

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Per Amended Order Adopting [redacted]es
April 1978

EXHIBIT C

AMENDMENTS INCORPORATED IN RULE 60 AS ADOPTED:

Strike out the entire text of section B.14. and substitute the following phrasing:

B.14. "Physician" means a medical doctor or osteopath, a chiropracter, or a dentist acting within the scope of CHEPP coverage of dental services; licensed in the state in which he practices and acting within the scope of his license. The term does not include podiatrists, optometrists, or psychologists. The inclusion of chiropractors here within the definition of "physician" shall not imply any authority within the CHEPP program for chiropractors to prescribe other health services for coverage under the program if prescribing such services would constitute the prescribing of internal drugs, the practice of medicine, or the practice of physical therapy.

Rephrase section B.20. to insert the words: as of July 1, 1977 after the words "Federal Social Security Act" and before the words "and, in Minnesota, by. . .etc."

In section B.21. of the rule, delete the period at the end and add the words: as of July 1, 1977.

In section B.29. of the rule, delete the matter after the words "Federal Social Security Act" and substitute the words: as of July 1, 1977, or a similar organization as defined in Minnesota Statutes, Section 145.61.

After section B.35. of the rule, add the following new definition:

B.36. "Applicant" means a person who has directly, or through his attorney, guardian, or personally designated representative, made application for benefits from the CHEP Program with his local welfare agency. Additionally, an applicant may be a deceased person's estate, on behalf of which an application is filed by the personal representative of the estate, subject to the restrictions in Section C.2. below.

Delete the first sentence of section C.5., to wit: ~~Local welfare agencies shall maintain such records of CHEPP applications as may be required by this rule and by administrative procedures established by the commissioner.~~

In section B.3. of the rule, in the first sentence, after the words "Minnesota Statutes", delete the number "1976" and move the comma to follow immediately after the word "Statutes".

In section A.1. of the rule, in the second sentence, after the words "Minnesota Statutes", delete the number "1976" and move the comma to follow immediately after the word "Statutes".

EXHIBIT B

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik, being first duly sworn, deposes and says that on the 8th day of March 1978, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of Hearing Examiner DPW-78-037-PE

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Eileen A. Gaiovnik

Subscribed and sworn to before me
this 8th day of March, 1978.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing Administration of the Catastrophic Health Expense Protection Program, Rule 60.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:00 a.m. on Friday, January 13, 1978, in the Veterans' Service Building, St. Paul, Minnesota.

James Jorgensen, Assistant Attorney General, appeared as counsel for the Department of Public Welfare. Paul H. Forseth, Supervisor, Food Stamp Program, Department of Public Welfare (formerly Supervisor, Catastrophic Health Expense Protection Program), and John Hansen, Supervisor, Catastrophic Health Expense Protection Program, Department of Public Welfare, testified in support of the rule on behalf of the Department. The hearing continued until all interested groups or persons had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Department of Public Welfare shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Department shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated

that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On December 6, 1977, the Department of Public Welfare filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On December 5, 1977, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 1102.

3. On December 5, 1977, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On December 15, 1977, the Department filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) The Statement of Evidence, including the names of witnesses to be called; and
(h) The names of Department personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through January 27, 1978 for the receipt of written comments and statements.

6. Statutory authority to promulgate the proposed rule is contained in Minn. Stat. § 62E.54 (1977 Supp.).

Section A - Introduction.

7. The above-captioned rule is a temporary rule currently in effect and proposed for adoption as a permanent rule to govern state administration of the Catastrophic Health Expense Protection Program, also referred to herein as CHEPP and the CHEP PROGRAM.

It is necessary that this rule be binding on the Department

of Public Welfare; on all county welfare and human service boards; on all persons and organizations contracting to perform functions under the CHEPP Act, Minn. Stat. §§ 62E.51 - 62E.55 (1977); on providers of health services who are paid or request payment under the Act; and on people who apply for or receive benefits under the Act in order to set forth what persons are affected by the proposed rule.

Uniform implementation of the proposed rule is needed to establish the intent of the Commissioner of Public Welfare to administer the program in a consistent manner. The rule provides that the Commissioner shall issue handbooks and informational materials to local welfare agencies; to persons and organizations that contract to perform functions required under the CHEPP Act; to providers of health services which may be paid for under the Act; and to people who apply for or receive benefits under the Act. This uniform implementation will aid in enforcing the Act in an orderly and uniform way.

The program is intended to be administered in a manner that will reinforce conscientious respect for the civil rights of its beneficiaries. The need to establish privacy protections of beneficiaries' personal medical records exists because of the current confusion in the state laws concerning private records.

It is necessary to remind all users of the proposed rule that it is subordinate to inconsistent state and federal laws.

Section B - Definitions.

8. The definitions contained in the Minnesota Department of Public Welfare Rules are needed to provide common terminology in discussing and understanding the substantive provisions of the rule.

a. The Department proposed that "1976" be inserted after the words, "Minnesota Statutes" in B.6.

b. The Department proposed that "1976" be inserted after the words, "Minnesota Statutes," B.12.C

C. Phillip MacDonald, Legislative Council of Senior Citizens in the Greater St. Paul Area, proposed that chiropractors be included in definition B.14, Physician.

D. Gene L. Johannes, Executive Director of the Minnesota Chiropractic Association, testified that under Minn. Stat. § 148.02(1), chiropractors are entitled to all rights and privileges of other physicians in all matters pertaining to the public health, except prescribing internal drugs or the practice of surgery and obstetrics. The Association believes that exclusion of chiropractors in B.14 is discriminatory and violates the intent of the Legislature.

Mr. Johannes also suggested that Minn. Stat. § 62E.32(3) includes as a "qualified expense" any charge for a health service described in Minn. Stat. § 62E.06(1) and does not exclude chiropractors.

e. It is the position of the Department that:

(1) Chiropractors are excluded from inclusion under the term "physician" by Minn. Stat. § 147.10 (1976);

(2) The Department maintains that Minn. Stat. § 148.02 distinguishes chiropractors from licensed doctors and physicians and that subd. 2 is exclusively directed toward the role of chiropractors in the system of public control and recording of contagious and infectious diseases and the recording of vital statistics.

(3) It is the position of the Department that the list of covered services in Minn. Stat. § 62E.06(1), which is the basis of qualified expenses under Minn. Stat. Ch. 62E, includes only those services actually listed and does not apply to chiropractic services. The Department believes that for the purposes of the CHEP Program, this listing should be narrowly construed as both a ceiling and a floor on benefits.

f. The Department proposed that B.20 be amended to read "Medical Assistant Program means that program of medical assistance to the poor and needy established by Title XIX of the Federal Social Security Act as of July 1, 1977, and in Minnesota by Minnesota Statutes 1976, as modified in the Minnesota Statutes 1977 Supplement, Chapter 256B."

g. The Department proposed that B.21 be amended by the addition of the words "as of July 1, 1977."

h. The Department proposed that B.22 be amended by inserting, following the words, "Minnesota Statutes," "1976 as modified in the Minnesota Statutes 1977 Supplement."

i. The Department proposed that B.29 be amended by deleting the matter after the words, "Federal Social Security Act," and substituting "as of July 1, 1977, or a similar organization as defined in Minn. Stat. § 145.61 (1976)."

j. The Department proposes that subsequent to July 1, 1977, means on or after July 1, 1977. The Department maintains that this interpretation is necessary as it is administratively important to

avoid accounting errors and mistakes in determining applicant deductibles and eligibility dates. Paul Forseth maintains that Representative James Swanson, Chief House authority of the Act, indicated on January 23, 1978, that it was the Legislative intent to begin the operation July 1, 1977, and not July 2, 1977.

k. The Department proposes that the following definition be added in response to a question from Phillip MacDonald:

> Section B.36 "Applicant" means a person who has directly or through his attorney, guardian or personally designated representative, made application for benefits from the CHPP Program with his local welfare agency. Additionally, an applicant may be a deceased person's estate on behalf of which an application is filed by the personal representative of the estate, subject to the restrictions in Section C.2 below.

Section C - Establishment and Duration of CHEPP Eligibility

The following section is proposed to govern the criteria used by the local agencies in determining the establishment and duration of an applicant's eligibility for the Catastrophic Health Expense Protection Program.

a. Proposed Section C-1 is necessary to establish that eligibility determinations will be done by local welfare agencies. Use of local agencies makes it easier for applicants and administrative agents to exchange necessary information and conduct personal interviews.

b. Proposed Section C-2 is necessary to establish who may make applications for CHEPP benefits. It is necessary to disallow representation by employers of providers of medical services because such persons would not be representing a family's financial interests. It is necessary to limit applications on behalf of a deceased person's estate to those heirs not eligible for CHEPP benefits to prevent total dispersal of family resources.

c. Proposed Section C-3 is necessary to establish who is responsible for individual eligibility decisions in the program.

d. Proposed Section C-4 is necessary to specify the information providing duties and services of the local welfare agencies.

e. Proposed Section C-5 is necessary to establish the duties of the local welfare agencies in the filing and processing of applications for the program.

f. Proposed Section C-6 encourages the use of other sources of welfare medical assistance wherever possible. The Department proposes that applicants entitled to benefits under other welfare programs be considered ineligible for CHEPP benefits if such other benefits are clearly equal to or greater than those available under CHEPP. It is necessary that consideration be given to other welfare programs so as to provide the most generous package of benefits possible.

g. Proposed Section C-7 is necessary to establish that applicants for the CHEPP benefits provide sufficient information and documents to allow complete eligiblity determination to be performed.

h. Proposed Section C-8, requiring that the satisfaction of the CHEPP deductible be met by out-of-pocket expenses or liabilities, is necessary to clarify the eligibility requirements of the Program.

i. Proposed Section C-9, allowing the applicant a choice in the selection of qualified expenses and the beginning date of the deductible period, is necessary to guide county eligibility workers in determining whether the deductible has been met. It is necessary that bills submitted for expenses after the chosen date be submitted in sequence because of limitations in the computer processing payments system.

j. Proposed Section C-10 is necessary to facilitate consideration of only the income available to the part of the family included in the application and not to income received prior to death of a deceased spouse or income of a spouse living apart from the applicant.

k. Proposed Section C-1 requires that eligibility for CHEPP-1 benefits run for 12 calendar months, beginning on the first day of the month and year of the earliest service occasioning a qualified expense. This section is needed because of

the structure of the client eligibility files used in the Medical Payments Central System. It is necessary to use the same consideration as the basis for the termination of eligibility of children attaining non-covered ages at month-end. This section also requires that eligibility for CHEPP-2 benefits runs from satisfaction of the deductible until last day of state fiscal year. This is necessary because of the need to pro-rate CHEPP-2 payments at a single point in time in the event that the appropriation is not sufficient to cover the sum of a beneficiary's raw entitlements to payments.

l. Proposed Section C-12 requires that eligibility for payment of qualified nursing home expenses be calculated separately from eligibility for other CHEPP benefits. This is necessary as the CHEPP Act establishes separate applications of separate eligibility tests as pre-conditions for receipt of actual benefits.

m. Proposed Section C-13 requires that application for payment of qualified nursing home expenses be made in a timely manner. This is necessary to insure that potential beneficiaries are allowed the earliest possible reduction in private-pay to Medical assistance rates and to insure that the State has all data needed for computation of liabilities by the end of the fiscal year.

n. Proposed Section C-14, concerning the termination of benefits, is necessary to provide an orderly system for reconsideration of provisional liability.

o. Proposed Section C-15 governs the appeals procedure available to protected persons. The Department proposes that the appeal be conducted pursuant to Minn. Stat. Ch. 15.

Section D Administration of Benefits and Payments.

10. This section of the proposed rule applies to the procedure governing the administration of benefits and payments.

a. Proposed Section D-1 is necessary to make it clear that eligible persons remain liable for a certain portion of the charges for covered services.

b. Proposed Section D-2 is necessary to clarify those situations in which charges disallowed by the Commissioner shall be considered forgiven rather than payable by the recipient.

c. Proposed Section D-3 requires that CHEPP-1 benefits to be paid to the provider of health services, and CHEPP-2 benefits to the nursing home residents or guardians. This procedure is necessary for most efficient use of the Medical Assistance Central Payments System.

d. Proposed Section D-4 is needed to simplify cost settlements between the Department and providers of services on a cost-related basis.

e. Proposed Section D-5 requires that regular providers of services to CHEPP beneficiaries give the Department the same enrollment information and provide agreements that are required for enrollment in the Medical Assistance Program. This section is necessary to allow for payment through the Medical Assistance Central Payments System.

f. Proposed Section D-6 requires that regular providers of services shall bill the CHEP Program directly. This procedure is necessary for payment of CHEPP claims through the Medical Assistance Central Payments System.

g. Dolores J. Bormen, Director of Lac Qui Parle County Family Service Center, suggested that time could be saved if the County Welfare Office rather than the computer paid the bills. Ms. Bormen states that it is time-consuming to calculate the exact spend-down date required by the computer system.

h. Proposed Section D-7 requires that providers bill third parties known to be liable or to supply the Department with sufficient information for reimbursement. This is necessary to assure greatest possible use of third-party medical benefits to which CHEPP beneficiaries are entitled. It is necessary to place restrictions on providers supplying bills to CHEPP beneficiaries in order to prevent beneficiaries from collecting third-party benefits for services paid by CHEPP without reporting these benefits to the Program.

i. Proposed Section C-8 is necessary to supply CHEPP beneficiaries with identification cards to establish a method by which providers can be informed of their patients' coverage.

j. Proposed Section D-9's listing of non-qualified expenses rule is necessary to provide advance notice to providers of what services are not covered by the CHEP Program. It is necessary to follow the procedures of the Medical Assistance Program for review of claims and for prior authorization of services in order to use the Medical Assistance Central Payments System to process Chepp claims.

k. Proposed Section D-10, termination of provider enrollment, is necessary to establish a method for orderly disenrollment.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Department of Public Welfare. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. § 15.052, subd. 3, it is the duty of the Hearing Examiner to: ". . . (4) make a report on each proposed agency action . . . taking notice of the degree to which the agency has (1) documented its statutory authority to take the proposed action, (ii) fulfilled all relevant, substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. The Examiner concludes that proposed DPW-60 should be amended as set out in Findings 8 a. and b. for the purpose of statutory clarification.

4. The Examiner concludes that proposed DPW 60 should be amended as set out in Findings 8 c. and d. to provide for the inclusion of chiropractors as required by Minn. Stat. § 148.02(2), which reads as follows:

> Chiropractors shall be subject to the same rules and regulations, both municipal and state, that govern other licensed doctors or physicians in the control of contagious and infectious diseases, and shall be entitled to sign health and death certificates and to all rights and privileges of other doctors or physicians in all matters pertaining to public health, except prescribing internal drugs or the practice of medicine, physical therapy, surgery and obstetrics. (Amended by Laws 1975, ch. 362, § 2.)

5. The Examiner concludes that proposed DPW-60 should be amended as set out in Findings 8 f. g. h. i and k to clarify the intent and purpose of the rule.

6. The Examiner concludes that the inclusion of statutory language in B.6 is crucial to the ability of a person affected by the rule to comprehend its meaning and effect.

7. The definitions of "Medicare", "General Assistance Medical Care", and "Review Organization", B.21, 22 and 29, respectively, includes references to provisions of the Federal Social Security Act. This is incorporation by reference and requires approval from the Chief Hearing Examiner pursuant to Minn. Stat. § 15.0412, subd. 4. The Department must also bear in mind the length of provisions set out in the statute for appropriate incorporation.

8. The Examiner concludes that the Department of Public Welfare has documented its statutory authority to promulgate the proposed rules and that the need for and reasonableness of the proposed rules has been demonstrated by an affirmative presentation of facts.

9. The Examiner concludes that the amendments he is suggesting to the rules make the rules more reasonable and that none of these amendments constitute a substantial change.

RECOMMENDATION

That the Department of Public Welfare adopt DPW-60 as proposed and recommended to be amended in this Report after compliance with Minn. Stat. § 15.0412, subd. 4. (See Conclusions 3, 4, 5 and 7.)

Dated this 8 day of March, 1978.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 60 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING ADMINISTRATION OF THE CATASTROPHIC HEALTH EXPENSE PROTECTION PROGRAM.

. AMENDED ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Peter Erickson, Hearing Examiner, Office of Hearing Examiners of the State of Minnesota, on January 13, 1978, at 9:00 A.M., in the Veterans' Service Building, St. Paul, Minnesota, after proper notice required by Minnesota Statutes 1976, Section 15.0412 was served on all persons, associations, and other interested groups registered with the Secretary of State for that purpose.

At said hearing proposed amendments to the above-captioned rules were considered as originally proposed as shown in the attached Exhibit A hereto. Mr. Paul Farseth, Supervisor, Food Stamp Program (formerly Supervisor, Catastrophic Health Expense Protection Program), made the Agency presentation at the hearing. The hearing continued until all interested persons and groups had an opportunity to be heard. Based upon the proceedings as indicated in the Report of Hearing Examiner, dated March 8, 1978, a copy of which is attached as Exhibit B hereto, and as indicated in the Amended Report of Hearing Examiner, dated April 18, 1978, a copy of which is attached as Exhibit E hereto, the Hearing Examiner made Findings of Fact, Conclusions, and Recommendations.

Pursuant to Minnesota Statutes Section 15.0412, subd. 4 (1976), as amended by Laws 1977, Chapter 443, said original Report has been available to all affected persons for over five days subsequent to the date of the Report.

After affording interested persons an opportunity to present written and/or oral statements, having reviewed all of the testimony, having considered all of the evidence adduced, having considered the report of the Hearing Examiner, and upon all the proceedings and testimony herein and applicable statutory standards or criteria, and having determined the need for the above-captioned rules and the reasonableness thereof,

NOW THEREFORE, IT IS ORDERED THAT the Commissioner hereby

1) adopts and incorporates herein the Report of the Hearing Examiner, dated March 8, 1978, as amended by the matter in the Amended Report of Hearing Examiner, dated April 18, 1978; provided, however, that the Department of Public Welfare withdraws its position regarding reimbursement of chiropractic services as reported by the Hearing Examiner in his FINDINGS OF FACT, section 8.e.; and provided further that the Department's proposed amendments to the rule to insert dates after certain occurrences of the words "Minnesota Statutes" are hereby withdrawn as unnecessary, and that the references to these amendments in the Report of the Hearing Examiner at FINDINGS OF FACT, sections 8.a., 8.b., 8.f., 8.h., and 8.i. and at CONCLUSIONS 3 and 5, are not adopted and incorporated herein; and

2) adopts the proposed amendments to the above-entitled rules, which amendments are listed in the attached Exhibit C hereto.

IT IS FURTHER ORDERED THAT the above-captioned rules from and after this day of April 19, 1978, shall read in their entirety as set forth in the attached Exhibit D, hereto, pursuant to the authority vested in me pursuant to Minnesota Statutes, Chapter 15 and Section 62E.54, as modified by Minnesota Statutes 1977 Supplement.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Edward J. Dirkswager, Jr.
Commissioner

EXHIBIT A

MINNESOTA DEPARTMENT OF PUBLIC WELFARE

PROPOSED RULE DPW-60

CATASTROPHIC HEALTH EXPENSE PROTECTION PROGRAM

THIS RULE IS PROPOSED FOR IMMEDIATE ADOPTION AS A TEMPORARY RULE AND FOR PUBLIC HEARING AND COMMENT PRIOR TO ADOPTION AS A PERMANENT RULE.

SEPTEMBER 12, 1977

QUESTIONS ABOUT MINNESOTA'S CATASTROPHIC HEALTH EXPENSE PROTECTION PROGRAM MAY BE SENT TO:

CHEPP
MINNESOTA DEPARTMENT OF PUBLIC WELFARE
BOX 43170
ST. PAUL, MINN. 55175
TELEPHONE: (612) 296-4729

MINNESOTA RULE DPW-60 --Catastrophic Health Expense Protection

A. INTRODUCTION

1. Scope and Purpose of Rule. This rule governs administration of the Catastrophic Health Expense Protection Program (CHEPP, CHEP Program) in Minnesota. It is issued pursuant to Minnesota Statutes 1976, section 62E.54, subdivision 1. It provides the basis for implementation of sections 62E.51 to 62E.55.

2. Persons Regulated. This rule is binding on the Department of Public Welfare, on all county welfare and human services boards (hereinafter called local welfare agencies), on all persons and organizations contracting to perform functions under the CHEPP act, on providers of health services who are paid or who request payment under the act, and on people who apply for or receive benefits under the act.

3. Uniform Implementation of the Rule. The Commissioner of Public Welfare shall issue handbooks and informational materials to local welfare agencies, to persons and organizations that contract to perform functions required under the CHEPP act, to providers of health services which may be paid for under the act, and to people who apply for or receive benefits under the act, so that the act and this rule are put into effect in an orderly and uniform way.

4. Civil Rights Protections. The CHEP Program shall be administered so as not to deny people who apply for or receive benefits their individual and civil rights. The program shall give due regard to the rights of its beneficiaries as to privacy of their personal medical records. No disclosure shall be made of such records or of personally identifiable data from them except as permitted by law and then only such pertinent data as is clearly required for proper administration of the program by those persons and organizations responsible for it.

5. Subordination of Rule to State and Federal Laws. Any provision of this rule which is inconsistent with any State or Federal law applicable to the CHEP Program is superseded thereby.

B. DEFINITIONS

For the purposes of this rule, the terms defined in this section have the meanings given them.

1. "Eligible person" means any person who is a resident of Minnesota and who, while a resident of Minnesota, has been found by the commissioner to have incurred an obligation to pay:

   a. qualified expenses for himself and any dependents in any 12 consecutive months exceeding:

      (1) 40 percent of his household income up to $ 15,000, plus 50 percent of his household income between $ 15,000 and $ 25,000, plus 60 percent of his household income in excess of $ 25,000, or

      (2) $ 2,500, whichever is greater; or

   b. qualified nursing home expenses for himself and any dependents in any 12 consecutive months exceeding 20 percent of his household income.

Where clearly indicated by the context, "eligible person" shall also mean the dependents of an eligible person as defined below.

2. "Resident of Minnesota" means a person who is presently residing in Minnesota, having there his principal and permanent abode, and having no intent to return to some other state to live upon completion of a course of medical care. In deciding whether an applicant for CHEPP benefits is a resident of Minnesota, all important aspects of the applicant's situation shall be considered, and the decision shall be made on the preponderance of the evidence. In doubtful cases, the following forms of evidence of residence may be included in those examined:

   a. The place of residence of the applicant's family members who would be eligible for CHEPP benefits;

   b. The number of months that the applicant has lived in Minnesota, and, in the case of retired persons who maintain residences in two or more states, the proportion of each of the past two years which the applicant has spent in Minnesota;

   c. The state in which the applicant and his spouse are:

      (1) Registered to vote;

      (2) Licensed to drive;

      (3) Registering their car(s);

      (4) Claiming a homestead for property tax relief;

      (5) Employed;

      (6) Doing their banking;

   d. The state in which the applicant lived for a substantial period before retiring and establishing residences in two or more states.

3. "Qualified expense" means any charge incurred subsequent to July 1, 1977 for a health service which is included in the list of covered services described in Minnesota Statutes 1976, section 62E.06, subdivision 1, and for which no third party is liable. Such qualified expenses shall include the usual and customary charges for the following services and articles when prescribed by a physician:

   a. Hospital services;

   b. Professional services for the diagnosis or treatment of injuries, illnesses or conditions, other than outpatient mental or dental, which are rendered by a physician or at his direction;

   c. Drugs requiring a physician's prescription;

   d. Services of a skilled nursing facility which meets the requirements for participation as such in the Medicare program or the Medical Assistance program, for not more than 120 days in an individual eligible person's year-long eligibility period, if the services would qualify as reimbursable services under Medicare, and if the services do not fall into the class of "qualified nursing home expenses" defined in paragraph B. 31 below, and if, in addition, the patient's attending physician certifies in writing that the services are not primarily of a custodial or residential nature;

Explanatory Comment:

[Skilled nursing facility services provided by a Medicare-eligible facility may be reimbursed by Medicare if all the following conditions are met:

•Admission to the facility occurred within 14 days after an inpatient hospital stay of at least 3 days, not counting the day of hospital discharge,

•Care in the skilled nursing facility is needed because of a condition which was treated during the above hospital stay,

•The medical doctor responsible for the patient's treatment certifies that the patient needs and actually receives skilled nursing or skilled rehabilitation services on a daily basis, and

•The facility's Utilization Review Committee or a Professional Standards Review Organization does not disapprove the stay.]

Continuation of Rule:

e. Services of a home health agency if the services would qualify as reimbursable services under Medicare;

Explanatory Comment:

[The requirements for Medicare reimbursement for home health agency services are as follows:

•The patient must need part-time skilled nursing care or physical therapy or speech therapy,

•A medical doctor must determine that the patient needs the services and must set up a plan for home health care,

•The patient must be confined to his home,

•The home health agency must be eligible to participate in the Medicare program, and

•The services provided must fall into one of the following categories:

+Part-time skilled nursing care,
+Physical therapy,
+Speech therapy,

•and also, if one of the above services is needed:

+Occupational therapy,
+Part-time services of home-health aides,
+Medical social services, and
+Medical supplies and non-durable equipment provided by the agency.]

Continuation of Rule:

f. Use of ionizing radiation or radioisotopes for therapeutic or diagnostic purposes;

g. Oxygen;

h. Anesthetics;

i. Prostheses other than dental, but including cataract lenses;

j. Rental or purchase, as appropriate, of durable medical equipment other than eyeglasses and hearing aids;

k. Diagnostic X-rays and laboratory tests;

l. Oral surgery for partially or completely unerupted impacted teeth, a tooth root without the extraction of the entire tooth, or the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth;

m. Services of a physical therapist; and

n. Transportation provided by licensed ambulance service to the nearest facility qualified to treat a condition, if such ambulance transportation is medically necessary.

4. "Dependent" means a spouse, unmarried child under the age of 19 years, a child who is a student under the age of 25 and financially dependent upon the parent, or a child of any age who is disabled and dependent upon the parent, provided such spouse or child is not currently eligible for benefits under the Medical Assistance program or the General Assistance Medical Care program. The term "child" as used here includes legally adopted children, and it also includes financially dependent step children, foster children, and children under the guardianship of the applicant or his spouse. Eligibility for benefits of children reaching age 19 or 25 shall end on the last day of the birthdate month, in the eligibility year.

5. "Household income" means the gross income of an eligible person and all his dependents 23 years of age or older for the calendar year preceding the year in which an application is filed for CHEPP benefits. A dependent's age, for the purposes of this paragraph, shall be his age on the last day of the calendar year preceding the year in which application is filed for CHEPP benefits. Income paid to the applicant or his spouse on behalf of children included in the application shall be considered the applicant's income rather than the children's unless an accounting must be made for its use to some person outside the applicant family; this interpretation of children's income applies in particular to Social Security survivors' benefits. Child support legally required to be paid to a custodial parent by an absent parent shall be considered income of the custodial parent if and only if the custodial parent is not entitled to claim the child(ren) as tax dependents. [Explanatory comment: this treatment of child support payments is based on the Minnesota Department of Revenue's interpretation of Minnesota Statutes, Section 290A.03, subdivision 3. See paragraph # 6. immediately below.]

6. "Gross income" means income as defined in Minnesota Statutes, Section 290A.03, subdivision 3. Cash benefits paid to eligible persons in lieu of payments to providers of health services shall not be included in "gross income" as defined here, but payments made by the United States Veterans' Administration for "Aid and Attendance" shall be considered to be a part of "gross income" rather than medical benefits.

Explanatory comment: [The definition of "gross income" in M.S. 1976, section 290A.03 is as follows:

Subd. 3. "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code of 1954 as amended through December 31, 1974, additions to federal adjusted gross income as provided in Minnesota Statutes, Section 290.01, Subdivision 20, Clause (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(10), and all nontaxable income, including but not limited to the amount of recognized net long term capital gains excluded from adjusted gross income, cash public assistance and relief, the gross amount of any pension or annuity (including railroad retirement benefits, all payments received under the federal social security act, and veterans' disability pensions), nontaxable interest received from the state or federal government or any instrumentality thereof, worker's compensation, unemployment benefits, nontaxable strike benefits, and the gross amount of "loss of time" insurance. In the case of an individual who files an income tax return on a fiscal year basis, the term "federal adjusted gross income" shall mean federal adjusted gross income reflected in the fiscal year ending in the calendar year. "Income does not include gifts from nongovernmental sources, surplus food or other relief granted under sections 273.012, subdivision 2 or 290A.01 to 290A.21.]

Continuation of Rule:

7. "Commissioner" means the commissioner of public welfare, or, as applicable, the commissioner's designated agent in the Department of Public Welfare, a local welfare agency, or a person or organization contracting to perform functions required for administration of the CHEP Program.

8. "Third party" means any person other than the eligible person or his dependents.

9. "CHEPP deductible" means the sum of qualified expenses which an applicant must have incurred an obligation to pay in order to become an eligible person, as defined in paragraph B. 1. above.

10. "Copayment" means the 10 percent share of a reasonable charge or qualified expense, in excess of a CHEPP deductible, for which an eligible person remains liable to a provider of health services after payment of the 90 percent share by the commissioner under the provisions of the CHEPP act and this rule.

11. "Adjustment" means a payment by or to the State of Minnesota intended to change the net amount of an earlier payment made by the CHEP Program.

12. "Private health care coverage" means any plan regulated by Minnesota Statutes, chapters 62A, 62C, 62D, 64A, or sections 62E.01 to 62E.17. Private health care coverage also includes any self-insurance plan providing health care benefits.

13. "Hospital services" means any and all reasonable and medically appropriate services provided on an inpatient or outpatient basis on the direction of a physician or under his supervision by a hospital which meets the requirements for reimbursement as such by the Medical Assistance program. Hospital services do not include outpatient mental or dental health services, drugs dispensed on an outpatient basis for consumption at some other location, home health services, outpatient oral surgery, prostheses for outpatient use, or durable medical equipment for use outside the hospital, to the extent that such services are not covered under the other provisions of the CHEP Program. Ambulance services and other medical transportation are not hospital services, per se, unless they lead to an inpatient hospital admission and are chargeable as hospital services under the rules and procedures of the Minnesota Medical Assistance program.

14. "Physician" means a medical doctor or osteopath, or a dentist acting within the scope of CHEPP coverage of dental services, licensed in the state in which he practices and acting within the scope of his license. The term does not include podiatrists, chiropracters, optometrists, or psychologists.

15. "Physical therapist" means an individual who meets the requirements for enrollment as such in the Minnesota Medical Assistance Program.

16. "Home health agency" means a public or private agency which specializes in giving nursing and other therapeutic and rehabilitative services in patients' hom es and which is eligible for enrollment as such in the Minnesota Medical Assistance Program.

17. "Illness" means disease, injury, or a condition involving bodily or mental disorder of any kind, including pregnancy and fertility, and also including the state of reasonable personal concern for maintenance of individual health.

18. "Nursing home" means an institution which is licensed as a nursing home by the state in which it is located. The term includes facilities which meet the standards of the Minnesota Medical Assistance Program for enrollment as skilled nursing facilities or as intermediate care facilities (I), but it excludes facilities (or beds, in the case of multi-level facilities) which are classified as intermediate care facilities (II) or as intermediate care facilities (Mental Retardation).

19. "Medically necessary" means reasonable and prudent according to commonly accepted standards of medical practice as applied to a particular case at a particular point in time in the light of such information as is or could reasonably be available to the treating physician.

20. "Medical Assistance Program" means that program of medical assistance to the poor and needy established by Title XIX of the Federal Social Security Act and, in Minnesota, by Minnesota Statutes, chapter 256B.

21. "Medicare" means that program of payment for health services for the aged and disabled established by Title XVIII of the Federal Social Security Act.

22. "General Assistance Medical Care" (GAMC) means that program of medical assistance for the poor and needy established by Minnesota Statutes, chapter 256D.

23. "Health maintenance organization" (HMO) means an organization offering prepaid health services, as defined in Minnesota Statutes, chapter 62D.

24. "CHEPP beneficiary" means an eligible or formerly eligible person or his dependent, someone on whose behalf CHEPP benefits have been or may be paid.

25. "Provider" means a provider of health services to an applicant for CHEPP benefits or to a CHEPP beneficiary.

26. "Regular provider" means a provider of health services to a CHEPP applicant or beneficiary who (which) wishes to be reimbursed for such services directly by the CHEP Program.

27. "Usual and customary charge" means a provider's normal charge, in the absence of insurance or other plan of health coverage, for a service or supply, but not more than the prevailing charge in the state for a like service or supply.

28. "Reasonable charge" means the charge for a service or supply which would be allowable for payment under the Medical Assistance Program as administered by the Minnesota Department of Public Welfare, except that customary charge audits by provider may be omitted uniformly for practitioners and that determinations of the reasonableness of charges which require professional review may be contracted to a review organization.

29. "Review organization" means a professional standards review organization as defined in the Federal Social Security Act or a similar organization as defined in Minnesota Statutes, section 145.61.

30. "Out-of-pocket" means the personal liability of an applicant, eligible person, or a dependent of one of these. A charge or expense for a service covered by CHEPP must be an out-of-pocket expense for the applicant or eligible family. Except as provided below, this means that no third party is legally liable to pay it and no third party has been liable to pay it and has then paid it to or on behalf of the family. If part of an expense for a covered service is paid by a liable third party or is the liability of a third party, that part is not a qualified expense under the CHEP Program and may not be used to satisfy the CHEPP deductible and may not be reimbursed by CHEPP. However, expenses for covered services actually paid by liable health insurance companies may be considered eligible out-of-pocket expenses for the purpose of satisfying the CHEPP deductible to the extent that the applicant or one of his dependents actually paid or contributed toward the insurance premiums, the contributions were made during the deductible period, and the services for which the insurance payments were made were received during the deductible period.

31. "Qualified nursing home expense" means any per diem charge (as "per diem charge" is defined by the Minnesota Medical Assistance program) incurred subsequent to July 1, 1977, for nursing home services after 36 months of continuous care provided to a person less than 65 years of age in a licensed nursing home bed certified at the skilled nursing facility (SNF) or intermediate care facility "1" (ICF-1) level. Periods of inpatient hospital care and short periods of therapeutic leave from nursing home care which occur after the initial admission to nursing home care shall count as part of the 36 months.

32. "Subsequent to July 1, 1977" means on or after July 1, 1977.

33. "Residual spend-down amount" means any portion of the CHEPP deductible which for administrative convenience is arranged to be deducted from CHEPP payments after an applicant has been accepted as an eligible person.

34. "Catastrophic Health Expense Protection Program coverage 1 (CHEPP-1)" means the set of CHEPP benefits available to persons who have become eligible under the provisions of paragraph B. 1. a. above. This coverage is the regular and broad coverage of the CHEPP Program. It makes no restrictions on benefits on account of age, except as regards defining who may be included in a single family group.

35. "Catastrophic Health Expense Protection Program coverage 2 (CHEPP-2)" means the coverage of some part of the routine per diem costs of nursing home care for persons less than 65 years of age who have been in a nursing home for at least 36 months and who have become eligible under the provisions of paragraph B. 1. b. above.

C. ESTABLISHMENT AND DURATION OF CHEPP ELIGIBILITY

1. Where to Apply. Applications for benefits from the Catastrophic Health Expense Protection Program shall be taken by the local welfare agency responsible for the county in which the applicant makes his home.

2. Who May Apply. Applications for CHEPP benefits may be made by a single adult person, by either spouse of a family, or by an individual's attorney, guardian, or personally designated representative, or by the administrator or court-appointed representative of a deceased individual's estate. A personally designated representative shall present written proof of his designation and shall not be an employee of or a contractor with any provider of medical services which has provided services to the applicant. No application may be made on behalf of a deceased person's estate unless the apparent heirs of the estate include the decedent's children, spouse, former spouse, or parents and these do not qualify to apply for CHEPP benefits because of age or relationship to the decedent. An applicant (that is, the person on whose behalf application is made) must be a resident of Minnesota at the time of application.

3. Delegation of Authority. The director of each local welfare agency is designated as the commissioner's agent authorized to review and determine applicants' eligibility for CHEPP benefits. This authority may be further delegated to the supervisor of the administrative unit within each agency which is responsible for processing CHEPP applications.

4. Provision of Information by Local Welfare Agencies. Local welfare agencies shall answer questions from the public about the CHEP Program, using information and literature supplied by the commissioner. Local agencies shall explain the program's benefits and requirements to people who apply or who are eligible for benefits. Local agencies shall explain the state's privacy-protection law to people who apply for CHEPP benefits.

5. Filing and Processing Applications. Local welfare agencies shall maintain such records of CHEPP applications as may be required by this rule and by administrative procedures established by the commissioner. Application forms and records of applicants' income and expenses for health services shall be kept in the local welfare agency for at least as long as such records are required to be kept by the Medical Assistance Program. Local agencies shall provide copies of CHEPP applications, applicants' medical bills, and other documents submitted at application, to the Department of Public Welfare as required by the commissioner. Local agencies shall determine whether an applicant is eligible for CHEPP benefits within 30 days of receiving all information and documents needed to determine eligibility. When an applicant has been found eligible, the local agency shall take whatever action is necessary to establish the applicant family as an eligible case in the State computerized Welfare Information System (the Case Information System); this updating of the Case Information System shall be completed within 10 work days of determining the applicant's eligibility.

6. Consideration of Alternative Welfare Programs. Local welfare agencies shall request from CHEPP applicants enough information to decide whether they can qualify for Medical Assistance, General Assistance Medical Care, or some other form of welfare medical assistance such as certification of need for care at the University Hospitals. Applicants entitled to benefits under such other welfare programs shall be considered ineligible for CHEPP benefits if such other benefits are clearly equal to or greater than those available under CHEPP. If an applicant becomes eligible for CHEPP in preference to some other welfare program to which he is entitled, justification of the selection shall be recorded in the case record.

7. Information and Documents to Be Supplied by CHEPP Applicants. Applicants for CHEPP benefits shall provide such information and documents as are needed to establish their eligibility for the program, including as applicable the following:

a. Application Data:

(1) Full names of family members included in the application;

(2) Birthdates of all family members;

(3) Current addresses of all family members included in the application;

(4) The main address of the household one month before the date of the first service offered in satisfaction of the CHEPP deductible;

(5) The Social Security Number of each family member whose income would be relevant to determining the family's eligibility for CHEPP benefits;

(6) The amount of the family's household income in the previous year, including an itemization of all such income not reported on a State or Federal income tax return or on an application for the Minnesota Renter's Credit, Income-adjusted Homestead Tax Credit, or Senior Citizen's Property Tax Freeze Credit;

(7) The Health Insurance Claim Number of each Medicare-eligible member of the applicant family;

(8) The names of all private or public plans or programs of health coverage from which one or more family members are entitled to benefits, the addresses of such plans, the policy numbers or beneficiary identification numbers for each plan, the names of the family members covered by each plan, and the name of the plan group if necessary for claim filing;

(9) The names of all automobile insurance companies with which family members have no-fault medical coverages, the policy numbers, and the addresses of the companies;

(10) The names of any other third parties who are or may be liable for the cost of health services or health insurance for any family member, and current information about the status of any actions pending or contemplated for recovery of damages or benefits for health services;

(11) The Medical Assistance Program, General Assistance Medical Care, or CHEPP identification number of each family member who has been eligible for one of those programs within the two years before the current application for CHEPP;

(12) The telephone number of the family's main home and the telephone number at work of the employed head of household;

(13) The sex and marital status of all adult family members;

b. A signed warranty by the applicant that the information supplied is true and complete, to the best of his knowledge and ability to make it such;

c. A signed assignment of third party benefits to the extent of the State's payments on the eligible family's behalf; an assignment shall be signed by the competent family member for each separate set of entitlements; each assignment shall include an authorization to release pertinent medical information for purposes of collecting health plan and other third party benefits for health services;

d. A signed authorization from each family member, other than dependent children under age 23 years, for the commissioner to inspect tax returns and applications for tax credits submitted to the Minnesota Department of Revenue, and for the commissioner to receive copies of such documents pertinent to verifying the income reported by the applicant family; the authority to inspect and receive copies of documents shall extend also to data from microforms and computer storage devices;

e. Copies of invoices from the providers of all health services whose charges are offered in satisfaction of the CHEPP deductible or for CHEPP payment, together with current information as to which charges have been billed to third parties and the extent to which such third parties have paid or are expected to pay for the charges, information as to which charges have been paid by the family out-of-pocket (with proof of payment), and a signed statement that no insurance company or other third party payment has been received or is expected to be received for charges offered in satisfaction of the CHEPP deductible or for which CHEPP payment is requested, except as explained above.

f. Proof of out-of-pocket payments for prepaid health coverages used to justify partial inclusion of payments by such prepaid plans in the eligible expenses used to satisfy the CHEPP deductible.

8. The CHEPP Deductible Is Out-of-Pocket. Eligible expenses offered in satisfaction of the CHEPP deductible must be out-of-pocket expenses and/or liabilities as defined in paragraph B. 30. above. Eligible expenses attributed to the CHEPP deductible need not have been paid in advance of CHEPP eligibility, and failure of an applicant to pay them shall not affect the applicant's eligibility. Payment of such deductible expenses by relatives, friends, or other persons having no legal duty to pay shall not defeat the out-of-pocket character of the expenses. If a payment by a liable third party is not available within a reasonable period of time (normally 120 days from the date of application), and if the applicant cannot otherwise qualify for the CHEP Program, the charges whose payment is in question may be treated as eligible expenses for satisfaction of the CHEPP deductible, provided all required assignments of benefits are signed by the member of the applicant family who appears to be entitled to the delayed or disputed third party payment.

9. Satisfaction of the CHEPP Deductible. The applicant for CHEPP benefits may select which of his qualified expenses for services received subsequent to July 1, 1977 is to be the earliest for satisfaction of the CHEPP deductible. Having selected a beginning date, the applicant shall then offer his remaining qualified expenses incurred after that date in satisfaction of the deductible, in the order in which such remaining expenses were incurred. The date of an expense shall be deemed to be the date of the earliest

service occasioning any part of the expense or charge. Applicants must be Minnesota residents at the time each service is received whose charge is used to satisfy the CHEPP deductible, but the services may be received in other states.

10. Income Considered in Special Cases. If a widow or widower applies for CHEPP benefits, the income received prior to death by the deceased spouse which was paid during the calendar year preceding the application year shall be disregarded in determining the CHEPP deductible which must be met by the applicant. Similarly, if an applicant or the applicant's spouse has petitioned for a dissolution of marriage and there exists a temporary decree or other legally binding agreement specifying the terms of separation, the gross income of the non-applicant spouse and any dependents living with the non-applicant spouse shall not be considered in computing the amount of the applicant's CHEPP deductible, provided the applicant is in fact separated from and living apart from the non-applicant spouse.

11. Duration of Eligibility. Eligibility for CHEPP-1 benefits shall run for 12 calendar months, beginning on the first day of the month and year of the earliest service occasioning a qualified expense offered in satisfaction of the CHEPP deductible. Such eligibility shall not cover the portion of any qualified expense offered in satisfaction of the deductible, but it may cover other qualified expenses incurred during the deductible period if such expenses were not known to be qualified at the time of application. Children who reach an age at which they become ineligible for CHEPP benefits during the 12 month period shall remain covered until the last day of the month in which they reach that age.

Eligibility for CHEPP-2 benefits shall run from the date of satisfaction of the CHEPP-2 deductible until the last day of the state fiscal year, this being currently June 30th. CHEPP-2 eligibility shall end, however, not later than the last day of the month in which the eligible nursing home patient reaches the age of 65 years.

Eligible persons who establish residence in another state shall be ineligible for CHEPP payments for services they receive after their change in residence.

12. Eligibility for Payment of Qualified Nursing Home Expenses.

A CHEPP applicant's eligibility for payment of qualified nursing home expenses as defined in section B.31. above shall be figured separately from eligibility for other CHEPP benefits. Qualified nursing home expenses as defined in section B.31. shall not be used to satisfy the CHEPP deductible for other CHEPP benefits, and other qualified expenses shall not be used to satisfy the CHEPP deductible for reimbursement of qualified nursing home expenses.

13. Application for Payment of Qualified Nursing Home Expenses.

Persons desiring CHEPP payment of qualified nursing home expenses shall apply for payment in a timely way. Application shall be made not later than 60 days after the end of the earliest month for which payment will be requested. Applications for payments for the last month of the State fiscal year (i.e. June) shall be made not later than the last day of the following month.

Persons who wish per diem charges of nursing homes to be limited to those allowed by Medical Assistance must establish eligibility for CHEPP reimbursement in the month before the month in which the limitation on charges is claimed against the nursing home.

14. Termination of Eligibility. Eligibility for CHEPP benefits may be terminated or interrupted by the commissioner if third party payments are made for services whose expenses were offered in satisfaction of the CHEPP deductible, regardless of whether they are made to the beneficiary, a provider of care, or the State. If a third party payment interrupts a family's CHEPP eligibility, the commissioner shall notify the family by letter. If the amount of deductible the family must re-incur to become eligible for CHEPP again is small, it shall be entered into the computerized central payments system as a residual spend-down amount. Then the family shall be permitted to continue to have medical claims billed to the CHEPP program, but amounts payable by the State shall be used to satisfy that residual spend-down before any actual payment is made on a family's behalf. Families which choose to re-establish eligibility for CHEPP benefits in this way are liable to providers of care for both their own copayment amounts and for State-share payments held back to satisfy the residual spend-down. Such families shall tell providers of health services of their interrupted CHEPP eligibility at the time of receiving health services.

Eligibility for CHEPP benefits may also be terminated by the commissioner upon a clear determination by the commissioner that incorrect or fraudulent data was submitted by an applicant in order to become eligible. Such a determination shall not be made until 14 days have passed from notice to the family by letter that it

is being considered and that the matter may be discussed with a designated representative of the commissioner. If eligibility is terminated because of errors made in good faith in figuring a family's deductible or its satisfaction, the family may be allowed to continue in the CHEP Program with the unsatisfied deductible amount being treated as a residual spend-down amount as provided in the preceding paragraph.

Families whose CHEPP eligibility is terminated or interrupted to satisfy additional deductible amounts shall return their CHEPP eligibility identification cards to the Department of Public Welfare, which shall issue replacement cards for families on interrupted eligibility.

15. Appeals. The final decision of the commissioner denying an application for status as an eligible person, suspending it, or revoking it, or denying all or part of the charges for a health service may be appealed by any interested party pursuant to Minnesota Statutes, chapter 15.

D. ADMINISTRATION OF BENEFITS AND PAYMENTS

1. Benefits Payable. Except for qualified nursing home expenses, the Department of Public Welfare shall pay 90 percent of the reasonable charge for an eligible person's qualified expenses in excess of his CHEPP deductible. The eligible person shall remain liable to the provider of health services for the remaining 10 percent of the reasonable charge for each service.

For qualified nursing home expenses, the Department of Public Welfare shall pay, at the end of each State fiscal year, an amount for each eligible person calculated as follows, unless some other formula is set by law:

+ (Reasonable cost of eligible person's qualified nursing home care during the State's fiscal year)
- (20 percent of the eligible person's household income in the calendar year before the year application is filed for CHEPP)

= Eligible person's raw entitlement

The CHEP Program will not pay more than the raw entitlement, but if there are insufficient funds earmarked for qualified nursing home expenses, the program's payments will be calculated as follows:

$$\text{Payable Amount} = \left(\text{State Appropriation for qualified nursing home expenses}\right) \times \left(\frac{\text{Eligible person's raw entitlement}}{\text{The sum of all eligible persons' raw entitlements}}\right)$$

2. Forgiveness of Disallowed Charges. If a charge for a covered service to an eligible person is billed to CHEPP, any part of the charge determined by the Department of Public Welfare to be more than a reasonable charge, or the entire charge if the service is determined to have been not medically necessary, shall be deemed to be an unconscionable fee, against the public policy of this state and unenforceable in any action brought for the recovery of moneys owed. Charges for qualified nursing home expenses shall be considered billed to CHEPP and subject to limitation on the first day of the month following written notice to the nursing home of a patient's eligibility.

In the case of nursing home care which occasions qualified nursing home expenses, any per diem charge for qualified nursing home care given to a person eligible for CHEPP benefits shall be deemed to be a reasonable charge if it is not more than the charge per diem allowed in that section of that facility for that level of care by the Minnesota Medical Assistance Program.

3. Persons to Whom Payments Are Made. CHEPP-1 benefits shall be paid only to providers of health services, and then only after receipt of a proper billing for review and adjudication; provided, however, that benefits shall be paid to eligible persons directly if the eligible person has already paid the provider and the services were received before the date of the eligible person's application for CHEPP. CHEPP-2 benefits shall be paid to the eligible nursing home resident or on his behalf to his spouse or guardian.

4. Post-payment Adjustments. Adjustments to amounts paid by the CHEP Program shall be settled between the provider and the Department of Public Welfare at 100 percent, with no payment or collection of copayments to or from CHEPP beneficiaries.

5. Enrollment of Regular Providers. Regular providers of services to CHEPP beneficiaries shall give the Department of Public Welfare the same enrollment information and provider agreements that are required for enrollment in the Medical Assistance Program, if these have not been given already to that program. Providers already enrolled in the Medical Assistance Program will be enrolled automatically as providers of services for CHEPP beneficiaries unless they ask in writing not to be. Acceptance of payments on behalf of CHEPP beneficiaries by providers enrolled in the Medical Assistance Program shall be deemed to be an acceptance of the terms of this Rule and to extend the provider's agreement with the Medical Assistance Program to cover services to CHEPP beneficiaries.

6. Invoicing Procedures. Regular providers of service to CHEPP beneficiaries shall bill the CHEP Program directly, using approved Minnesota Medical Assistance Program invoices and forms. This requirement for billing by providers may be waived by the Department of Public Welfare for services provided and billed before the date

an applicant for CHEPP benefits is told that he or she is eligible.

If a provider of health services knows that a patient is eligible for CHEPP benefits, other than qualified nursing home expenses, he shall not try to collect charges from the patient or his family for services which are to be billed to CHEPP until the amount of the CHEPP beneficiary's copayment liability has been reported to the provider by the Department of Public Welfare. (A provider may, however, seek third party payments for services to CHEPP beneficiaries, provided that any third party recoveries of charges for services paid for in part by CHEPP are reported to the CHEP Program.)

Providers who bill the CHEP Program shall accept the program's determination of what will constitute reasonable charges for services to CHEPP beneficiaries, and they shall not attempt to collect from beneficiaries any charges disallowed by the program as excessive or as being for services deemed not medically necessary.

7. Third Party (Insurance) Claims. Providers shall bill third parties known to be liable for health services provided to CHEPP beneficiaries or shall supply sufficient information to the Department of Public Welfare to allow the department to claim reimbursement under its rights of assignment or subrogation. Providers shall not supply known CHEPP beneficiaries with invoices requesting payment for services to be billed to the CHEP Program unless such invoices are prominently marked to indicate that payment by the CHEP Program will be or has been requested.

8. CHEPP Beneficiary Identification Cards. CHEPP beneficiaries shall be provided with identification cards giving the dates of their eligibility and their identification numbers. Beneficiaries shall show these cards to providers of health services before they receive services for which they expect part payment by CHEPP. CHEPP beneficiaries eligible only for part payment of qualified nursing home expenses shall receive separate and distinct identification cards or letters.

9. Non-qualifying Expenses. Charges for the following shall be considered to be not qualified expenses, not covered by the CHEP Program:

   a. Cosmetic surgery, except to repair an injury or birth defect;

   b. Private hospital or nursing home rooms, to the extent that the charges exceed the institution's charge for its most common semi-private room, unless a private room is prescribed as medically necessary by a physician. If an institution has no semi-private rooms, its most common semi-private room charge shall be deemed to be 90 percent of its lowest private room charge;

   c. Trans-sexual surgery;

   d. Artificial insemination;

   e. Reversals of sterilizations entered into originally with free and informed consent;

   f. Autopsies;

   g. Missed appointments;

   h. Costs of billing;

   i. Inpatient psychiatric care substituted for outpatient care primarily to acquire reimbursability of the services under the CHEP Program.

Procedures used by the Minnesota Medical Assistance program for review of the appropriateness or medical necessity of health services shall be used for the review of claims for CHEPP payments to the extent that they are not incompatible with this rule or with the Catastrophic Health Expense Protection Act. Providers of care shall observe such procedures, including prior-authorization procedures, as a condition of receiving payments from the CHEP Program.

10. Termination of Provider Enrollments. Providers may be terminated from enrollment as eligible payees under the CHEP Program according to the procedures established for such termination in the Minnesota Medical Assistance Program. Providers terminated from the Medical Assistance Program for misconduct shall be simultaneously terminated from the CHEP Program.

R DPW-60 as adopted

EXHIBIT D

MINNESOTA DEPARTMENT OF PUBLIC WELFARE

RULE DPW-60

CATASTROPHIC HEALTH EXPENSE PROTECTION PROGRAM

This rule is adopted as a permanent rule.

April 19,
~~March 20,~~ 1978

Questions about Minnesota's Catastrophic Health Expense Protection Program may be sent to:

CHEPP
Minnesota Department of Public Welfare
Box 43170
St. Paul, MN. 55164
Telephone: (612) 296-4729

PROPOSED 87

MINNESOTA RULE DPW-60 --Catastrophic Health Expense Protection

A. INTRODUCTION

1. Scope and Purpose of Rule. This rule governs administration of the Catastrophic Health Expense Protection Program (CHEPP, CHEP Program) in Minnesota. It is issued pursuant to Minnesota Statutes, ~~1976~~ 87, section 62E.54, subdivision 1. It provides the basis for implementation of sections 62E.51 to 62E.55.

2. Persons Regulated. This rule is binding on the Department of Public Welfare, on all county welfare and human services boards (hereinafter called local welfare agencies), on all persons and organizations contracting to perform functions under the CHEPP act, on providers of health services who are paid or who request payment under the act, and on people who apply for or receive benefits under the act.

3. Uniform Implementation of the Rule. The Commissioner of Public Welfare shall issue handbooks and informational materials to local welfare agencies, to persons and organizations that contract to perform functions required under the CHEPP act, to providers of health services which may be paid for under the act, and to people who apply for or receive benefits under the act, so that the act and this rule are put into effect in an orderly and uniform way.

4. Civil Rights Protections. The CHEP Program shall be administered so as not to deny people who apply for or receive benefits their individual and civil rights. The program shall give due regard to the rights of its beneficiaries as to privacy of their personal medical records. No disclosure shall be made of such records or of personally identifiable data from them except as permitted by law and then only such pertinent data as is clearly required for proper administration of the program by those persons and organizations responsible for it.

5. Subordination of Rule to State and Federal Laws. Any provision of this rule which is inconsistent with any State or Federal law applicable to the CHEP Program is superseded thereby.

B. DEFINITIONS

For the purposes of this rule, the terms defined in this section have the meanings given them.

1. "Eligible person" means any person who is a resident of Minnesota and who, while a resident of Minnesota, has been found by the commissioner to have incurred an obligation to pay:

   a. qualified expenses for himself and any dependents in any 12 consecutive months exceeding:

      (1) 40 percent of his household income up to $ 15,000, plus 50 percent of his household income between $ 15,000 and $ 25,000, plus 60 percent of his household income in excess of $ 25,000, or

      (2) $ 2,500, whichever is greater; or

   b. qualified nursing home expenses for himself and any dependents in any 12 consecutive months exceeding 20 percent of his household income.

Where clearly indicated by the context, "eligible person" shall also mean the dependents of an eligible person as defined below.

2. "Resident of Minnesota" means a person who is presently residing in Minnesota, having there his principal and permanent abode, and having no intent to return to some other state to live upon completion of a course of medical care. In deciding whether an applicant for CHEPP benefits is a resident of Minnesota, all important aspects of the applicant's situation shall be considered, and the decision shall be made on the preponderance of the evidence. In doubtful cases, the following forms of evidence of residence may be included in those examined:

   a. The place of residence of the applicant's family members who would be eligible for CHEPP benefits;

   b. The number of months that the applicant has lived in Minnesota, and, in the case of retired persons who maintain residences in two or more states, the proportion of each of the past two years which the applicant has spent in Minnesota;

   c. The state in which the applicant and his spouse are:

      (1) Registered to vote;

      (2) Licensed to drive;

      (3) Registering their car(s);

      (4) Claiming a homestead for property tax relief;

      (5) Employed;

      (6) Doing their banking;

   d. The state in which the applicant lived for a substantial period before retiring and establishing residences in two or more states.

3. "Qualified expense" means any charge incurred subsequent to July 1, 1977 for a health service which is included in the list of covered services described in Minnesota Statutes, ~~1976~~, section 62E.06, subdivision 1, and for which no third party is liable. Such qualified expenses shall include the usual and customary charges for the following services and articles when prescribed by a physician:

   a. Hospital services;

   b. Professional services for the diagnosis or treatment of injuries, illnesses or conditions, other than outpatient mental or dental, which are rendered by a physician or at his direction;

   c. Drugs requiring a physician's prescription;

   d. Services of a skilled nursing facility which meets the requirements for participation as such in the Medicare program or the Medical Assistance program, for not more than 120 days in an individual eligible person's year-long eligibility period, if the services would qualify as reimbursable services under Medicare, and if the services do not fall into the class of "qualified nursing home expenses" defined in paragraph B. 31 below, and if, in addition, the patient's attending physician certifies in writing that the services are not primarily of a custodial or residential nature;

Explanatory Comment:

[Skilled nursing facility services provided by a Medicare-eligible facility may be reimbursed by Medicare if all the following conditions are met:

•Admission to the facility occurred within 14 days after an inpatient hospital stay of at least 3 days, not counting the day of hospital discharge.

•Care in the skilled nursing facility is needed because of a condition which was treated during the above hospital stay,

•The medical doctor responsible for the patient's treatment certifies that the patient needs and actually receives skilled nursing or skilled rehabilitation services on a daily basis, and

•The facility's Utilization Review Committee or a Professional Standards Review Organization does not disapprove the stay.]

Continuation of Rule:

e. Services of a home health agency if the services would qualify as reimbursable services under Medicare;

Explanatory Comment: [The requirements for Medicare reimbursement for home health agency services are as follows:

•The patient must need part-time skilled nursing care or physical therapy or speech therapy,

•A medical doctor must determine that the patient needs the services and must set up a plan for home health care,

•The patient must be confined to his home,

•The home health agency must be eligible to participate in the Medicare program, and

•The services provided must fall into one of the following categories:

+Part-time skilled nursing care,
+Physical therapy,
+Speech therapy,

•and also, if one of the above services is needed:

+Occupational therapy,
+Part-time services of home-health aides,
+Medical social services, and
+Medical supplies and non-durable equipment provided by the agency.]

Continuation of Rule:

f. Use of ionizing radiation or radioisotopes for therapeutic or diagnostic purposes;

g. Oxygen;

h. Anesthetics;

i. Prostheses other than dental, but including cataract lenses;

j. Rental or purchase, as appropriate, of durable medical equipment other than eyeglasses and hearing aids;

k. Diagnostic X-rays and laboratory tests;

l. Oral surgery for partially or completely unerupted impacted teeth, a tooth root without the extraction of the entire tooth, or the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth;

m. Services of a physical therapist; and

n. Transportation provided by licensed ambulance service to the nearest facility qualified to treat a condition, if such ambulance transportation is medically necessary.

4. "Dependent" means a spouse, unmarried child under the age of 19 years, a child who is a student under the age of 25 and financially dependent upon the parent, or a child of any age who is disabled and dependent upon the parent, provided such spouse or child is not currently eligible for benefits under the Medical Assistance program or the General Assistance Medical Care program. The term "child" as used here includes legally adopted children, and it also includes financially dependent step children, foster children, and children under the guardianship of the applicant or his spouse. Eligibility for benefits of children reaching age 19 or 25 shall end on the last day of the birthdate month, in the eligibility year.

5. "Household income" means the gross income of an eligible person and all his dependents 23 years of age or older for the calendar year preceding the year in which an application is filed for CHEPP benefits. A dependent's age, for the purposes of this paragraph, shall be his age on the last day of the calendar year preceding the year in which application is filed for CHEPP benefits. Income paid to the applicant or his spouse on behalf of children included in the application shall be considered the applicant's income rather than the children's unless an accounting must be made for its use to some person outside the applicant family; this interpretation of children's income applies in particular to Social Security survivors' benefits. Child support legally required to be paid to a custodial parent by an absent parent shall be considered income of the custodial parent if and only if the custodial parent is not entitled to claim the child(ren) as tax dependents. [Explanatory comment: this treatment of child support payments is based on the Minnesota Department of Revenue's interpretation of Minnesota Statutes, Section 290A.03, subdivision 3. See paragraph # 6. immediately below.]

6. "Gross income" means income as defined in Minnesota Statutes, ~~1976,~~ Section 290A.03, subdivision 3. Cash benefits paid to eligible persons in lieu of payments to providers of health services shall not be included in "gross income" as defined here, but payments made by the United States Veterans' Administration for "Aid and Attendance" shall be considered to be a part of "gross income" rather than medical benefits.

Explanatory comment: [The definition of "gross income" in M.S. 1976, section 290A.03 is as follows:

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Subd. 3. "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code of 1954 as amended through December 31, 1974, additions to federal adjusted gross income as provided in Minnesota Statutes, Section 290.01, Subdivision 20, Clause (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(10), and all nontaxable income, including but not limited to the amount of recognized net long term capital gains excluded from adjusted gross income, cash public assistance and relief, the gross amount of any pension or annuity (including railroad retirement benefits, all payments received under the federal social security act, and veterans' disability pensions), nontaxable interest received from the state or federal government or any instrumentality thereof, worker's compensation, unemployment benefits, nontaxable strike benefits, and the gross amount of "loss of time" insurance. In the case of an individual who files an income tax return on a fiscal year basis, the term "federal adjusted gross income" shall mean federal adjusted gross income reflected in the fiscal year ending in the calendar year. "Income does not include gifts from nongovernmental sources, surplus food or other relief granted under sections 273.012, subdivision 2 or 290A.01 to 290A.21.]

Continuation of Rule:

7. "Commissioner" means the commissioner of public welfare, or, as applicable, the commissioner's designated agent in the Department of Public Welfare, a local welfare agency, or a person or organization contracting to perform functions required for administration of the CHEP Program.

8. "Third party" means any person other than the eligible person or his dependents.

9. "CHEPP deductible" means the sum of qualified expenses which an applicant must have incurred an obligation to pay in order to become an eligible person, as defined in paragraph B. 1. above.

10. "Copayment" means the 10 percent share of a reasonable charge or qualified expense, in excess of a CHEPP deductible, for which an eligible person remains liable to a provider of health services after payment of the 90 percent share by the commissioner under the provisions of the CHEPP act and this rule.

11. "Adjustment" means a payment by or to the State of Minnesota intended to change the net amount of an earlier payment made by the CHEP Program.

12. "Private health care coverage" means any plan regulated by Minnesota Statutes, ~~1976,~~ chapters 62A, 62C, 62D, 64A, or sections 62E.01 to 62E.17. Private health care coverage also includes any self-insurance plan providing health care benefits.

13. "Hospital services" means any and all reasonable and medically appropriate services provided on an inpatient or outpatient basis on the direction of a physician or under his supervision by a hospital which meets the requirements for reimbursement as such by the Medical Assistance program. Hospital services do not include outpatient mental or dental health services, drugs dispensed on an outpatient basis for consumption at some other location, home health services, outpatient oral surgery, prostheses for outpatient use, or durable medical equipment for use outside the hospital, to the extent that such services are not covered under the other provisions of the CHEP Program. Ambulance services and other medical transportation are not hospital services, per se, unless they lead to an inpatient hospital admission and are chargeable as hospital services under the rules and procedures of the Minnesota Medical Assistance program.

14. "Physician" means a medical doctor or osteopath, a chiropractor, or a dentist acting within the scope of CHEPP coverage of dental services; licensed in the state in which he practices and acting within the scope of his license. The term does not include podiatrists, optometrists, or psychologists. The inclusion of chiropractors here within the definition of "physician" shall not imply any authority within the CHEP Program for chiropractors to prescribe other health services for coverage under the program if prescribing such services would constitute the prescribing of internal drugs, the practice of medicine, or the practice of physical therapy.

15. "Physical therapist" means an individual who meets the requirements for enrollment as such in the Minnesota Medical Assistance Program.

16. "Home health agency" means a public or private agency which specializes in giving nursing and other therapeutic and rehabilitative services in patients' hom es and which is eligible for enrollment as such in the Minnesota Medical Assistance Program.

17. "Illness" means disease, injury, or a condition involving bodily or mental disorder of any kind, including pregnancy and fertility, and also including the state of reasonable personal concern for maintenance of individual health.

18. "Nursing home" means an institution which is licensed as a nursing home by the state in which it is located. The term includes facilities which meet the standards of the Minnesota Medical Assistance Program for enrollment as skilled nursing facilities or as intermediate care facilities (I), but it excludes facilities (or beds, in the case of multi-level facilities) which are classified as intermediate care facilities (II) or as intermediate care facilities (Mental Retardation).

19. "Medically necessary" means reasonable and prudent according to commonly accepted standards of medical practice as applied to a particular case at a particular point in time in the light of such information as is or could reasonably be available to the treating physician.

20. "Medical Assistance Program" means that program of medical assistance to the poor and needy established by Title XIX of the Federal Social Security Act as of July, 1977 and, in Minnesota, by Minnesota Statutes ~~1976 as modified in the Minnesota Statutes 1977 Supplement,~~ chapter 256B.

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21. "Medicare" means that program of payment for health services for the aged and disabled established by Title XVIII of the Federal Social Security Act as of July 1, 1977.

22. "General Assistance Medical Care" (GAMC) means that program of medical assistance for the poor and needy established by Minnesota Statutes, ~~1976 as modified in the Minnesota Statutes 1977 Supplement~~, chapter 256D.

23. "Health maintenance organization" (HMO) means an organization offering prepaid health services, as defined in Minnesota Statutes, chapter 62D.

24. "CHEPP beneficiary" means an eligible or formerly eligible person or his dependent, someone on whose behalf CHEPP benefits have been or may be paid.

25. "Provider" means a provider of health services to an applicant for CHEPP benefits or to a CHEPP beneficiary.

26. "Regular provider" means a provider of health services to a CHEPP applicant or beneficiary who (which) wishes to be reimbursed for such services directly by the CHEP Program.

27. "Usual and customary charge" means a provider's normal charge, in the absence of insurance or other plan of health coverage, for a service or supply, but not more than the prevailing charge in the state for a like service or supply.

28. "Reasonable charge" means the charge for a service or supply which would be allowable for payment under the Medical Assistance Program as administered by the Minnesota Department of Public Welfare, except that customary charge audits by provider may be omitted uniformly for practitioners and that determinations of the reasonableness of charges which require professional review may be contracted to a review organization.

29. "Review organization" means a professional standards review organization as defined in the Federal Social Security Act as of July 1, 1977, or a similar organization as defined in Minnesota Statutes ~~1976~~, section 145.61.

30. "Out-of-pocket" means the personal liability of an applicant, eligible person, or a dependent of one of these. A charge or expense for a service covered by CHEPP must be an out-of-pocket expense for the applicant or eligible family. Except as provided below, this means that no third party is legally liable to pay it and no third party has been liable to pay it and has then paid it to or on behalf of the family. If part of an expense for a covered service is paid by a liable third party or is the liability of a third party, that part is not a qualified expense under the CHEP Program and may not be used to satisfy the CHEPP deductible and may not be reimbursed by CHEPP. However, expenses for covered services actually paid by liable health insurance companies may be considered eligible out-of-pocket expenses for the purpose of satisfying the CHEPP deductible to the extent that the applicant or one of his dependents actually paid or contributed toward the insurance premiums, the contributions were made during the deductible period, and the services for which the insurance payments were made were received during the deductible period.

31. "Qualified nursing home expense" means any per diem charge (as "per diem charge" is defined by the Minnesota Medical Assistance program) incurred subsequent to July 1, 1977, for nursing home services after 36 months of continuous care provided to a person less than 65 years of age in a licensed nursing home bed certified at the skilled nursing facility (SNF) or intermediate care facility "1" (ICF-1) level. Periods of inpatient hospital care and short periods of therapeutic leave from nursing home care which occur after the initial admission to nursing home care shall count as part of the 36 months.

32. "Subsequent to July 1, 1977" means on or after July 1, 1977.

33. "Residual spend-down amount" means any portion of the CHEPP deductible which for administrative convenience is arranged to be deducted from CHEPP payments after an applicant has been accepted as an eligible person.

34. "Catastrophic Health Expense Protection Program coverage 1 (CHEPP-1)" means the set of CHEPP benefits available to persons who have become eligible under the provisions of paragraph B. 1. a. above. This coverage is the regular and broad coverage of the CHEP Program. It makes no restrictions on benefits on account of age, except as regards defining who may be included in a single family group.

35. "Catastrophic Health Expense Protection Program coverage 2 (CHEPP-2)" means the coverage of some part of the routine per diem costs of nursing home care for persons less than 65 years of age who have been in a nursing home for at least 36 months and who have become eligible under the provisions of paragraph B. 1. b. above.

36. "Applicant" means a person who has directly, or through his attorney, guardian, or personally designated representative, made application for benefits from the CHEP Program with his local welfare agency. Additionally, an applicant may be a deceased person's estate, on behalf of which an application is filed by the personal representative of the estate, subject to the restrictions in section C.2. below.

C. ESTABLISHMENT AND DURATION OF CHEPP ELIGIBILITY

1. Where to Apply. Applications for benefits from the Catastrophic Health Expense Protection Program shall be taken by the local welfare agency responsible for the county in which the applicant makes his home.

2. Who May Apply. Applications for CHEPP benefits may be made by a single adult person, by either spouse of a family, or by an individual's attorney, guardian, or personally designated representative, or by the administrator or court-appointed representative of a deceased individual's estate. A personally designated representative shall present written proof of his designation and shall not be an employee of or a contractor with any provider of medical services which has provided services to the applicant. No application may be made on behalf of a deceased person's estate unless the apparent heirs of the estate include the decedent's children, spouse, former spouse, or parents and these do not qualify to apply for CHEPP benefits because of age or relationship to the decedent. An applicant (that is, the person on whose behalf application is made) must be a resident of Minnesota at the time of application.

3. Delegation of Authority. The director of each local welfare agency is designated as the commissioner's agent authorized to review and determine applicants' eligibility for CHEPP benefits. This authority may be further delegated to the supervisor of the administrative unit within each agency which is responsible for processing CHEPP applications.

4. Provision of Information by Local Welfare Agencies. Local welfare agencies shall answer questions from the public about the CHEP Program, using information and literature supplied by the commissioner. Local agencies shall explain the program's benefits and requirements to people who apply or who are eligible for benefits. Local agencies shall explain the state's privacy-protection law to people who apply for CHEPP benefits.

5. Filing and Processing Applications. ~~Local welfare agencies shall maintain such records of CHEPP applications as may be required by this rule and by administrative procedures established by the commissioner.~~ Application forms and records of applicants' income and expenses for health services shall be kept in the local welfare agency for at least as long as such records are required to be kept by the Medical Assistance Program. Local agencies shall provide copies of CHEPP applications, applicants' medical bills, and other documents submitted at application, to the Department of Public Welfare as required by the commissioner. Local agencies shall determine whether an applicant is eligible for CHEPP benefits within 30 days of receiving all information and documents needed to determine eligibility. When an applicant has been found eligible, the local agency shall take whatever action is necessary to establish the applicant family as an eligible case in the State computerized Welfare Information System (the Case Information System); this updating of the Case Information System shall be completed within 10 work days of determining the applicant's eligibility.

6. Consideration of Alternative Welfare Programs. Local welfare agencies shall request from CHEPP applicants enough information to decide whether they can qualify for Medical Assistance, General Assistance Medical Care, or some other form of welfare medical assistance such as certification of need for care at the University Hospitals. Applicants entitled to benefits under such other welfare programs shall be considered ineligible for CHEPP benefits if such other benefits are clearly equal to or greater than those available under CHEPP. If an applicant becomes eligible for CHEPP in preference to some other welfare program to which he is entitled, justification of the selection shall be recorded in the case record.

7. Information and Documents to Be Supplied by CHEPP Applicants. Applicants for CHEPP benefits shall provide such information and documents as are needed to establish their eligibility for the program, including as applicable the following:

a. Application Data:

(1) Full names of family members included in the application;

(2) Birthdates of all family members;

(3) Current addresses of all family members included in the application;

(4) The main address of the household one month before the date of the first service offered in satisfaction of the CHEPP deductible;

(5) The Social Security Number of each family member whose income would be relevant to determining the family's eligibility for CHEPP benefits;

(6) The amount of the family's household income in the previous year, including an itemization of all such income not reported on a State or Federal income tax return or on an application for the Minnesota Renter's Credit, Income-adjusted Homestead Tax Credit, or Senior Citizen's Property Tax Freeze Credit;

(7) The Health Insurance Claim Number of each Medicare-eligible member of the applicant family;

(8) The names of all private or public plans or programs of health coverage from which one or more family members are entitled to benefits, the addresses of such plans, the policy numbers or beneficiary identification numbers for each plan, the names of the family members covered by each plan, and the name of the plan group if necessary for claim filing;

(9) The names of all automobile insurance companies with which family members have no-fault medical coverages, the policy numbers, and the addresses of the companies;

(10) The names of any other third parties who are or may be liable for the cost of health services or health insurance for any family member, and current information about the status of any actions pending or contemplated for recovery of damages or benefits for health services;

(11) The Medical Assistance Program, General Assistance Medical Care, or CHEPP identification number of each family member who has been eligible for one of those programs within the two years before the current application for CHEPP;

(12) The telephone number of the family's main home and the telephone number at work of the employed head of household;

(13) The sex and marital status of all adult family members;

b. A signed warranty by the applicant that the information supplied is true and complete, to the best of his knowledge and ability to make it such;

c. A signed assignment of third party benefits to the extent of the State's payments on the eligible family's behalf; an assignment shall be signed by the competent family member for each separate set of entitlements; each assignment shall include an authorization to release pertinent medical information for purposes of collecting health plan and other third party benefits for health services;

d. A signed authorization from each family member, other than dependent children under age 23 years, for the commissioner to inspect tax returns and applications for tax credits submitted to the Minnesota Department of Revenue, and for the commissioner to receive copies of such documents pertinent to verifying the income reported by the applicant family; the authority to inspect and receive copies of documents shall extend also to data from microforms and computer storage devices;

e. Copies of invoices from the providers of all health services whose charges are offered in satisfaction of the CHEPP deductible or for CHEPP payment, together with current information as to which charges have been billed to third parties and the extent to which such third parties have paid or are expected to pay for the charges, information as to which charges have been paid by the family out-of-pocket (with proof of payment), and a signed statement that no insurance company or other third party payment has been received or is expected to be received for charges offered in satisfaction of the CHEPP deductible or for which CHEPP payment is requested, except as explained above.

f. Proof of out-of-pocket payments for prepaid health coverages used to justify partial inclusion of payments by such prepaid plans in the eligible expenses used to satisfy the CHEPP deductible.

8. The CHEPP Deductible Is Out-of-Pocket. Eligible expenses offered in satisfaction of the CHEPP deductible must be out-of-pocket expenses and/or liabilities as defined in paragraph B. 30. above. Eligible expenses attributed to the CHEPP deductible need not have been paid in advance of CHEPP eligibility, and failure of an applicant to pay them shall not affect the applicant's eligibility. Payment of such deductible expenses by relatives, friends, or other persons having no legal duty to pay shall not defeat the out-of-pocket character of the expenses. If a payment by a liable third party is not available within a reasonable period of time (normally 120 days from the date of application), and if the applicant cannot otherwise qualify for the CHEP Program, the charges whose payment is in question may be treated as eligible expenses for satisfaction of the CHEPP deductible, provided all required assignments of benefits are signed by the member of the applicant family who appears to be entitled to the delayed or disputed third party payment.

9. Satisfaction of the CHEPP Deductible. The applicant for CHEPP benefits may select which of his qualified expenses for services received subsequent to July 1, 1977 is to be the earliest for satisfaction of the CHEPP deductible. Having selected a beginning date, the applicant shall then offer his remaining qualified expenses incurred after that date in satisfaction of the deductible, in the order in which such remaining expenses were incurred. The date of an expense shall be deemed to be the date of the earliest

service occasioning any part of the expense or charge. Applicants must be Minnesota residents at the time each service is received whose charge is used to satisfy the CHEPP deductible, but the services may be received in other states.

10. Income Considered in Special Cases. If a widow or widower applies for CHEPP benefits, the income received prior to death by the deceased spouse which was paid during the calendar year preceding the application year shall be disregarded in determining the CHEPP deductible which must be met by the applicant. Similarly, if an applicant or the applicant's spouse has petitioned for a dissolution of marriage and there exists a temporary decree or other legally binding agreement specifying the terms of separation, the gross income of the non-applicant spouse and any dependents living with the non-applicant spouse shall not be considered in computing the amount of the applicant's CHEPP deductible, provided the applicant is in fact separated from and living apart from the non-applicant spouse.

11. Duration of Eligibility. Eligibility for CHEPP-1 benefits shall run for 12 calendar months, beginning on the first day of the month and year of the earliest service occasioning a qualified expense offered in satisfaction of the CHEPP deductible. Such eligibility shall not cover the portion of any qualified expense offered in satisfaction of the deductible, but it may cover other qualified expenses incurred during the deductible period if such expenses were not known to be qualified at the time of application. Children who reach an age at which they become ineligible for CHEPP benefits during the 12 month period shall remain covered until the last day of the month in which they reach that age.

Eligibility for CHEPP-2 benefits shall run from the date of satisfaction of the CHEPP-2 deductible until the last day of the state fiscal year, this being currently June 30th. CHEPP-2 eligibility shall end, however, not later than the last day of the month in which the eligible nursing home patient reaches the age of 65 years.

Eligible persons who establish residence in another state shall be ineligible for CHEPP payments for services they receive after their change in residence.

12. Eligibility for Payment of Qualified Nursing Home Expenses.

A CHEPP applicant's eligibility for payment of qualified nursing home expenses as defined in section B.31. above shall be figured separately from eligibility for other CHEPP benefits. Qualified nursing home expenses as defined in section B.31. shall not be used to satisfy the CHEPP deductible for other CHEPP benefits, and other qualified expenses shall not be used to satisfy the CHEPP deductible for reimbursement of qualified nursing home expenses.

13. Application for Payment of Qualified Nursing Home Expenses.

Persons desiring CHEPP payment of qualified nursing home expenses shall apply for payment in a timely way. Application shall be made not later than 60 days after the end of the earliest month for which payment will be requested. Applications for payments for the last month of the State fiscal year (i.e. June) shall be made not later than the last day of the following month.

Persons who wish per diem charges of nursing homes to be limited to those allowed by Medical Assistance must establish eligibility for CHEPP reimbursement in the month before the month in which the limitation on charges is claimed against the nursing home.

14. Termination of Eligibility. Eligibility for CHEPP benefits may be terminated or interrupted by the commissioner if third party payments are made for services whose expenses were offered in satisfaction of the CHEPP deductible, regardless of whether they are made to the beneficiary, a provider of care, or the State. If a third party payment interrupts a family's CHEPP eligibility, the commissioner shall notify the family by letter. If the amount of deductible the family must re-incur to become eligible for CHEPP again is small, it shall be entered into the computerized central payments system as a residual spend-down amount. Then the family shall be permitted to continue to have medical claims billed to the CHEPP program, but amounts payable by the State shall be used to satisfy that residual spend-down before any actual payment is made on a family's behalf. Families which choose to re-establish eligibility for CHEPP benefits in this way are liable to providers of care for both their own copayment amounts and for State-share payments held back to satisfy the residual spend-down. Such families shall tell providers of health services of their interrupted CHEPP eligibility at the time of receiving health services.

Eligibility for CHEPP benefits may also be terminated by the commissioner upon a clear determination by the commissioner that incorrect or fraudulent data was submitted by an applicant in order to become eligible. Such a determination shall not be made until 14 days have passed from notice to the family by letter that it

is being considered and that the matter may be discussed with a designated representative of the commissioner. If eligibility is terminated because of errors made in good faith in figuring a family's deductible or its satisfaction, the family may be allowed to continue in the CHEP Program with the unsatisfied deductible amount being treated as a residual spend-down amount as provided in the preceding paragraph.

Families whose CHEPP eligibility is terminated or interrupted to satisfy additional deductible amounts shall return their CHEPP eligibility identification cards to the Department of Public Welfare, which shall issue replacement cards for families on interrupted eligibility.

15. Appeals. The final decision of the commissioner denying an application for status as an eligible person, suspending it, or revoking it, or denying all or part of the charges for a health service may be appealed by any interested party pursuant to Minnesota Statutes, chapter 15.

D. ADMINISTRATION OF BENEFITS AND PAYMENTS

1. Benefits Payable. Except for qualified nursing home expenses, the Department of Public Welfare shall pay 90 percent of the reasonable charge for an eligible person's qualified expenses in excess of his CHEPP deductible. The eligible person shall remain liable to the provider of health services for the remaining 10 percent of the reasonable charge for each service.

For qualified nursing home expenses, the Department of Public Welfare shall pay, at the end of each State fiscal year, an amount for each eligible person calculated as follows, unless some other formula is set by law:

+ (Reasonable cost of eligible person's qualified nursing home care during the State's fiscal year)
- (20 percent of the eligible person's household income in the calendar year before the year application is filed for CHEPP)

= Eligible person's raw entitlement

The CHEP Program will not pay more than the raw entitlement, but if there are insufficient funds earmarked for qualified nursing home expenses, the program's payments will be calculated as follows:

$$\text{Payable Amount} = \left(\begin{array}{l}\text{State Appropriation for}\\ \text{qualified nursing home}\\ \text{expenses}\end{array}\right) \times \left(\frac{\text{Eligible person's raw entitlement}}{\text{The sum of all eligible persons' raw entitlements}}\right)$$

2. Forgiveness of Disallowed Charges. If a charge for a covered service to an eligible person is billed to CHEPP, any part of the charge determined by the Department of Public Welfare to be more than a reasonable charge, or the entire charge if the service is determined to have been not medically necessary, shall be deemed to be an unconscionable fee, against the public policy of this state and unenforceable in any action brought for the recovery of moneys owed. Charges for qualified nursing home expenses shall be considered billed to CHEPP and subject to limitation on the first day of the month following written notice to the nursing home of a patient's eligibility.

In the case of nursing home care which occasions qualified nursing home expenses, any per diem charge for qualified nursing home care given to a person eligible for CHEPP benefits shall be deemed to be a reasonable charge if it is not more than the charge per diem allowed in that section of that facility for that level of care by the Minnesota Medical Assistance Program.

3. Persons to Whom Payments Are Made. CHEPP-1 benefits shall be paid only to providers of health services, and then only after receipt of a proper billing for review and adjudication; provided, however, that benefits shall be paid to eligible persons directly if the eligible person has already paid the provider and the services were received before the date of the eligible person's application for CHEPP. CHEPP-2 benefits shall be paid to the eligible nursing home resident or on his behalf to his spouse or guardian.

4. Post-payment Adjustments. Adjustments to amounts paid by the CHEP Program shall be settled between the provider and the Department of Public Welfare at 100 percent, with no payment or collection of copayments to or from CHEPP beneficiaries.

5. Enrollment of Regular Providers. Regular providers of services to CHEPP beneficiaries shall give the Department of Public Welfare the same enrollment information and provider agreements that are required for enrollment in the Medical Assistance Program, if these have not been given already to that program. Providers already enrolled in the Medical Assistance Program will be enrolled automatically as providers of services for CHEPP beneficiaries unless they ask in writing not to be. Acceptance of payments on behalf of CHEPP beneficiaries by providers enrolled in the Medical Assistance Program shall be deemed to be an acceptance of the terms of this Rule and to extend the provider's agreement with the Medical Assistance Program to cover services to CHEPP beneficiaries.

6. Invoicing Procedures. Regular providers of service to CHEPP beneficiaries shall bill the CHEP Program directly, using approved Minnesota Medical Assistance Program invoices and forms. This requirement for billing by providers may be waived by the Department of Public Welfare for services provided and billed before the date

an applicant for CHEPP benefits is told that he or she is eligible.

If a provider of health services knows that a patient is eligible for CHEPP benefits, other than qualified nursing home expenses, he shall not try to collect charges from the patient or his family for services which are to be billed to CHEPP until the amount of the CHEPP beneficiary's copayment liability has been reported to the provider by the Department of Public Welfare. (A provider may, however, seek third party payments for services to CHEPP beneficiaries, provided that any third party recoveries of charges for services paid for in part by CHEPP are reported to the CHEP Program.)

Providers who bill the CHEP Program shall accept the program's determination of what will constitute reasonable charges for services to CHEPP beneficiaries, and they shall not attempt to collect from beneficiaries any charges disallowed by the program as excessive or as being for services deemed not medically necessary.

7. Third Party (Insurance) Claims. Providers shall bill third parties known to be liable for health services provided to CHEPP beneficiaries or shall supply sufficient information to the Department of Public Welfare to allow the department to claim reimbursement under its rights of assignment or subrogation. Providers shall not supply known CHEPP beneficiaries with invoices requesting payment for services to be billed to the CHEP Program unless such invoices are prominently marked to indicate that payment by the CHEP Program will be or has been requested.

8. CHEPP Beneficiary Identification Cards. CHEPP beneficiaries shall be provided with identification cards giving the dates of their eligibility and their identification numbers. Beneficiaries shall show these cards to providers of health services before they receive services for which they expect part payment by CHEPP. CHEPP beneficiaries eligible only for part payment of qualified nursing home expenses shall receive separate and distinct identification cards or letters.

9. Non-qualifying Expenses. Charges for the following shall be considered to be not qualified expenses, not covered by the CHEP Program:

   a. Cosmetic surgery, except to repair an injury or birth defect;

   b. Private hospital or nursing home rooms, to the extent that the charges exceed the institution's charge for its most common semi-private room, unless a private room is prescribed as medically necessary by a physician. If an institution has no semi-private rooms, its most common semi-private room charge shall be deemed to be 90 percent of its lowest private room charge;

   c. Trans-sexual surgery;

   d. Artificial insemination;

   e. Reversals of sterilizations entered into originally with free and informed consent;

   f. Autopsies;

   g. Missed appointments;

   h. Costs of billing;

   i. Inpatient psychiatric care substituted for outpatient care primarily to acquire reimbursability of the services under the CHEP Program.

Procedures used by the Minnesota Medical Assistance program for review of the appropriateness or medical necessity of health services shall be used for the review of claims for CHEPP payments to the extent that they are not incompatible with this rule or with the Catastrophic Health Expense Protection Act. Providers of care shall observe such procedures, including prior-authorization procedures, as a condition of receiving payments from the CHEP Program.

10. Termination of Provider Enrollments. Providers may be terminated from enrollment as eligible payees under the CHEP Program according to the procedures established for such termination in the Minnesota Medical Assistance Program. Providers terminated from the Medical Assistance Program for misconduct shall be simultaneously terminated from the CHEP Program.

APPROVED AS TO FORM AND LEGALITY

APR 20 1978 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Lee E Thuly

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 20 1978
Joan Anderson Growe
Secretary of State
3:30 pm

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General James A. Jorgensen do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures and all relevant statutory provisions have been followed.

JAMES A. JORGENSEN
Special Assistant
Attorney General

Dated: March 27, 1978

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General James A. Jorgensen do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures and all relevant statutory provisions have been followed.

JAMES A. JORGENSEN
Special Assistant
Attorney General

Dated: March 27, 1978

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Tibor M. Gallo do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures and all relevant statutory provisions have been followed.

Tibor M. Gallo

TIBOR M. GALLO
Special Assistant
Attorney General

Dated: April 19, 1978

EXHIBIT E

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing Administration of the Catastrophic Health Expense Protection Program, Rule 60.	AMENDED REPORT OF HEARING EXAMINER

CONCLUSIONS

6. Throughout the proposed rule, statutory language has been incorporated for the sake of clarity and to aid in the general understanding of the rule. The Examiner concludes that the inclusion of statutory language in B.1., 3. - 8., 31., C. 15. and D. 2. is crucial to the ability of a person affected by the rule to comprehend its meaning and effect.

Dated: April 18, 1978.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD J. DIRKSWAGER, JR.

COMMISSIONER OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 60 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE ADMINISTRATION OF THE CATASTROPHIC HEALTH EXPENSE PROTECTION PROGRAM.

AMPLIFICATION OF TESTIMONY PRESENTED AT THE 13 JANUARY 1978 HEARING ON THE ADOPTION OF RULE 60. PROPOSAL OF CERTAIN NON-SUBSTANTIVE AMENDMENTS TO THE RULE.

1. Regarding Section B.32. defining the words "Subsequent to July 1, 1977" to mean "on or after July 1, 1977": In addition to its earlier justification of this definition as administratively important to avoid accounting errors and mistakes in determining applicant deductibles and eligibility dates, the Department of Public Welfare wishes here to argue that the definition as proposed is that intended by the Legislature in the CHEP Act. In support of this contention, we report here a conversation between Representative James Swanson, chief House author of the Act, and P. Farseth, principal author of the proposed Rule, on January 23, 1978, in which Representative Swanson indicated that it was indeed the Legislative intent that operation of the program was to begin on July 1st rather than on July 2nd.

2. Regarding testimony at the hearing by Eugene L. Johannes, Executive Director of the Minnesota Chiropractic Association, to the effect that the Act dictates coverage of chiropractic services under the class of physician services, the Department wishes here to offer the following restatement of its reasons for excluding chiropractic services from that class and certain responses to the arguments presented by Mr. Johannes:

   a. It is the position of the Department that chiropractors are excluded from inclusion under the term "physician" by Minnesota Statutes 1976, Section 147.10, which limits use of that term to licensed medical doctors and osteopaths, licensed under that chapter.

   b. It is the position of the Department that the very limited inclusion of dentists under the class of physicians in the Rule is not unreasonable (in the face of the exclusion of chiropractors) because of the powers available to dentists to prescribe legend drugs, to admit (under certain circumstances) patients into inpatient hospital care, to administer injections, and otherwise to practice certain forms of intrusive medicine not within the scope of the practice of chiropractic.

   c. It is the position of the Department that the matter in Minnesota Statutes 148.08 cited by Mr. Johannes regarding the rights and powers of licensed chiropractors does itself distinguish chiropractors from "licensed doctors or physicians". It is the position of the Department, further, that the reference of Section 148.08, Subd. 2, is either primarily or exclusively directed toward defining the role of chiropracters in the system of public control and recording of contagious and infectious diseases and of recording vital statistics data on causes of death. We take this focus to be only tangentially relevant to the practice of chiropractic as a healing art and to the scope and authority of chiropractic practice.

   d. It is the position of the Department that the "list of covered services described in section 62E.06, subd. 1" which may be the basis of "eligible expenses" under section 62E.52, subd. 2, includes only the matter in the

actual list found in section 62E.06, subd. 1, subsection (b) and does not include the matter referred to by back-reference in the first paragraph of the subdivision. We believe that the Legislative intent in section 62E.06 was primarily to establish minimum benefit levels which were to be met by health insurors in policies and contracts offered as Minnesota Qualified plans, allowing more extensive coverages also to be offered but prohibiting (in the first paragraph's back references to requirements in chapters 62A and 62C) the offering of certain kinds of policies and contracts as Qualified if they did not continue certain other technical benefit arrangements previously written into law. For the purposes of the Catastrophic Health Expense Protection Program, however, we believe that the listing of covered services should be narrowly construed as both a ceiling and a floor on benefits. Were this not done, almost any kind of quasi-medical care could be offered as covered under the CHEP Program, and great doubt would exist as to which of the requirements of chapters 62A and 62C should apply to the program. Thus if the coverage of chiropractic services were required for CHEPP pursuant to section 62A.15, to which Mr. Johannes referred, it would seem that benefits for ambulatory mental health services would also have to be provided, pursuant to section 62A.152. But this would seem to be contrary to the restriction in section 62E.06, subd. 1, subsection (b)(2). Further, how would the Department construe the words

> The provisions of this section shall apply to all group policies or subscriber contracts. . . .

as these appear in sections 62A.15 and 62A.152? Is the CHEP Program a group policy? A subscriber contract? How would the language in section 62A.151:

> The restrictions and requirements of this section shall not apply to any plan or policy which is individually underwritten or provided for a specific individual and the members of his family as a nongroup policy

be applied to CHEPP? Is CHEPP coverage a plan or policy provided for a specific individual and the members of his family? The potential for confusion is staggering. In this light, we believe that narrow construction of the back reference in section 62E.52 is both correct and expedient.

Additional material follows.

3. In response to questions from Mr. Phillip MacDonald at the hearing, we propose to add the following definition to the body of the Rule as indicated:

Section B.36. "Applicant" means a person who has directly, or through his attorney, guardian, or personally designated representative, made application for benefits from the CHEP Program with his local welfare agency. Additionally, an applicant may be a deceased person's estate, on behalf of which an application is filed by the personal representative of the estate, subject to the restrictions in section C.2. below.

4. To insure clarity of reference in the citation of certain statutes and regulations, the Department proposes the following changes to the Rule as indicated.

In Section B.6. of the Rule, the first sentence, insert the number "1976," after the words "Minnesota Statutes".

In Section B.12. of the Rule, the first sentence, insert "1976," after the words "Minnesota Statutes".

Rephrase Section B.20. to read:

"Medical Assistance Program" means that program of medical assistance to the poor and needy established by Title XIX of the Federal Social Security Act as of July 1, 1977 and, in Minnesota, by Minnesota Statutes 1976 as modified in the Minnesota Statutes 1977 Suplement, chapter 256B.

In Section B.21. of the Rule, delete the period at the end and add the words: "as of July 1, 1977."

In Section B.22. of the Rule, following the words "Minnesota Statutes" insert "1976 as modified in the Minnesota Statutes 1977 Supplement," before the words "chapter 256D".

In Section B.29. of the Rule, delete the matter after the words "Federal Social Security Act" and substitute:

as of July 1, 1977, or a similar organization as defined in Minnesota Statutes 1976, section 145.61.

State of Minnesota
Department of Public Welfare

Date: January 26, 1978

Edward J. Dirkswager, Jr.
Commissioner

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE CATASTROPHIC HEALTH EXPENSE PROTECTION PROGRAM, RULE 60

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, 55155, on January 13, 1978, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter Erickson, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104, (612) 296-8118, either before the hearing or within five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

Proposed Rule 60 governs administration of the Catastrophic Health Expense Protection Program (CHEPP, CHEP Program) in Minnesota. The Catastrophic Health Expense Protection Program is designed to provide limited help to people faced with severe out-of-pocket expenses for health care which are not covered by insurance or other government programs of medical assistance. Provisions of the proposed rule cover persons regulated, civil rights protections, definition of terms, establishment and duration of CHEPP eligibility, and administration of benefits and payments.

Copies of the proposed rule are now available and one free copy may be obtained by writing to John Hansen, CHEPP, Department of Public Welfare, Box 43170, St. Paul, Minnesota, 55164. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rule is contained in Minnesota Statutes 62E.54 Subd. 1. A "statement of need" explaining why the agency feels the proposed rule is necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, phone number (612) 296-5615.

Edward J. Dirkswager

EDWARD J. DIRKSWAGER, JR.
Commissioner

Dated: November 9, 1977

DPW-78-037-PE

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING ADMINISTRATION OF THE CATASTROPHIC HEALTH EXPENSE PROTECTION PROGRAM, RULE 60.	ORDER OF THE CHIEF HEARING EXAMINER

Pursuant to Minnesota Statutes, 1976, Section 15.0412, as amended by Laws of Minnesota, 1977, Chapter 443, Section 2, the Minnesota Department of Public Welfare, on March 22, 1978, requested approval of the Chief Hearing Examiner to be allowed to incorporate by reference certain federal statutes in the above-entitled proposed rules. The statutes are as follows:

1. Title XVIII of the Federal Social Security Act.

2. The Federal Social Security Act's definition of professional standards review organizations.

The Chief Hearing Examiner hereby finds that each of the federal laws incorporated exceed 3,000 words in length and would exceed five printed pages in the Minnesota State Register. Additionally, the Chief Hearing Examiner finds that each of the laws is readily available for review by persons affected and is otherwise readily available and accessible to the public.

NOW, THEREFORE, the Chief Hearing Examiner herewith gives approval to the Minnesota Department of Public Welfare for the incorporation by reference of the above-entitled federal statutes in their proposed rules relating to the Catastrophic Health Expense Protection Program.

Dated this 27th day
of March, 1978.

Duane R Harves

DPW-78-037-PE

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE)
DEPARTMENT OF PUBLIC WELFARE)
GOVERNING ADMINISTRATION OF)
THE CATASTROPHIC HEALTH EX-)
PENSE PROTECTION PROGRAM,)
RULE 60.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on January 13, 1978, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Public Welfare on March 8, 1978; and

WHEREAS, the Department of Public Welfare has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Public Welfare has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Public Welfare has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Public Welfare has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 27th day
of March, 1978.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE CATASTROPHIC HEALTH EXPENSE PROTECTION PROGRAM, RULE 60

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rule be held in the Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, 55155, on January 13, 1978, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Edward J. Dirkswager, Jr.
Commissioner

Date: Nov 21, 1977

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD J. DIRKSWAGER, JR.

COMMISSIONER OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 60 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE ADMINISTRATION OF THE CATASTROPHIC HEALTH EXPENSE PROTECTION PROGRAM.

STATEMENT OF NEED

The above captioned rule is a temporary rule currently in effect and proposed for adoption as a permanent rule to govern state administration of the Catastrophic Health Expense Protection Program (also referred to herein as CHEPP and as the Program). The Program was established pursuant to Minnesota Statutes 1976, Sections 62E.51 to 62E.55. Operation of the Program began on July 1, 1977. A proposed text for a temporary Rule 60 was published in the Minnesota State Register on July 5, 1977, and that temporary rule, reflecting changes made in the CHEPP Act during the 1977 Legislative session, and amended on the basis of comments received after publication, took effect on Nov. 9, 1977.

The authority of the Commissioner of Public Welfare to promulgate this rule is found in Minnesota Statutes, Section 62E.54.

There follows a brief discussion of the need for and the reasonableness of the various sections of Rule 60.

(Note: Rule 60 contains within it verbatim sections of statute law. This inclusion is necessary to allow clarification of how the statute is to be interpreted and to insure that persons administering the Program or otherwise affected by the rule will accurately put together those Program requirements defined by statute and those defined by the Rule in a coherent way. Typescript copies of the Rule are available which identify by type face those portions of the rule taken from the statute, the new matter being printed in a dark sans-serif face called Letter Gothic, the embedded statutory material being printed in a lighter Roman face called Advocate, and explanatory notes being printed in a smaller Roman face called Courier.)

Section A.1. SCOPE AND PURPOSE OF RULE is reasonable and necessary to state the subject matter of the rule and its statutory basis.

Section A.2. PERSONS REGULATED is necessary and reasonable to set forth what persons are affected by the rule.

Section A.3. UNIFORM IMPLEMENTATION OF THE RULE is necessary and reasonable to establish the intent of the Commissioner of Public Welfare to administer the Program in a consistent and uniform way in all counties of the state for all applicants, beneficiaries, and providers of medical care affected by the Program.

Section A.4. CIVIL RIGHTS PROTECTIONS is reasonable and necessary to reinforce conscientious respect for beneficiaries civil rights on the part of providers of care and of persons administering the program. Reference is made to privacy protections because of the current flux in the state laws concerning private records.

Section A.5. SUBORDINATION OF RULE TO STATE AND FEDERAL LAWS is reasonable and necessary to remind all users of the Rule that any portions of the Rule which come to be found inconsistent with law are superseded by the applicable State or Federal law.

Section B. DEFINITIONS is reasonable and necessary to clarify the precise or intended meanings of terms used in the Rule. Statutory definitions are included here for ease of reference. Where statutory definitions leave precise meanings ambiguous, additional language has been added within or at the end of those definitions. No further comments are offered here on those definitions whose reasonableness and necessity is straightforwardly apparent.

Section B.2. "RESIDENT OF MINNESOTA"--this definition is needed to guide eligibility workers in deciding when applicants meet the residency test imposed by law. The discussion of possible considerations in doubtful cases is not intended to cover the fine particularities of every case in a mechanical way but rather to establish considerations and principles which can lead to equitable and reasonably uniform eligibility decisions.

Section B.3. "QUALIFIED EXPENSE":

d.--the definition of qualified expenses from care in a SKILLED NURSING FACILITY is needed to clarify what sorts of services are or are not implied in the statutory language; further, clarification is given to prevent ambiguity concerning when skilled nursing care is covered by the principal CHEPP coverage (CHEPP-1) and when by the coverage for long term custodial care (CHEPP-2). Clarification is reasonable and necessary to indicate that length of stay limits apply to individual patients and not accumulatively to family groups. The explanatory comments provide further summary statement of requirements from the Medicare program to which the statute law refers.

e.--the definition is augmented by explanatory material summarizing Medicare requirements referred to in the statute law.

f.--the statutory phrasing is modified to reflect the meanings commonly given such phrases by health insurers and the Minnesota Comprehensive Health Association. This rephrasing is reasonable and necessary to make clear that sources of ionizing radiation other than radium and X-rays are acceptable for coverage.

i.--the words "but including cataract lenses" have been added to the statutory language to assure consistency with practice in Medicare and among health insurers and the Minnesota Comprehensive Health Association. Were this issue not clarified, CHEPP would cover glass eyes (prosthetic replacements for missing eyes) but not cataract lenses (prosthetic replacements for human eye lenses surgically removed); such a result would be unreasonable.

n.--the phrase "if such ambulance transportation is medically necessary" has been added, consistent with the power granted the Commissioner of Public Welfare to refuse to pay for expenses deemed to be not medically necessary. The intent here is to focus, as necessary, on post-service review of the medical necessity of ambulance transportation, inasmuch as prior physician orders for such transportation may not be practical in emergencies.

Section B.4. "DEPENDENT"--this definition is reasonable and necessary to assure uniform definition of who may be considered a dependent in the Program. The statutory language has been augmented to prevent redundant eligibility under both CHEPP and other government welfare medical programs; to insure coverage for certain adopted, foster, and other financially dependent children; and to define workable dates for cessation of dependency which are consistent with practice in the Medical Assistance Central Payments System through which CHEPP medical claims will be processed.

Section B.5. "HOUSEHOLD INCOME"--this definition has been expanded beyond the statutory language to give consistent definition to when dependents' income is to be counted. The treatment here of child support paid by absent parents is reasonable and necessary because it is based on practice of the Minnesota Department of Revenue as that department interprets the statute law referenced in the CHEPP Act. The treatment of payments to parents of Social Security Administration survivors' benefits on behalf of children is reasonable and necessary because the parent controls the income and needs to make no accounting for its use. . .and also because such income is paid for ordinary living expenses and does not represent children's summer earnings set aside for later educational expenses. (Cf. the various Legislative committee discussions in 1977 concerning the disregard of children's income.)

Section B.6. "GROSS INCOME"--the reasonableness of excluding medical benefits from income is apparent from the fact that medical benefits are considered in relation to whether medical expenses are qualified expenses under the program. The treatment of Veterans' Administration "aid and attendance" payments as income is reasonable because it reflects the Veterans' Administration interpretation of such benefits. The statute law referenced by the CHEPP Act's definition of income is printed for reference as an explanatory comment.

Section B.7. "COMMISSIONER"--the explication of the broad meaning of "commissioner" is reasonable and necessary to insure that readers of the Rule understand that certain references in the Rule and in the CHEPP Act do not refer solely to one human person.

Section B.9. "CHEPP DEDUCTIBLE"--this definition is necessary to give a name to a concept defined but not named in the CHEPP Act. It is reasonable for ease of reference in the Rule and in Program materials.

Section B.10. "COPAYMENT"--see B.9. above.

Section B.13. "HOSPITAL SERVICES"--this definition is reasonable and necessary to limit what services may be considered as hospital services. The exclusion of certain services done in or by hospitals from this definition is reasonable here to make clear that such services are subject to the CHEPP limitations imposed on them when performed by other persons or institutions in other settings.

Section B.14. "PHYSICIAN"--this definition is reasonable and necessary to define who may provide covered medical services and who may authorize or prescribe other services covered under CHEPP. The inclusion of dentists, as limited, is reasonable because they are included explicitly for payment in other parts of the CHEPP Act, because they may prescribe drugs, and because they may have hospital privileges. The exclusion of podiatrists, chiropracters, optometrists, and psychologists from the definition of physicians is reasonable because it is consistent with Minnesota Statutes 1976, Section 147.10, which limits the use of the term "physician" to licensed medical doctors and osteopaths. The exclusion is not made unreasonable

by the back reference in M.S. 62E.06 to mandatory coverages by insurance companies defined in M.S. 62A and 62C, because the back reference is not contained in the list of covered services referenced by M.S. 62E.52, Subd. 3. Only the list of covered services is referenced, not the entirety of Section 62E.06. The back reference in 62E.06 is intended to continue in force certain obligations of health insurance companies and non-profit service plan corporations with regard to issuance of "qualified" health insurance policies. It was not intended to interject the various inconsistent health insurance regulations (which are often applicable only to certain particular kinds of insurance policies) en masse into the operation of the CHEPP Program.

Section B.15. "PHYSICAL THERAPIST"--this definition is reasonable and necessary to insure compatibility of CHEPP operations with those of the Medical Assistance Program, whose claims processing system will be used by CHEPP and whose operating rules have already been through hearing and approved for reasonableness.

Section B.16. "HOME HEALTH AGENCY"--see B.15

Section B.17. "ILLNESS"--this definition is reasonable and necessary to establish that the CHEPP Program, consistent with Medical Assistance Program practice, will cover reasonable preventive health services and family planning services which are sometimes not covered by health insurers.

Section B.18. "NURSING HOME"--this definition is reasonable and necessary to establish that the Program will not consider the simplest levels of boarding care to be potentially eligible nursing home services, even though such care may occasionally be referred to as nursing home care. This exclusion is reasonable also because of the limits to the appropriation for CHEPP-2 services, under which coverage boarding care would have to be paid.

Section B.19. "MEDICALLY NECESSARY"--this definition is needed as a guide to claims reviewers to prevent the statutory language from being applied in a way which would deny payments for medical services provided in good faith which only after they have been provided turn out to have been unnecessary or ineffective.

Section B.28. "REASONABLE CHARGE"--this definition is reasonable and necessary to allow payment of CHEPP claims through the Medical Assistance Central Payments System, the reimbursement practices of which are subject to Federal standards for reasonableness and adequacy. The allowance for possible disregard of customary charge audits for practitioners is reasonable because such audits often prove unfair in times of high inflation and may in some cases be imposed in the Medical Assistance Program only because of Federal requirements not applicable to CHEPP. The provision for delegation of certain reviews to review organizations allows application of special professional expertise to difficult cases.

Section B.30. "OUT-OF-POCKET"--this definition is reasonable and necessary to clarify when expenses are to be deemed to be out-of-pocket under various circumstances of potential third-party liability or payment. The treatment of insurance premium payments as an offset to medical payments by insurance companies is reasonable because it prevents penalties to CHEPP beneficiaries who continue to pay for health insurance (thus reducing CHEPP payments) and because it aims at the greatest possible consistency with Medical Assistance policy.

Section B.31. "QUALIFIED NURSING HOME EXPENSE"--this definition is necessary and reasonable to sort out which nursing home expenses are covered by CHEPP-1 and which by CHEPP-2. The limitation of coverage under CHEPP-2 to per diem costs

is reasonable because of the limited appropriation for CHEPP-2. The inclusion of leave periods in the 36 month wait for benefits is reasonable to simplify eligibility determinations and to prevent patients from foregoing therapeutic leave for financial reasons.

Section B.32. "SUBSEQUENT TO JULY 1, 1977"--this definition is reasonable and necessary to make eligibility determinations and claims payments for institutional care workable at the start of the program.

Section B.34. "CHEPP-1"; Section B.35. "CHEPP-2"--these definitions are reasonable and necessary to name the two separate kinds of CHEPP coverage and routes to eligibility defined in statute law.

Section C.1. WHERE TO APPLY is reasonable and necessary to establish that eligibility determinations will be done in local welfare agencies. Use of local welfare agencies is reasonable because it places the point of application geographically close to applicants' homes, allows personal interviews of applicants, and simplifies contacts with applicants to get additional information. It is also reasonable because the county welfare agencies are administrative arms of the single state welfare system, because skilled Medical Assistance eligibility staff are available in such agencies to perform eligibility interviews and to coordinate CHEPP benefits with other welfare programs, and to review nursing home placements as in the Medical Assistance Program.

Section C.2. WHO MAY APPLY is reasonable and necessary to establish who may represent a family at application. The restrictions on use of medical care providers' agents as representatives of applicants are reasonable because such persons would not be expected to be familiar with the applicant's financial affairs, because such persons would not be representing the family's financial interests (but rather those of the medical care provider), and because such persons are not ordinarily allowed to make applications on behalf of potential Medical Assistance recipients. The restrictions on applications on behalf of estates of decedents who might have been eligible for CHEPP benefits are reasonable because they provide a workable means of carrying out the Legislative intent in the CHEPP Act to aid families (rather than medical care providers or other creditors) and to prevent the total dispersal of family resources which had been laboriously set aside for children. The intent here is to allow an adult son of a farmer, for instance, to apply for CHEPP help to pay the final bills of the deceased father without having to sell the farm. . .but <u>not</u> to allow CHEPP payments for the final bills of a decedent having no close heirs but having bills in excess of the assets left behind.

Section C.3. DELEGATION OF AUTHORITY is reasonable and necessary to establish who is responsible for individual eligibility decisions in the Program.

Section C.4. PROVISION OF INFORMATION is reasonable and necessary to further specify the duties of local welfare agencies to members of the public who ask about or apply for help from the Program.

Section C.5. FILING AND PROCESSING APPLICATIONS is reasonable and necessary to establish the duties of local welfare agencies in handling applications for CHEPP benefits. This sort of language is similar to requirements imposed in other department rules on counties for the administration of such programs as Medical Assistance or Aid to Families with Dependent Children.

Section C.6. CONSIDERATION OF ALTERNATIVE WELFARE PROGRAMS is reasonable and necessary to insure that other sources of welfare medical assistance are used where possible, so as to provide the most generous package of benefits to which each family is entitled and so as to utilize the Federally subsidized Medical Assistance program wherever possible. (The CHEPP Program may provide less help in some cases than University Hospital Papers. It provides a more restricted array of covered services than Medical Assistance and General Assistance Medical Care. In some cases its CHEPP Deductible may be less than the "spend-down" for Medical Assistance or General Assistance Medical Care, but often it will be higher for the very poor.)

Section C.7. INFORMATION AND DOCUMENTS TO BE SUPPLIED is reasonable and necessary to establish a basis for requiring the information and documents which may be needed to operate the Program as required by the CHEPP Act and the Rule. The need for most of the information and documents is evident. A few items require comment:

a.(4)--the previous address is needed to verify whether the family members were Minnesota residents at the time the earliest deductible expense were incurred.

a.(5)--the Social Security numbers of family members whose income would be relevant to eligibility are needed to allow checking data from the Minnesota Department of Revenue. This demand for Social Security numbers is permitted by 42 U.S.C. 405(c)(2)(C)(ii), as amended by Public Law 94-455.

a.(7)--the Health Insurance Claim Number of Medicare-eligible family members is needed to coordinate medical benefits with Medicare.

a.(8) and a.(9)--information about health insurance and no-fault auto insurance is needed to coordinate medical benefits with potentially liable third party payers.

a.(10)--information about other potential third party medical liabilities is needed to allow the department to pursue payment of benefits from those sources under the benefits recovery authorities of the department and the Program.

a.(12)--information about phone numbers is necessary and reasonable to allow communication with beneficiaries and applicants concerning benefits and concerning collection of third party liabilities.

a.(13)--information about the sex of family members is necessary and reasonable to review medical claims before payment. Information about marital status is necessary and reasonable to allow pursuit of possible liabilities of absent spouses (or their insurance companies) for medical bills incurred by CHEPP beneficiaries.

b.--the signed warranty of truthful application is necessary and reasonable to allow prosecution of individuals who file fraudulent applications and is consistent with practice in other welfare programs.

c.--the signed assignment of third party benefits for medical costs is necessary and reasonable to allow collection of third party benefits on behalf of the beneficiary families. The authorization to release medical information is necessary and reasonable to facilitate collection of third party benefits.

d.--a signed authorization to verify income reported by checking Minnesota individual income tax records is reasonable and necessary to deter fraudulent applications and to facilitate the application of quality control reviews to a sample of eligibility determinations. The use of income tax records is reasonable because the income considered by the Program is historical rather than current. The verification of income information on at least a sample of applications is consistent with practice in other welfare programs, though the source of information is somewhat different, since the other programs look for data on current income. The disclosure of income tax information by the Minnesota Department of Revenue is permitted if a signed authorization is obtained from the subject of the data. (To the extent that such income tax data in the Revenue Department is classified as public or as private, the subject would have a clear right to receive, at his request, a copy of the data as held.)

e.--copies of invoices for medical care charges, proofs of payment, and such related data are reasonable and necessary to allow calculation of applicants' CHEPP Deductibles. A signed statement about expected future payments is reasonable and necessary to allow future review of a case where payments might be made by both CHEPP and an insurance company or where a late insurance payment might defeat the out-of-pocket CHEPP Deductible after CHEPP eligibility had been established.

f.--proof of payments out-of-pocket for prepaid health coverages is reasonable and necessary to justify disregarding third party payments on bills used to satisfy the CHEPP Deductible.

Section C.8. THE CHEPP DEDUCTIBLE IS OUT-OF-POCKET is reasonable and necessary to clarify the eligibility requirements of the Program. The consideration allowed to unpaid medical expenses is reasonable and necessary to prevent the most impoverished applicants from being excluded from the Program. The disregarding of payment of medical bills by non-liable third parties is dictated by the statutory language "for which no third party is liable" in the definition of "Qualified Expense". The disregarding of third party liabilities which are not available within a reasonable period of time is reasonable as a protection to families whose insurance policies string them out indefinitely or eventually pay paltry amounts, is consistent with Federal requirements for the Medical Assistance Program, and is provided for in the 1977 amendments to the CHEPP Act.

Section C.9. SATISFACTION OF THE CHEPP DEDUCTIBLE is reasonable and necessary to guide county eligibility workers in figuring out the applicant's eligibility year and in determining whether the deductible has been met. The applicant's right to choose the beginning date of the deductible period is contained in the Act. The requirement that bills be offered to satisfy the deductible in the approximate sequence they were incurred is necessary to limit the number of bills submitted for payment whose service dates precede the deductible satisfaction date; such attempt at limiting the number of such "loose" bills to be paid by CHEPP is reasonable because of the limitations of the Medical Assistance Central Payments System, which is not designed to handle payment of bills for service dates earlier than Medical Assistance "spend-down" satisfaction dates except by manual intervention in the computer processing. Allowance of charges to Minnesota residents for services received in other states is reasonable and necessary because the CHEPP Act makes no restriction on coverage for such services.

Section C.10. INCOME CONSIDERED IN SPECIAL CASES is reasonable and necessary to prevent establishment of eligibility deductibles based on income and resources plainly no longer available to certain individuals, and for which records may not be easily obtainable. The intent is to consider the income of that part of the family included in the application.

Section C.11. DURATION OF ELIGIBILITY is reasonable and necessary to clarify the administration of eligibility years during which benefits are available. The use of eligibility years based on calendar months is reasonable and necessary because of the structure of the client eligibility file used in the Medical Assistance Central Payments System which will process CHEPP claims and is consistent with practice in the Medical Assistance and General Assistance Medical Care programs. Similar considerations apply to the termination of eligibility of children attaining non-covered ages at month-end. The use of the Minnesota State Fiscal Year as the eligibility year for CHEPP-2 is reasonable and necessary because of the need to pro-rate CHEPP-2 payments at a single point in time in the event that the appropriation is not sufficient to cover the sum of beneficiaries' raw entitlements to payments. It is also reasonable because the need for the floating eligibility year used in CHEPP-1 does not occur. The floating eligibility year allows a family with a block of catastrophic expenses (usually hospital and physican charges) which are clumped over the end of a year to put all the expenses together into a single eligibility year in order to qualify for help from CHEPP. The expenses considered by CHEPP-2, however, are by definition chronic monthly expenses evenly spread over the course of each year, so no hardship should be created by use of a fixed eligibility year.

Section C.12. ELIGIBILITY FOR PAYMENT OF QUALIFIED NURSING HOME EXPENSES is reasonable and necessary to make clear the separate calculations of eligibility for CHEPP-1 and CHEPP-2 implicit in the CHEPP Act. The Act itself seems to allow putting the two different classes of expenses together to see whether an individual is an eligible person, but then it establishes separate applications of separate eligibility tests as preconditions for receipt of actual benefits.

Section C.13. APPLICATION FOR PAYMENT OF QUALIFIED NURSING HOME EXPENSES is reasonable and necessary to insure that potential beneficiaries are allowed the earliest possible reduction in per diem rates from private-pay to Medical Assistance rates and to insure that all data needed for computation of amounts to be paid at the end of the State fiscal year are received in a timely way. The requirements are further reasonable because they insure that invoices and other data needed for computation of state liabilities are not lost but are rather received in time to allow projections of expected expenses.

Section C.14. TERMINATION OF BENEFITS is necessary and reasonable to provide an orderly system for reconsidering provisional eligibility granted during the pendancy of uncollected and unavailable third party payments. The provision for interupted but restorable eligibility is designed to prevent imposition of a second deductible on families whose original deductible is trivially defeated by third party payments for services used in the original satisfaction of the deductible. The system proposed is reasonable because it produces the least administrative confusion in local agencies. The provisions for terminating a family's eligibility for fraudulent applications are reasonable because they allow time for administrative hearings and reviews and because they provide for notice to the family affected. The provisions for dealing with innocent errors in application data are reasonable for the same reasons as those noted with regard to late third party payments. The requirements for return of CHEPP eligibility cards are necessary and reasonable to insure that after eligibility is interrupted or terminated no requests are made to medical care providers for

services which would not be provided were the provider to know that no CHEPP eligibility exists. The provision for temporary identification cards for persons on interrupted eligibility will allow such persons to work out payment arrangements with medical care providers for services received during the interruption period.

Section C.15. APPEALS is reasonable and necessary to make available the text of the statute law regarding appeals to users of the Rule. The extension of the appeals option to suspensions and revocations of eligibility is a reasonable protection for affected persons.

Section D.1. BENEFITS PAYABLE is reasonable and necessary to make it clear that eligible persons remain liable for 10 percent of the allowed charge for covered services paid for by CHEPP-1. The formula given for computing CHEPP-2 payments is reasonable and necessary to explicate the meaning of the CHEPP Act.

Section D.2. FORGIVENESS OF DISALLOWED CHARGES is reasonable and necessary to clarify those situations in which charges disallowed by the commissioner are to be considered forgiven rather than payable by the recipient. The definition of the time at which "qualified nursing home expenses" are to become subject to limitation is reasonable and necessary to provide nursing homes with reasonable notice of the onset of limits on their charges and with reasonable time to correct their billings. The imposition of Medical Assistance per diem charge standards on nursing homes is consistent with the earlier definition of "reasonable charge" (item B.28).

Section D.3. PERSONS TO WHOM PAYMENTS ARE MADE is reasonable and necessary to allow payment of CHEPP claims through the Medical Assistance Central Payments System after appropriate review of invoices. The provision for payments to eligible persons directly of charges they have already paid is reasonable as a means of seeing that they receive the money they have coming with the least possible confusion. The provision for payment of CHEPP-2 benefits to eligible persons rather than to nursing homes is reasonable because these payments will be made long after the nursing homes have been paid.

Section D.4. POST PAYMENT ADJUSTMENTS is reasonable and necessary to simplify cost settlements between the department and medical care providers reimbursed on a cost-related basis. Computer calculation of beneficiaries' (patients') liabilities and/or entitlements may not be attainable at present in the Medical Assistance Central Payments System. Where medical care providers have entitlements payable by the state, the intent is that the state should pay the full entitlements, not just 90 percent.

Section D.5. ENROLLMENT OF REGULAR PROVIDERS is reasonable and necessary to allow for payment of regular medical care providers through the Medical Assistance Central Payments System. The provision for presumed enrollment of Medical Assistance providers is reasonable because it reduces the paperwork imposed on them while also allowing them to decline to participate in the program.

Section D.6. INVOICING PROCEDURES is reasonable and necessary to pay CHEPP claims through the Medical Assistance Central Payments System. The provision for excep-

tions for bills already sent to CHEPP beneficiaries before notice of their eligibility is reasonable because it reduces the paper work imposed on medical care providers and imposes no excessive burdens on the state. The restrictions on what bills may be sent to known CHEPP beneficiaries by medical care providers are reasonable and necessary to prevent intentional or inadvertent collection by providers of fees paid by CHEPP or of disallowed portions of fees billed to CHEPP. The restatement of providers' duty to accept state determinations of what will constitute reasonable charges is reasonable and necessary to make this information about statutory limits available to readers of the Rule.

Section D.7. THIRD PARTY (INSURANCE) CLAIMS is reasonable and necessary to assure that the greatest possible use is made of third party medical benefits to which CHEPP beneficiaries are entitled. The restrictions on supplying bills to CHEPP beneficiaries are reasonable and necessary to prevent beneficiaries from collecting third party benefits for services paid for by the CHEPP program without reporting those benefits to the Program.

Section D.8. CHEPP BENEFICIARY IDENTIFICATION CARDS is reasonable and necessary to establish methods by which medical care providers can be informed of their patients' CHEPP coverages and of the nature of those coverages.

Section D.9. NON-QUALIFYING EXPENSES is reasonable and necessary to provide advance knowledge to medical care providers of what services are not covered by the CHEPP Program. The exclusions of cosmetic surgery and certain charges for private hospital and nursing home rooms are based on statutory language from the Minnesota Comprehensive Health Insurance Act of 1976. The exclusions of trans-sexual surgery, artificial insemination, and certain reversals of sterilizations create a rebuttable presumption that they are not medically necessary. The recent court decision requiring payment by Medical Assistance for certain trans-sexual surgery does not make the exclusion here unreasonable insofar as that decision was based upon Federal regulations applicable only to the Medical Assistance Program. The exclusions of autopsies, missed appointment charges, and billing charges are reasonable inasmuch as these charges are not for medical services of benefit to CHEPP beneficiaries. The exclusion of psychiatric care done on an inpatient basis principally to acquire coverage from CHEPP is reasonable as a method of enforcing the statutory limits on CHEPP coverage of psychiatry. The incorporation by reference of compatible Medical Assistance Program procedures and standards for review of claims and for prior authorization of services is necessary and reasonable if the Medical Assistance Central Payments System is to be used to process CHEPP claims. It is further reasonable because of the protections which exist within the Medical Assistance Program for insuring that the standards are reasonable and because such incorporation of standards by reference has already been done in the administrative rule for the General Assistance Medical Care Program.

Section D.10. TERMINATION OF PROVIDER ENROLLMENTS is reasonable and necessary to establish a method for orderly disenrollment of providers. Simultaneous termination from CHEPP and the Medical Assistance Program is reasonable because conduct justifying termination from the latter program is sufficient cause for termination from the former.

State of Minnesota
Department of Public Welfare

Date: December 13, 1977

Edward J. Dirkswager, Jr.
Commissioner

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD DIRKSWAGER, JR.

COMMISSIONER OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 60 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE ADMINISTRATION OF THE CATASTROPHIC HEALTH EXPENSE PROTECTION PROGRAM.

STATEMENT OF EVIDENCE

In addition to the "Statement of Need" which is available for inspection or purchase at the Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104 and in support thereof, the Department of Public Welfare will introduce some or all of the following evidence:

Testimony will be presented explaining the history of the Catastrophic Health Expense Protection Act of 1976, the amendments thereto in 1977, and the need for and reasonableness of the proposed rule.

We may call one or more of the following expert witnesses to testify:

Mr. John Hansen, Supervisor
Catastrophic Health Expense Protection Program, Department of Public Welfare

Mr. Hansen may explain various aspects of the current operation of the program.

Mr. Paul H. Farseth, Supervisor
Food Stamp Program, Department of Public Welfare
(Formerly Supervisor, Catastrophic Health Expense Protection Program)

Mr. Farseth may explain the provisions of the proposed rule and why those provisions are reasonable and necessary.

Mr. Robert C. Baird, Assistant Commissioner
Department of Public Welfare

Mr. Robert Randle, Director
Medical Assistance Division, Department of Public Welfare

Mr. Baird and/or Mr. Randle may explain the relationship of the Catastrophic Health Expense Protection Program to the Medical Assistance Program, the General Assistance Medical Care Program, and other programs of welfare medical assistance.

Mr. G. Warren Peterson, Director
Systems and Data Flow Division, Department of Public Welfare

Mr. Bradley Stoneking, Director
Invoice Processing Division, Department of Public Welfare

Mr. Peterson and/or Mr. Stoneking may explain the nature and requirements of the Medical Assistance Central Payments System

We may introduce the following documentary evidence:

- Rule 47 of the Department of Public Welfare, governing administration of the Medical Assistance Program.

- Rule 49 of the Department of Public Welfare, governing the setting of rates for nursing home care under the Medical Assistance Program.

- Title 45, Code of Federal Regulations, Sections 248 through 253 governing the Medical Assistance Program, plus matter in Title 20 C.F.R. referenced therein.

- Minnesota Statutes, Chapters 62A, 62C, and 62E, or portions thereof, plus the matter from Minnesota Laws of 1977, Chapters 1051 and 1030, relating to the Catastrophic Health Expense Protection Program.

- Matter from United States Public Law 94-455 relating to the use of Social Security numbers in welfare programs.

- Certain forms and handbooks used in the Catastrophic Health Expense Protection Program, the Medical Assistance Program, and the Minnesota Income-adjusted Homestead Tax Credit Program.

- Minnesota Statutes, Section 147.10.

- Your Medicare Handbook.

State of Minnesota
Department of Public Welfare

Dated: Dec. 14, 1977

Edward J. Dirkswager, Jr.
Commissioner

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE CATASTROPHIC HEALTH EXPENSE PROTECTION PROGRAM, RULE 60

CERTIFICATE OF DELIVERY
SECRETARY
OF STATE LIST

I hereby certify that the attached 486 Labels 4 sheets constitute the complete list of persons, associations, and other interested groups who as of 8:30 o'clock A M., this 1st day of DECEMBER, 1977, have requested pursuant to M.S. 1976, 15.0412 Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

By Cheri L. Mattson

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE CATASTROPHIC HEALTH EXPENSE PROTECTION PROGRAM, RULE 60

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Jacqueline Sue Wierstad, being duly sworn on oath deposes and says:

1) That she is an employee of the Executive Division of the State of Minnesota.

2) That on the 1st day of December, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 1st day of December, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Jacqueline Sue Wierstad

Subscribed and sworn to before me this 1 day of December, 1977

Notary Public,

Ramsey County, Minnesota

My Commission expires Sept 22, 1984

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE CATASTROPHIC HEALTH EXPENSE PROTECTION PROGRAM, RULE 60

AFFIDAVIT OF MAILING

Jacqueline Sue Wierstad, being first duly sworn, deposes and says: That on the 5th day of December, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Jacqueline Sue Wierstad

Subscribed and sworn to before me this 5th day of December, 1977

Notary Public,

Ramsey County, Minnesota

My Commission expires Sept 22, 1984

Margaret Holt

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 60 OF THE DEPARTMENT OF PUBLIC WELFARE, GOVERNING THE CATASTROPHIC HEALTH EXPENSE PROTECTION PROGRAM

AFFIDAVIT OF ADDITIONAL MAILING

JACQUELINE SUE WIERSTAD, being first duly sworn, deposes and says:

That on the 5th day of December, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, in addition to mailing the attached Notice of Hearing to all persons and associations listed on the Secretary of State's list, she also served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid to the following agencies:

All Minnesota County Welfare Departments
All Minnesota Human Service Boards
All Minnesota Area Mental Health Boards
All Minnesota State Hospitals

Jacqueline Sue Wierstad

Subscribed and sworn to before me
this 6th day of December
1977.
Margaret Holtt