areas into attainment by requiring that new emissions facilities are more than offset by reduction in existing emissions.

OFFICIAL NOTICES

If adopted by the Pollution Control Agency Board, the offset rule will apply to proposed emission facilities that will emit 100 tons per year of an air pollutant for which the area around such facilities is designated nonattainment and to proposed expansions of emission facilities that will emit various amounts depending on the pollutant emitted. Those facilities subject to this rule will be required to meet a stringent pollution control requirement, to obtain more than offsetting emission reductions, to provide a net air quality benefit through these reductions, and to certify that all facilities in Minnesota which are owned or operated by the same person are in compliance with air pollution rules.

The amendments to the coal handling rule were adopted by the agency on May 26, 1981 and became effective on July 7, 1981. These amendments make it clear that if fugitive emissions from enclosed coal handling facilities located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth exceed 20 percent opacity, the owner or operator of such facility must control those emissions by *either* installing control equipment *or* by using dust suppression methods. If the control equipment option is chosen, then the standard applicable to the facility is expressed in terms of a particulate grain loading. If dust suppression methods are used, then the standard applicable to the facility will be expressed in terms of opacity.

Dated this 11th day of September, 1981.

Louis J. Breimhurst
Executive Director

Department of Public Welfare Social Services Bureau

Notice of Intent to Solicit Outside Opinion Concerning Reimbursement for Cost of Care of Mentally Retarded or Epileptic or Emotionally Handicapped Children

Notice is hereby given that the Minnesota Department of Public Welfare is considering draft amendments to 12 MCAR § 2.030. This rule governs reimbursement for cost of mentally retarded, or epileptic or emotionally handicapped children.

Authority for this rule is contained in Minnesota Statutes, § 252.27 as amended by Laws of Minnesota, 1981, chapter 355.

The proposed changes include:

1. Parental responsibility for cost of care up to 10% of actual monthly cost of care determined by fee schedule.
2. All of child unearned income, excluding clothing and personal needs to be used towards cost of care.
3. All of child's earned income, excluding clothing and personal needs, employment expenses and one-third remainder, to be used towards cost of care.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be made addressed to:

Gordon W. Buyse
Administrative Generalist
Social Service Division
Department of Public Welfare
St. Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the telephone at 612/296-3979.

All statements of information and comment must be received by October 26, 1981. Any written material by the Department shall become part of the hearing record.

Department of Transportation

Petition of the County of Dodge for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of the County of Dodge has made a written request to the Commissioner of Transportation for a variance from minimum design standards for design speed along Mantorville Town Road 51 between Trunk Highway 57 and 0.85 Miles East.

The request is for a variance from 14 MCAR § 1.5032 H.1.a., Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a design speed of 20 miles per hour instead of a minimum design speed of 40 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 8th day of September, 1981.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove ICC Track Nos. (Unknown) Located at South St. Paul, Minnesota

Notice of Application and of Opportunity for Hearing

Notice is hereby given that the Chicago and North Western Transportation Company (with attorneys at 4200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota) has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. § 219.741 to retire and remove ICC Track Nos. (Unknown) located at South St. Paul, Minnesota.

Any person may file a written objection to the action proposed by the petitioner by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before October 9, 1981. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

Upon receipt of a written objection, the commissioner will, with respect to the named petitioner, set the matter down for hearing. If no objections are received, the commissioner may grant the relief sought by the petitioner.

The petition recites among other matters that:

"The subject track is no longer needed for rail transportation service, constitutes a continuing and burdensome maintenance expense, and is an unnecessary safety hazard. The track is not used at the present time, and there is no present prospect that the subject track will be needed in the future. The only shipper, patron or member of the public who might have any interest in the retention of the tracks or facilities is Kasson Realty, 412 Southview Boulevard, South St. Paul, Minnesota 55075."

If this matter is set for hearing, any person who desires to become a party to this matter must submit a timely Petition to Intervene to the Hearing Examiner pursuant to 9 MCAR § 2.210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

September 14, 1981

Richard P. Braun
Commissioner

Minnesota Water Resources Board

Notice of Hearing on the Petition to Withdraw Territory

A hearing on a Petition to Withdraw Territory from the Minnehaha Creek Watershed District will begin at 7:30 p.m. on Wednesday, October 7, 1981, at the Medina City Hall, 2052 County Road 24 (located near the intersection of County Road 24 and Medina Road) in Medina, Minnesota.

A complete notice of and order for hearing will be published in the *Crow River News*, Osseo, Minnesota, on September 16 and 23, 1981.

Copies of the complete notice are also available from the Minnesota Water Resources Board's office at 555 Wabasha Street, Room 206, St. Paul, Minnesota 55102, (612) 296-2840.

STATE OF MINNESOTA

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

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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.

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