

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

ADMIN 1013 (Rev. 1/78)

OUR FILE NO. 475

DEPARTMENT Attorney General

STATE OF MINNESOTA

Office Memorandum

TO : **Alan Held**
Special Assistant
Attorney General

DATE: **October 20, 1978**

FROM : Lee E. Sheehy
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved — **Department of Public Welfare DPW 162 Allocation of Title XX Funds to County Welfare and Human Services Boards**

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

LES/dw
Enclosure

cc: **Duane Harves**

ADOPTED

MINNESOTA RULE DPW 162 -- Allocation of Title XX Funds to County Welfare and Human Services Boards

A. Introduction

1. This rule governs the method by which the Department of Public Welfare determines the amount of funds under Title XX of the Social Security Act that county welfare and human services boards may receive in reimbursement for social services expenditures made during each program year. The Department of Public Welfare's authority to promulgate this rule is contained in Minnesota Statute 393.07, Subdivisions 1, 2, and 3 (1976).

2. The federal financial participation governed by the rule is limited to Minnesota's share of the amount authorized and appropriated by Congress each year to carry out the programs of Title XX less an amount equal to the state administrative expenses, special projects, and state-administered purchase of service contracts as determined by the Commissioner of Public Welfare or mandated by the Minnesota State Legislature.

3. In the event the Congress authorizes and appropriates any additional funds to carry out the general purposes or specialized purposes of Title XX of the Social Security Act, the Department of Public Welfare shall use the method established in Sections B, C, and D of this rule to determine the amount of such additional federal financial participation for which each local social services agency may claim reimbursement during the program year or years for which such funds are intended.

4. This rule does not govern Title XX funds authorized and appropriated by the Congress for staff development and Southeast Asian Refugee Programs.

5. Definitions

a. Allocation: The amount of Title XX funds, determined by the formula in part C of this rule, that a local social services agency may receive in reimbursement for social services expenditures in a program year.

b. Commissioner: Minnesota Commissioner of Public Welfare.

c. Comprehensive Annual Services Program (CASP) Plan: The State Social Services Plan, which is a compilation of all the local social services plans, and which meets the state plan requirements of Title XX of the Social Security Act.

d. County Welfare Board: Board established under the provisions of Minnesota Statute 393.01.

e. Federal Financial Participation: Federal monies available through Title XX of the Social Security Act to be used in payment for social services.

f. Formula: The method by which Title XX funds are allocated to local social services agencies.

g. General Allocation: The general purpose Congressional appropriation for Title XX of the Social Security Act.

h. Human Services Board: Board established under the provisions of Minnesota Statute 402, Human Services Act.

i. Joint County Welfare Board: A single welfare board established by agreement between two or more county boards of commissioners pursuant to Minnesota Statute 393.01, Subdivision 7, County Welfare Board - Joint Exercise of Powers.

j. Local Social Services Agency: Local agency under the authority of the county welfare or human services board which is responsible for social services.

k. Program Year: The period from October 1 of a given calendar year through September 30 of the following calendar year.

l. Social Services: Those services which are included in the Minnesota Comprehensive Annual Services Program (CASP) Plan.

m. State Agency: Minnesota Department of Public Welfare.

n. Supplemental Allocation: Any specific purpose Congressional appropriation for Title XX of the Social Security Act.

o. Title XX: The Title of the Social Security Act known as "Grants to States for Services" that was established by Public Law 93-647, as amended.

p. Title XX Earnings: The federal share of Title XX expenditures reported to the Department of Public Welfare by a local social services agency for reimbursement of direct delivery costs, purchased services, and allocated administrative costs.

B. Allocation Procedures

1. The total amount of Title XX funds to which the formula in part C of this rule shall be applied, shall be determined by subtracting from the total general or supplemental Title XX funds an amount equal to the state administrative expenses, special projects, and state-administered purchase of service contracts as determined by the Commissioner of Public Welfare or mandated by the Minnesota State Legislature.

2. By April 1 of each year, the State Agency shall advise each local social services agency of the amount of its allocation for the program year beginning the following October 1.

3. Counties administratively organized under a multicounty human services board or joint county welfare board may receive an allocation equal to the sum of the allocations each separate county is entitled to under this formula, if separate data is routinely reported to the State Agency, or an allocation based on combined data, if such is routinely reported to the State Agency.

4. The formula in part C of this rule becomes effective as of January 1, 1979. The first computation shall be for the period of January 1, 1979, through September 30, 1979. For every program year thereafter, the full program year applies.

5. Protection Factor

This section of the rule provides a protection factor for counties whose allocations will be reduced as a result of the implementation of the rule, identifies the source of funds for the protection factor and specifies the method of calculation of the protection factor.

a. For the period of January 1, 1979, through September 30, 1979 (3/4 of the program year), no county shall receive a reduction greater than 7.5% of the previous full program year's allocation. For the period of October 1, 1979, through September 30, 1980, no county shall receive a reduction greater than 10% of the previous year's allocation. For the period of October 1, 1980, through September 30, 1981, no county shall receive a reduction greater than 10% of the previous year's allocation. Thereafter, no reduction percentages apply.

b. No county shall receive less than the smaller of the amount calculated pursuant to the formula in part C of this rule or the amount allocated for the period October 1, 1977, through September 30, 1978.

c. The monies required to provide the protection granted in paragraphs B.5.a. and B.5.b. of this rule will be obtained by reducing the allocation to all counties not covered by this protection. The reduction shall be a common percentage computed by dividing the total protection amounts determined in paragraphs B.5.a. and B.5.b. by the total allocations to the nonprotected counties derived from the formula in part C.

C. Formula

1. The method by which the State Agency determines each county's Title XX allocation shall be a formula comprised of the following factors:

a. County Public Assistance Factor: A mathematical value which represents an unduplicated count of the county's total population receiving Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Minnesota Supplemental Aid (MSA), and Medical Assistance (MA), in proportion to the state's total population receiving public assistance through these programs, as determined by the latest available data from the Department of Public Welfare. The term "unduplicated count" means that each recipient is counted only once even if receiving assistance under more than one of the programs listed above.

b. County Population Factor: A mathematical value which represents the county's total population in proportion to the state's total population, as determined by the latest available data from the State Demographer's Office.

c. Expenditure Factor: A mathematical value which represents the county's total reported Title XX earnings (purchase of service, direct delivery costs and allocated administrative costs) in proportion to the total of all counties' reported Title XX earnings, as determined by the latest available data from the State Department of Public Welfare.

d. Equalization Aid Factor: A mathematical value based upon the index for each county derived from the Equalization Aid Formula which is a mathematical formula comprised of the following factors: welfare recipient rate per 1,000, per capita income, per capita taxable value, and per capita expenditures for welfare less salary expenditures. This factor is computed as follows:

(1) Counties are ranked in inverse order on each of the four factors from 87 to 1.

(2) The rankings for each county are totaled to determine the total combined points for each county.

(3) The index (total combined points) for each county is divided by the sum of the indicies for all counties in the state to establish a relative rank ratio for each county.

(4) The net county welfare costs, less salary expenditure, is divided by the sum of the net county welfare costs, less salary expenditures, for all counties in the state to establish a relative size ratio for each county.

(5) The relative rank ratio (#3) is multiplied by the relative size ratio (#4) for each county to establish an adjusted rank ratio.

(6) The adjusted rank ratio (#5) for each county is divided by the sum of the adjusted rank for all counties to establish an index which is used in the allocation formula (Item B).

2. The relative weight given to each factor shall be as follows:

a. 40% to County Public Assistance Factor.

b. 20% to County Population Factor.

c. 20% to Expenditure Factor.

d. 20% to Equalization Aid Factor.

3. The allocation formula shall be computed as follows:

a. An index shall be derived for each county consisting of the four factors with the relative weights assigned in C-2.

b. The index for each county shall be divided by the sum of the indicies for all counties in the state to establish a ratio for each county.

c. The Title XX funds allocated to the counties shall be multiplied by the ratio for each county to establish the allocation for each county.

D. Reallocation Procedures

1. To fully utilize Title XX funds, including supplemental funds available to the State of Minnesota, the Department of Public Welfare shall reallocate all surplus funds initially allocated to local social services agencies.

2. Each county welfare or human services board shall certify to the Commissioner of Public Welfare within 30 days of the close of the quarter ending December 31.

a. The portion of the initial allocation they expect to earn during the program year.

b. The amount of federal financial participation they could earn above their initial allocation.

3. If board certification is not received by the Commissioner by January 31, Title XX reimbursement shall be withheld from delinquent counties until such time as certification is received.

4. Based on these certifications, the Commissioner of Public Welfare shall determine the surplus and reallocate all projected surplus funds to counties which certify that they can earn more federal financial participation than provided for in the initial allocation.

5. Funds shall be reallocated in the same proportion as the formula provided for in part C of this rule up to the amount each local social services agency certifies it can earn above its allocation, and excluding those local social services agencies unable to earn their allocation.

6. At the close of the program year, the Commissioner of Public Welfare shall make a final reallocation of surplus funds based on the formula in part C of this rule.

7. No county with reimbursable earnings less than its allocation shall be considered for reallocation funds.

APPROVED AS TO FORM AND LEGALITY
OCT. 18 1978 19__
WARREN SPANNAUS, ATTORNEY GENERAL
BY Lee E. Sherburne
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 19 1978
Joan Anderson Growe
Secretary of State

9:30 a.m.

#475 Dept of Welfare DSW-162

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 10/2 Temporary Rule NO

Resubmitted and Received _____

DUE DATE 10/20

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved 10/18 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ?
4. Order for Hearing ✓
5. Notice of Hearing _____
   (i) Sufficiency _____
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence _____
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable _____
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable _____
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓ (misc file)
17. Petition by Public, where applicable _____.

[A-3 changed for prop rule] DPW 162 Is A-1 really a rule?

Reading of Adopted

A-5 Defs 1) I assume ref to MN state & Fed Title XX is O.K & P.L 93-647 A-2 was changed

a) Is ref to CASP in (C) & (L) at p.2 O.K or is it an incorp by ref? (CASP changes annually)

B-1 rule does exactly use terms as defined in A-5 i.e it refers to gen or supp Title XX funds not to gen or supp "allocations" as per A

Also Rule is under i.e "shall be determ. by subtracting for the total gen or supp Title XX funds an amt"

it is [gen + supp] — "amt equal to state adm exp etc"

or is it gen — ↗

supp — ↗

[B-1, 2 changed for proposed rules

[B-3 may not shall?

~~[B-5 of proposed rules was DROPPED~~

[B-5 of prop. rules = changed/expanded Note stmt of N&R - p 4 - says "it is anticipated that by 1981 each county will..." etc where's the evid for this?

Adopted B-5 (b)(c) or vague?

(C) Formula (2) (3) : re: allocation formula

"index" is mentioned 3x ; it's confusing
its in 1(d)(3), 1(d)(6) and 2(2)

C-d-6 Where is "Item B"?

index at 1(d)(3) is used in getting to (6)

C-(3) index is it?: four factors?:

- Co Pub Asst Factor
- Co Pop Factor
- Expend Factor
- Equalize Aid Factor

D(2) needs (:)

D(1) questioned its under
(4) clear it up

HE

12 p. 11 DPW's authority = O.K

13 Date problem

14 A-1 = N & R

15 A-2 " — shed amend

16 A-3 = " " "

17 A-4 "

18 A-5 " (awkward)

19 B-1 " " "

20 B-2 " " "

21 B-3 "

22 B-4 "

23 proposed B-5 : serious defect

p. 14 24 if add (b) & (c)

* Ag says its not at their 10 & 11 cites transcript & justifies "no substan chng" (query why there's N & R + is this substantial change?

transcript 177-79 201-207 see Ag's post-hring comments p. 8

actual long read at hring

25 C.1.a correct ambig & its N & R

26 C.1.b N & R (clarify)

27 C.1.c = N & R

28 C.1.d. N & R

29 Long Discussion

p. 25 30 C.2 is N & R (not "the most reas")

31 D.1 = N & R

32 D.2 N & R

33 D.3 N & R

34 D.4 "

35 D.5 } unreasonable

36 D.6 } tho necessary

* Ag at their 14 & 15 cite to transcript at 298-9 But I note that Tr. p 300 there's comments re: nonsensical rule (Distad = Asst Co Attny (Dakota Co)

37 D.C = N & R

$\boxed{\text{Issues}}$: does the ~~state~~ DPW have the authority to make the Stnds or shld the state freq, s act?

See DPW's pre-hring memo p. 3

; pp 76 – of transcript

~~p. 3 of~~

See HE Report – p. 25

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Lee Sheehy
Special Assistant Attorney General
Department of Administration

DATE: September 29, 1978

FROM : Alan A. Held
Special Assistant Attorney General

PHONE: 8406

SUBJECT: DPW Rule 162

Department of Public Welfare Rule 162 is hereby submitted to you for review for form and legality according to Minn. Stat. §15.0412, subd. 4 (Supp. 1977).

Please note that a copy of the Notice of Intent to Solicit Outside Opinion concerning Rule 162 is included in the "miscellaneous" document file.

If you have any questions, please call me at 6-8406.

AAH:dq

att.

PROPOSED RULE

MINNESOTA RULE DPW 162 -- Allocation of Title XX Funds to County Welfare and Human Services Boards

RECEIVED
MAR 15 1978
OFFICE OF HEARING EXAMINERS

A. Introduction

1. This Rule governs the method by which the Department of Public Welfare determines the amount of funds under Title XX of the Social Security Act that county welfare and human services boards may receive in reimbursement for social services expenditures made during each program year. The Department of Public Welfare's authority to promulgate this Rule is contained in Minnesota Statute 393.07, Subdivision 1, 2, and 3 (1976).

2. The federal financial participation governed by the Rule is limited to Minnesota's share of the amount authorized and appropriated by Congress each year to carry out the programs of Title XX less an amount determined necessary by the Commissioner of Public Welfare for state administrative expenses, special projects, and state administered purchase of service contracts.

3. In the event the Congress authorizes and appropriates any additional funds to carry out the general purposes or specialized purposes of Title XX of the Social Security Act, the Department of Public Welfare shall use this method to determine the amount of such additional federal financial participation for which each local social services agency may claim reimbursement during the program year or years for which such funds are intended.

4. This Rule does not govern Title XX funds authorized and appropriated by the Federal Congress for staff development and Southeast Asian Refugee Programs.

5. Definitions

a. Allocation: The amount of Title XX funds, determined by the formula in Part C of this Rule, that a local social services agency may receive in reimbursement for social services expenditures in a program year.

b. Commissioner: Minnesota Commissioner of Public Welfare.

c. Comprehensive Annual Services Program (CASP) Plan: The State Social Services Plan, which is a compilation of all the local social services plans, and which meets the state plan requirements of Title XX of the Social Security Act.

d. County Welfare Board: Board established under the provisions of Minnesota Statute 393.01.

e. Federal Financial Participation: Federal monies available through Title XX of the Social Security Act to be used in payment for social services.

f. Formula: The method by which Title XX funds are allocated to local social services agencies.

g. General Allocation: The general purpose Congressional appropriation for Title XX of the Social Security Act.

h. Human Services Board: Board established under the provisions of Minnesota Statute 402, Human Services Act.

i. Joint County Welfare Board: A single welfare board established

by agreement between two or more county boards of commissioners pursuant to Minnesota Statute 393.01, Subdivision 7, County Welfare Board - Joint Exercise of Powers.

j. Local Social Services Agency: Local agency under the authority of the county welfare or human services board which is responsible for social services.

k. Program Year: The period from October 1 of a given calendar year through September 30 of the following calendar year.

l. Social Services: Those services which are included in the Minnesota Comprehensive Annual Services Program (CASP) Plan.

m. State Agency: Minnesota Department of Public Welfare.

n. Supplemental Allocation: Any specific purpose Congressional appropriation for Title XX of the Social Security Act.

o. Title XX: The Title of the Social Security Act known as "Grants to States for Services" that was established by Public Law 93-647, as amended.

p. Title XX Earnings: The federal share of Title XX expenditures reported to the Department of Public Welfare by a local social services agency for reimbursement of direct delivery costs, purchased services, and allocated administrative costs.

B. Allocation Procedures

1. To determine the amount of Title XX funds available to the counties, the Commissioner of Public Welfare shall first determine the amount of general or supplemental Title XX funds that are necessary for state administrative expenses, special projects, and state administered purchase of service contracts. The formula in Part C of this Rule is then applied to the balance to determine each local social services agency's allocation.

2. By April 1 of each year, the State Agency shall advise each local social services agency of the amount of federal financial participation it may claim reimbursement for during the program year beginning the following October 1.

3. Counties administratively organized under a multicounty human services board or joint county welfare board may receive an allocation equal to the sum of the allocations each separate county is entitled to under this formula, if separate data is routinely reported to the state agency, or an allocation based on combined data, if such is routinely reported to the State Agency.

4. The formula in Part C of this Rule becomes effective as of January 1, 1979. The first year computation shall be for the period of January 1, 1979 through September 30, 1979. For every program year thereafter, the full program year applies.

5. For the period of January 1, 1979 through September 30, 1979, no county shall receive a reduction greater than 7.5% of the previous year's allocation. For the period of October 1, 1979 through September 30, 1980, no county shall receive a reduction greater than 10% of the previous year's allocation. For the period of October 1, 1980

through September 30, 1981, no county shall receive a reduction greater than 10% of the previous year's allocation. Thereafter, no reduction percentages apply.

C. Formula

1. The method by which the State Agency determines each county's Title XX allocation shall be a formula comprised of the following factors:

a. County Public Assistance Factor: A mathematical value which represents an unduplicated count of the county's total population receiving Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Minnesota Supplemental Assistance (MSA), and Medical Assistance (MA), in proportion to the state's total population receiving public assistance through these programs, as determined by the latest available data from the Department of Public Welfare.

b. County Population Factor: A mathematical value which represents the county's total population in proportion to the state's total population, as determined by the latest available data from the State Demographer's Office.

c. Expenditure Factor: A mathematical value which represents the county's total reported Title XX earnings (purchase of service, direct delivery costs and allocated administrative costs) in proportion to the total of all counties' reported Title XX earnings, as determined by the latest available data from the State Department of Public Welfare.

d. Equalization Aid Factor: A mathematical value based upon the index for each county derived from the Equalization Aid Formula which is

a mathematical formula comprised of the following factors: welfare recipient rate per 1,000, per capita income, per capita taxable value, and per capita expenditures for welfare less salary expenditures. This factor is computed as follows:

(1) Counties are ranked in inverse order on each of the four factors from 87 to 1.

(2) The rankings for each county are totaled to determine the total combined points for each county.

(3) The index (total combined points) for each county is divided by the sum of the indicies for all counties in the state to establish a relative rank ratio for each county.

(4) The net county welfare costs, less salary expenditure, is divided by the sum of the net county welfare costs, less salary expenditures, for all counties in the state to establish a relative size ratio for each county.

(5) The relative rank ratio (#3) is multiplied by the relative size ratio (#4) for each county to establish an adjusted rank ratio.

(6) The adjusted rank ratio (#5) for each county is divided by the sum of the adjusted rank for all counties to establish an index which is used in the allocation formula (Item B).

2. The relative weight given to each factor shall be as follows:

a. 40% to County Public Assistance Factor.

b. 20% to County Population Factor.

c. 20% to Expenditure Factor.

d. 20% to Equalization Aid Factor.

3. The allocation formula shall be computed as follows:

a. An index shall be derived for each county consisting of the four factors with the relative weights assigned in C-2.

b. The index for each county shall be divided by the sum of the indicies for all counties in the state to establish a ratio for each county.

c. The Title XX funds allocated to the counties shall be multiplied by the ratio for each county to establish the allocation for each county.

D. Reallocation Procedures

1. To fully utilize Title XX funds, including supplemental funds available to the State of Minnesota, the Department of Public Welfare shall reallocate all surplus funds initially allocated to local social services agencies.

2. Each county welfare or human services board shall certify to the Commissioner of Public Welfare within 30 days of the close of the quarter ending December 31.

a. The portion of the initial allocation they expect to earn during the program year.

b. The amount of federal financial participation they could earn above their initial allocation.

3. If board certification is not received by the Commissioner by January 31, Title XX reimbursement shall be withheld from delinquent counties until such time as certification is received.

4. Based on these certifications, the Commissioner of Public Welfare shall determine the surplus and reallocate all projected surplus funds to counties which certify that they can earn more federal financial participation than provided for in the initial allocation.

5. Funds shall be reallocated in the same proportion as the formula provided for in Part C of this Rule up to the amount each local social services agency certifies it can earn above its allocation, and excluding those local social services agencies unable to earn their allocation.

6. At the close of the program year, the Commissioner of Public Welfare shall make a final reallocation of surplus funds based on the formula in Part C of this Rule.

7. No county with reimburseable earnings less than its allocation shall be considered for reallocation funds.

IR/het

ADOPTED

MINNESOTA RULE DPW 162 -- Allocation of Title XX Funds to County Welfare and Human Services Boards

A. Introduction

1. This rule governs the method by which the Department of Public Welfare determines the amount of funds under Title XX of the Social Security Act that county welfare and human services boards may receive in reimbursement for social services expenditures made during each program year. The Department of Public Welfare's authority to promulgate this rule is contained in Minnesota Statute 393.07, Subdivisions 1, 2, and 3 (1976).

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3. In the event the Congress authorizes and appropriates any additional funds to carry out the general purposes or specialized purposes of Title XX of the Social Security Act, the Department of Public Welfare shall use the method established in Sections B, C, and D of this rule to determine the amount of such additional federal financial participation for which each local social services agency may claim reimbursement during the program year or years for which such funds are intended.

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3. Counties administratively organized under a multicounty human services board or joint county welfare board may receive an allocation equal to the sum of the allocations each separate county is entitled to under this formula, if separate data is routinely reported to the State Agency, or an allocation based on combined data, if such is routinely reported to the State Agency.

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b. No county shall receive less than the smaller of the amount calculated pursuant to the formula in part C of this rule or the amount allocated for the period October 1, 1977, through September 30, 1978.

c. The monies required to provide the protection granted in paragraphs B.5.a. and B.5.b. of this rule will be obtained by reducing the allocation to all counties not covered by this protection. The reduction shall be a common percentage computed by dividing the total protection amounts determined in paragraphs B.5.a. and B.5.b. by the total allocations to the nonprotected counties derived from the formula in part C.

C. Formula

1. The method by which the State Agency determines each county's Title XX allocation shall be a formula comprised of the following factors:

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b. County Population Factor: A mathematical value which represents the county's total population in proportion to the state's total population, as determined by the latest available data from the State Demographer's Office.

c. Expenditure Factor: A mathematical value which represents the county's total reported Title XX earnings (purchase of service, direct delivery costs and allocated administrative costs) in proportion to the total of all counties' reported Title XX earnings, as determined by the latest available data from the State Department of Public Welfare.

d. Equalization Aid Factor: A mathematical value based upon the index for each county derived from the Equalization Aid Formula which is a mathematical formula comprised of the following factors: welfare recipient rate per 1,000, per capita income, per capita taxable value, and per capita expenditures for welfare less salary expenditures. This factor is computed as follows:

(1) Counties are ranked in inverse order on each of the four factors from 87 to 1.

(2) The rankings for each county are totaled to determine the total combined points for each county.

(3) The index (total combined points) for each county is divided by the sum of the indicies for all counties in the state to establish a relative rank ratio for each county.

(4) The net county welfare costs, less salary expenditure, is divided by the sum of the net county welfare costs, less salary expenditures, for all counties in the state to establish a relative size ratio for each county.

(5) The relative rank ratio (#3) is multiplied by the relative size ratio (#4) for each county to establish an adjusted rank ratio.

(6) The adjusted rank ratio (#5) for each county is divided by the sum of the adjusted rank for all counties to establish an index which is used in the allocation formula (Item B).

2. The relative weight given to each factor shall be as follows:

a. 40% to County Public Assistance Factor.

b. 20% to County Population Factor.

c. 20% to Expenditure Factor.

d. 20% to Equalization Aid Factor.

3. The allocation formula shall be computed as follows:

a. An index shall be derived for each county consisting of the four factors with the relative weights assigned in C-2.

b. The index for each county shall be divided by the sum of the indicies for all counties in the state to establish a ratio for each county.

c. The Title XX funds allocated to the counties shall be multiplied by the ratio for each county to establish the allocation for each county.

D. Reallocation Procedures

1. To fully utilize Title XX funds, including supplemental funds available to the State of Minnesota, the Department of Public Welfare shall reallocate all surplus funds initially allocated to local social services agencies.

2. Each county welfare or human services board shall certify to the Commissioner of Public Welfare within 30 days of the close of the quarter ending December 31.

a. The portion of the initial allocation they expect to earn during the program year.

b. The amount of federal financial participation they could earn above their initial allocation.

3. If board certification is not received by the Commissioner by January 31, Title XX reimbursement shall be withheld from delinquent counties until such time as certification is received.

4. Based on these certifications, the Commissioner of Public Welfare shall determine the surplus and reallocate all projected surplus funds to counties which certify that they can earn more federal financial participation than provided for in the initial allocation.

5. Funds shall be reallocated in the same proportion as the formula provided for in part C of this rule up to the amount each local social services agency certifies it can earn above its allocation, and excluding those local social services agencies unable to earn their allocation.

6. At the close of the program year, the Commissioner of Public Welfare shall make a final reallocation of surplus funds based on the formula in part C of this rule.

7. No county with reimbursable earnings less than its allocation shall be considered for reallocation funds.

RECEIVED
MAR 15 1978
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 162 OF THE DEPARTMENT OF PUBLIC WELFARE, GOVERNING THE ALLOCATION OF TITLE XX FUNDS TO COUNTY WELFARE AND HUMAN SERVICE BOARDS

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rule be held in the State Office Building, Room 83, Wabasha Street (between Aurora and Fuller), St. Paul, Minnesota, 55101, on Thursday, April 20th, 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 representative 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

Dated: March 7, 1978

Agency Ex. 1
4-20-78 jmp

DPW-78-848-RG

RECEIVED
MAR 15 1978
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 162 OF THE DEPARTMENT OF PUBLIC WELFARE, GOVERNING THE ALLOCATION OF TITLE XX FUNDS TO COUNTY WELFARE AND HUMAN SERVICE BOARDS

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the State Office Building, Room 83, Wabasha Street (between Aurora and Fuller), St. Paul, Minnesota, 55101, on Thursday, April 20th, 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 Natalie Gaull, Hearing Examiner, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104, (612) 296-8111, either before the hearing or within five working days after the close of the hearing or for a longer period not to exceed 20 days if ordered by the Hearing Examiner.

Proposed Rule DPW 162, if adopted, would govern the method by which the Minnesota Department of Public Welfare determines the amount of funds under Title XX of the Social Security Act that county welfare and human service boards may be reimbursed for social services expenditures made during each program year. In the present program year in Minnesota, approximately $46 million of these funds are being expended for such social services as homemaking, day care, adult and child protection and foster care, adoption, money management, counseling, developmental achievement, and employability. This proposed rule seeks to determine the maximum amount of funds that would be available to each county for the 1978-1979 program year and future program years, the formula used to determine that amount, the indices used in the formula and their weighting, and reallocation of any unused Title XX funds.

Copies of the proposed rule are now available and one free copy may be obtained by writing to Margaret Holt, Department of Public Welfare, Division of Social Services, Centennial Office Building, Fourth Floor, St. Paul, Minnesota, 55155, telephone number (612) 296-2338. 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 Minn. Stat. 393.07, Subds. 1, 2, and 3 (1976). A "statement of need" explaning 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, telephone (612) 296-5615.

Edward J. Dirkswager, Jr.
EDWARD J. DIRKSWAGER, JR.
Commissioner

Dated: March 3, 1978

Agency Exh. 17
4-20-78 jmp

PROPOSED RULE 162

FISCAL STATEMENT

At the present time counties spend approximately $16,000,000 per year as the matching funds to receive approximately $42,680,000 in federal funds for social services under Title XX of the Social Security Act. The adoption of this rule will not alter the total amount of $16,000,000 that counties will spend for this purpose. However, the adoption of this rule will raise the allocation of federal funds for some counties and lower it for others. So, although the total amount spent by counties as matching funds remain the same, there will be increased spending of local funds by counties whose allocation of federal funds is increased and a corresponding decrease in local spending for those counties receiving a decrease in federal funds.

Agency Exh 4
4-20-78 jmp

RECEIVED
MAR 23 1978
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 162, OF THE DEPARTMENT OF PUBLIC WELFARE, GOVERNING THE ALLOCATION OF TITLE XX FUNDS TO COUNTY WELFARE AND HUMAN SERVICE BOARDS

CERTIFICATE OF DELIVERY
SECRETARY OF STATE
LIST

I hereby certify that the attached 484 labels, 4 sheets constitute the complete list of persons, associations, and other interested groups who as of 10:00 o'clock A .M. this 15th day of March, 1978, have requested pursuant to M.S. 15.0412 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

Agency Exh 5
4-20-78 jmp

RECEIVED
MAR 23 1978
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 162 OF THE DEPARTMENT OF PUBLIC WELFARE, GOVERNING THE ALLOCATION OF TITLE XX FUNDS TO COUNTY WELFARE AND HUMAN SERVICE BOARDS

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

DIANE L. HENDERSON, being first duly sworn, deposes and says:

1) That she is an employee of the Special Services Division, Department of Public Welfare, State of Minnesota.

2) That on the 14th day of March, 1978, 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 have 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 14th day of March, 1978, 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.

Diane L. Henderson

Subscribed and sworn to before me

this 21 day of March

1978.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

Agency Exh 6
4-20-78 jmp

RECEIVED
MAR 23 1978
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 162 OF THE DEPARTMENT OF PUBLIC WELFARE, GOVERNING THE ALLOCATION OF TITLE XX FUNDS TO COUNTY WELFARE AND HUMAN SERVICE BOARDS

AFFIDAVIT OF MAILING

DIANE LYNN HENDERSON, being first duly sworn, deposes and says:

That on the 17th day of March, 1978, 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.

Diane Lynn Henderson

Subscribed and sworn to before me this

21 day of March, 1978

Notary Public,

Ramsey County, Minnesota

My Commission expires Sept 22, 1984

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

Agency Exh 7
Dkt # 20-78

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

RECEIVED
MAR 23 1978
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 162 OF THE DEPARTMENT OF PUBLIC WELFARE, GOVERNING THE ALLOCATION OF TITLE XX FUNDS TO COUNTY WELFARE AND HUMAN SERVICE BOARDS

AFFIDAVIT OF ADDITIONAL MAILING

DIANE LYNN HENDERSON, being first duly sworn, deposes and says:

That on the 14th day of March, 1978, 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

Diane Henderson

Subscribed and sworn to before me
this 21 day of March
1978.

Margaret Holt

MARGARET HOLT
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Sept. 22, 1984

Agency Exh. 9
4-30-78 PHP

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

RECEIVED
MAR 23 1978
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 162 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE ALLOCATION OF TITLE XX FUNDS TO COUNTY WELFARE AND HUMAN SERVICES BOARDS

STATEMENT OF NEED

The above captioned rule is a new rule which governs the allocation of Title XX social services funds to county welfare and human services boards. Title XX, entitled "Grants to States for Services," is an amendment to the Social Security Act of 1935. It was established with the passage of Public Law 93-647, signed by the President in January, 1975, and became effective October 1, 1975. Title 45, Code of Federal Regulations, Chapter II, Part 228, which was first published in proposed form in the Federal Register on April 14, 1975, implemented Title XX. The current regulations 45 CFR, Part 228, were published in the Federal Register on January 31, 1977.

The authority for promulgation of this rule is Minnesota Statute 393.07, Subd. 1, 2, and 3 (1976). This statute grants the Commissioner of Public Welfare authority to supervise the Minnesota social services program. It also directs that the duties of the county welfare boards shall be performed in accordance with standards, rules, and regulations which may be promulgated by the Commissioner of Public Welfare to achieve the purposes intended by law and to comply with the requirements of the Federal Social Security Act.

In addition to the authority established in state law, federal regulations in Chapter 45, Code of Federal Regulations, Part 228.6 (a) require that the chief executive officer of the state designate a state agency to administer and supervise the administration of the state's Title XX program. In accordance with this requirement, the Department of Public Welfare has been designated the state Title XX agency and so has the authority to supervise the Title XX programs.

Title XX funds provide reimbursement for social services expenditures made on behalf of persons meeting certain eligibility criteria. These social services and eligibility groups are defined in the 1977-78 Minnesota Comprehensive Annual Services Program (CASP) Plan. The rate of federal reimbursement is 75% of expenditures. Prior to 1972, states could receive unlimited federal reimbursement and so expanded social services programs considerably. In an effort to slow the rising cost of social services, the United States Congress enacted Public Law 92-512, effective July 1, 1972. This law placed an annual national limit of $2.5 billion on the amount of federal reimbursement for social services expenditures. To remain within the limit, each state was and continues to be allotted a portion of these funds based on its percent of the total national population. Minnesota's share of the federal appropriation was and is approximately $46 million each year. This reimbursement limit continues to be in effect.

Section A. 1., specifies the purpose of this Rule as governing the method by which Title XX funds will be allocated. It is necessary and reasonable

that the Department of Public Welfare have a method for allocating Title XX funds, because the amount of funds available in Minnesota each year has a federally imposed limit and the amount is insufficient to provide a full 75% federal financial participation in the costs of social services expenditures made by county welfare and human services boards throughout the state. An allocation method is necessary in order to ensure that funds are distributed in a uniform manner and to determine the amount of Title XX federal financial participation each county can expect to earn during each program year.

Section A. 2., states that the Commissioner may first identify a portion of the Minnesota Title XX allotment for state administrative and purchase of service costs. This is needed to clarify the specific amount of funds this Rule will govern. It is reasonable and necessary for the Commissioner to allocate a portion of the federal allotment each year for state administrative costs such as salaries, travel, supplies and communication; state level purchase of service contracts such as migrant day care and developmental achievement services; and for special projects that are in keeping with legislative sanctions or intent. This enables the Commissioner to administer the responsibilities of the designated state Title XX agency. This is a proper exercise of administrative discretion within the authority given to the Commissioner by state law. This is also necessary in order to comply with the directive of the State Legislature which requires that specific amounts of Title XX funds earned by the state agency be deposited in the State General Fund.

Section A. 3., is anticipatory in nature and clarifies the applicability of this formula to any increased funding for social services of either a general or specific nature that Congress, at any future time, may appropriate under Title XX of the Social Security Act. It is reasonable and necessary that the method be applicable to future, as well as present funding to ensure that, even though the amount of money available under Title XX may fluctuate, there is predictability and consistency in the method of allocating funds to local social services agencies.

Section A. 4., clarifies that funds for staff development and the Southeast Asian Refugee Program are not subject to allocation or expenditures in accordance with this Rule. Funds for these programs were appropriated by Congress under Title XX authority but are beyond the Congressionally placed $2.5 billion ceiling, and so do not need to be governed by this Rule.

Section A. 5., defines terms that are used in this Rule. It is reasonable and necessary to include these definitions so there is common understanding of the terms used in the Rule.

Section B., of the Rule, specifies the procedures and conditions which shall be used in allocating Title XX funds to counties.

Section B. 1., establishes that the amount available for allocation to counties is determined by deducting the amount retained for state level purposes from the total federal allotment to Minnesota. It is reasonable that this determination be made prior to funds being allocated to the

counties in order to determine the exact amount of the Title XX allotment to the state that will be made available to the local social services agencies for a given program year.

Section B. 2., establishes April 1 of each year as the date by which the state agency shall advise each local social services agency of the amount of federal financial participation it may claim in reimbursement during the program year that begins on the following October 1. The date, April 1, is reasonable because it provides local social services agencies sufficient lead time to develop and submit their social services plans for the coming program year. The development of the Comprehensive Annual Services Program (CASP) Plan must be in accordance with the following time table:

February 1 - Planning guidelines distributed to county welfare and human services boards.

May 15 - Proposed geographic area plans submitted to DPW.

July 1 to August 15 - Public comment period.

August 15 - Final geographic area plan submitted to DPW.

October 1 - Publication of the final CASP Plan.

This schedule must be followed to enable the Department to meet federal requirements for publication of the CASP Plan.

Section B. 3., establishes two methods by which the allocation for multi-county organizations may be determined. These methods are (1) on an individual county basis if separate data is routinely reported to the state agency for each county, (2) on a combined basis for the several counties included in a multicounty organization if such data is routinely reported on a combined basis to the state agency. This section is reasonable and necessary in order to give information to multicounty boards about the choice of methods available to them for determining their allocations. The method by which the allocation is determined will be dependent upon the choice that the multicounty board makes in regard to submission of county-by-county data or combined data.

Section B. 4., states that the effective date of the Rule is January 1, 1979, and that the first year's computation shall be for the period January 1, 1979, to September 30, 1979, a nine month period rather than a twelve month period. Thereafter, the formula applies to the full program year, October 1 through September 30. It is reasonable and necessary for the effective date of the formula to be January 1, 1979, rather than October 1, 1978, because local tax levies for matching county funds for the calendar year 1978 were based on the present administrative formula for allocating Title XX funds. Since most counties' allocations will change with this new formula, it would be unreasonable to allocate funds for three months of this calendar year based on the new formula, when local tax levies for the present year have already been established.

Section B. 5., establishes a maximum reduction level per year for any county whose allocation would be reduced from the previous year. It is reasonable and necessary to place a limit on the amount of the reduction that any county would sustain as a result of this formula. This limitation is intended to prevent a sudden and drastic curtailment of services which would be detrimental to persons receiving such services. This reduction limitation would give affected counties an opportunity to gradually increase county tax levies to offset decreased federal financial participation. It is reasonable and necessary for such reduction to be limited to 10% per twelve month program year because this affords local social services agencies an opportunity to gradually scale down services as necessary and avoids severely crippling services if sufficient increases in local tax levies cannot be secured.

The first period for which the allocation applies is nine months rather than twelve, therefore, the reduction limitation is 7.5%, rather than the full 10% for each of the ensuing years. It is anticiapted that by September 30, 1981, each county will be at the actual amount that the formula produces without need for any further protection from reduction.

Section C identifies and describes the formula factors that the state agency will use to determine each county's Title XX allocation, describes the relative weighting that is given to each factor, and identifies the manner in which the formula shall be computed.

Section C. 1. a., identifies and describes the "county public assistance factor." It is reasonable and necessary to include this factor in the formula because it is the most reliable indicator of the number of recipients of public assistance. Title XX of the Social Security Act identifies such recipients as one of two groups of persons who are eligible for services. The public assistance programs that are included in this factor are Aid to Families With Dependent Children, Supplemental Security Income, Minnesota Supplemental Assistance and Medical Assistance. The inclusion of these specific programs in the public assistance factor is reasonable and necessary because it is consistent with the manner in which public assistance recipients are defined in Title XX law and regulations.

The data for the Aid to Families With Dependent Children and Minnesota Supplemental Assistance programs is obtained from monthly payment abstracts submitted by counties to the Department of Public Welfare. The data for the Medical Assistance program is obtained from monthly output reports from the Department's centralized Medical Assistance disbursement system. The data for the Supplemental Security Income program is obtained monthly from the data exchange system with the Federal Social Security Administration.

Section C. 1. b., describes the "county population factor." County population is included as a factor in the formula because, in addition to public assistance recipients, the other persons who are eligible for services funded under Title XX of the Social Security Act are from the general

population whose income does not exceed 115% of the state median income. County population factor is included as the best indicator of the population group from which recipients of services under Title XX may come. Annual estimates of county population, published by the State Demographer's Office, will be the source of this data.

Section C. 1. c., describes the "expenditure factor." It is reasonable and necessary to include a factor related to expenditures as the best available indicator of the level of development of services in each county, because there is a direct correlation between the amount of expenditures for services and the quantity of services provided. It is reasonable to take into consideration the level of development of services on an individual county basis and to include a factor that gives support to sustaining such developed programs.

Section C. 1. d., describes the "equalization aid factor." It is reasonable to include a factor in the formula that relates to the availability of county resources for funding services because of the need to provide additional support to those counties least able to finance services from local tax levy. The equalization aid formula is the best available indicator of such county capability as evidenced by the fact that it has been used by the State Legislature since 1969 as a basis for appropriating money to be distributed to distressed counties in the state.

Sections C. 1. d. (1-6), describes the manner in which the equalization aid factor is computed. It is reasonable and necessary to provide this description to establish a common understanding of the steps followed to arrive at this factor.

Section C. 2. a. - d., identifies the relative weight that is assigned to each factor. The public assistance factor is considered to be of greater significance than each of the other three factors, because the Title XX law requires that an amount equal to 50% of the Title XX expenditures be utilized for public assistance recipients. This is a clear indication of congressional intent to give high priority to the provision of social services to this particular population group. Therefore, a weight of 40% has been assigned to the public assistance factor. The other three factors are each given an equal weighting of 20%. These three factors are population, which recognizes the intent of provision of social services to persons other than public assistance recipients; social service expenditures, which recognizes the level of development, past history of level of service development and county support of social services programs; and equalization aid, which takes into account local ability to pay.

Section C. 3. a. - c., describes how the formula is used to compute the allocation to each county. It is reasonable and necessary to compute the county allocation in this manner because it is a standardized, commonly accepted method of making such computations where several factors are utilized.

Section D., describes procedures that will be utilized for the reallocation of any funds which are initially allocated to local social services agencies that will not be fully claimed by such agencies. A reallocation procedure is provided for in this Rule so that there is a method to ensure that all

funds allotted to Minnesota under Title XX of the Social Security Act will be fully utilized. Some counties are spending well over their allocation while others are spending less. It would be imprudent for the Department not to provide for the reallocation of funds from counties of low utilization to counties who can claim federal financial participation above their allocations. It is necessary to have a reallocation procedure because unused funds would revert to the federal government at the end of each federal fiscal year.

It is reasonable and necessary to require each county welfare or human services board to certify to the Commissioner of Public Welfare, within 30 days of the close of the first quarter of the program year, ending December 1, an estimate of the amount of the final allocation it expects to earn during the program year and the amount of federal financial participation it could earn above the annual allocation. This enables the Commissioner to determine the amount of funds available for reallocation and to identify those local social services agencies which have the capability to use additional funds.

Section D. 3., gives the Commissioner authority to withhold Title XX reimbursement from counties that do not submit required information by January 31 of each program year. It is reasonable and necessary for the Commissioner to have such authority in order to ensure county compliance with this procedure and to ensure the availability of Title XX funds to counties with the capability to use these funds.

Section D. 5., describes the method that shall be used for reallocating available funds as determined through the individual county welfare and human services agency board certifications. It is reasonable and necessary that the same formula used for the initial allocation be used for reallocation to provide simplicity, consistency and equitability in making these funds available to local social services agencies.

Section D. 6., provides authority for the Commissioner of Public Welfare to make a final reallocation of surplus funds based on the formula in Part C of this Rule at the close of each program year. It is reasonable and necessary that there be a method for final year end adjustments in order to ensure that the full allocation that is made to Minnesota by the Federal Government is properly and fully used for the expenditure of social services for persons in Minnesota.

Date March 21, 1978

COMMISSIONER OF PUBLIC WELFARE

Edward J. Dirkswager, Jr.

Edward J. Dirkswager, Jr. Commissioner

Attachment

Agency Ex. 10
ymp 4-20-78

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD J. DIRKSWAGER, JR.

COMMISSIONER OF PUBLIC WELFARE

RECEIVED
MAR 23 1978
OFFICE OF HEARING
EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULE 162 OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING THE ALLOCATION OF TITLE XX FUNDS TO COUNTY WELFARE AND HUMAN SERVICES BOARDS

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 the following evidence:

Testimony at the hearing will cover the history of the Federal Title XX Program and its relation to social services in Minnesota, a history of the allocation formula, and the subsequent need for this proposed Rule.

One or more of the following expert witnesses from the Department of Public Welfare may testify:

Edward J. Dirkswager, Jr., Commissioner
Department of Public Welfare

James J. Hiniker, Deputy Commissioner
Department of Public Welfare

Gary Haselhuhn, Director, Division of Social Services
Department of Public Welfare

Charles L. Fecht, Assistant Director, Division of Social Services
Department of Public Welfare

Herb Cashdollar, Supervisor, Service Administration
Division of Social Services
Department of Public Welfare

John Brenneman, Administrative Generalist
Division of Social Services
Department of Public Welfare

Donald Gullingsrud, Supervisor
Social Services Reimbursement
Department of Public Welfare

The following documents will be introduced:

- 45 CFR 228 "Social Services Programs for Individuals and Families: Title XX of the Social Security Act".
- 1977-78 Comprehensive Annual Social Services (CASP) Plan.
- Title XX State Administrative Plan.
- Minnesota Statute 393.07, Subdivisions 1, 2, and 3.
- Department of Public Welfare Informational Bulletin #78-17 of February 23, 1978.

The following statutes and bills will be cited:

- Minnesota Statutes, Chapter 15.
- Public Law 92-512.
- Public Law 93-647.
- Minnesota Rule DPW-160.
- Titles I, IV-A, VI, X, XIV of the Social Security Act.
- 1977 Legislative Session, House File 1.
- 1978 Legislative Session, House File 2033 and Senate File 2189.

Commissioner of Public Welfare

Dated: March 21, 1978

Edward J. Dirkswager, Jr.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rule 162 of the Department of Public Welfare Governing the Allocation of Title XX Funds to County Welfare and Human Service Boards.	))))))	REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Natalie L. Gaull, duly appointed as Hearing Examiner in this matter on April 20, 1978, in the Auditorium of the State Office Building, Room 83, Wabasha Street, Saint Paul, Minnesota 55101. The hearing continued on April 21, 1978, in the same location.

This proceeding is a rules hearing held pursuant to Minn. Stat. Ch. 15, to determine whether the proposed rule should be adopted. Copies of this Report are available for review from the Department of Public Welfare or from the Office of Hearing Examiners.

Members of the agency panel included: Commissioner Edward Dirkswager, Jr.; Barbara D. Gill, Special Assistant Attorney General; Gary Haselhuhn, Acting Assistant Commissioner of the Community Services Bureau; Carol Watkins, Policy Analyst for the Division of Social Services; Don Gullingsrud, Fiscal Management Section, Department of Public Welfare; John Brenneman, Service Administration Section, Department of Public Welfare; Herb Cashdollar, Supervisor, Division of Social Services; Charles Fecht, Assistant Director, Division of Social Services.

One hundred and one persons signed the hearing register at the hearing. Forty-six persons presented testimony at the hearing. More than 100 timely written comments were received by the Examiner during the period subsequent to the mailing of the Notice of Hearing and prior to the close of the record on May 11, 1978. Several petitions were also received by the Examiner during that period.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On March 15, 1978, the Department of Public Welfare (hereinafter "the Department") filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rule; and
(b) A copy of the proposed Order for Hearing.

2. On March 20, 1978, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed Notice of Hearing; and
(b) A copy of the fiscal statement for the proposed rule.

3. On March 23, 1978, the Department filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Certificate of Delivery of the Secretary of State's list;
(d) The Affidavit of Receipt of the Secretary of State's list;
(e) The Affidavit of Mailing to persons on the Secretary of State's list;
(f) The Affidavit of Additional Mailing;
(g) The Secretary of State's list and list of additional names;
(h) The Statement of Evidence; and
(i) The Statement of Need.

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

4. On March 14, 1978, the Department mailed the Notice of Hearing to all persons whose names, in addition to those on the Secretary of State's list, are contained in Agency Exhibit No. 8.

5. On March 17, 1978, the Notice of Hearing was sent to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

6. On March 20, 1978, a Notice of Hearing and a copy of the proposed rule were published at 2 State Register 1751.

7. The record remained open through May 11, 1978, for the receipt of written comments and statements. Any written comments or statements received after that date were not considered by the Hearing Examiner pursuant to Minn. Rule HE 105.

Introduction

8. Proposed rule 162 was designed to establish a formula, consistent with certain Department policies, for allocation of Title XX reimbursement funds among the counties. The history of the Title XX reimbursement system is set forth in some detail at Paragraph 10, et seq. of this Report. After lengthy study of the record, the Examiner has concluded that the strong disagreements concerning which formula is the most appropriate allocation formula result from the combination of the following factors:

(a) The total amount of money available for allocation is insufficient to reimburse all counties in an amount equal to 75 percent of their expenditures, the maximum amount permitted under Federal law and the amount of actual reimbursement prior to 1975.

(b) The interest of urban counties, who already have a highly developed system of social services, in maintaining that level of services without increased county expenditures by maintaining or increasing their level of Title XX reimbursement.

(c) The interest of rural and suburban counties with less highly developed social service systems in expanding available services and minimizing the required county financial support by increasing their level of Title XX reimbursement.

Therefore, each county supports the formula which will be most beneficial to it.

9. Minn. Stat. § 15.052, subd. 3 and Minn. Rule HE 106 provide in relevant part that the Hearing Examiner's report must take notice of the degree to which the Department (a) documented its statutory authority to take the proposed action; (b) fulfilled all relevant substantive and procedural requirements of law or rule; and (c) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts. It must be emphasized that the Department is not required to propose or adopt the most reasonable rule, it is only required to make an affirmative presentation of facts showing that its rule is reasonable.

Although there is a general concensus as to the meaning of "necessary" as "required" or "needed", the Examiner believes it is appropriate to define the standard of "reasonableness" applied in this proceeding:

"Reasonableness" is the opposite of arbitrariness and caprice. An arbitrary and capricious standard can be defined as follows:

> That standard [arbitrary and capricious] is a narrow one, to be applied only where administrative action "is not supportable on any rational basis" or where it is "willful and unreasoning action, without consideration and in disregard of the facts or circumstances of the case."

Greenhill v. Bailey, 519 F.2d 5, 10 (8th Cir. 1975). Reasonableness, then, means to have a rational basis for the action.

In setting forth the findings that establish the rational basis for adoption of this rule, the Department's presentation is not limited to only adjudicatory facts. Rulemaking is a legislative function; it is not an adjudicatory function like a contested case is. There is a difference between the kind of facts relied on in a rulemaking hearing and the kind of facts relied on in an adjudication. Professor Kenneth Culp Davis identifies this difference:

> Two main elements in rulemaking are (1) facts, and (2) ideas about policies. The two are generally interwoven in such a degree that in some parts of the whole problem of what to do, they are inseparable. Even so, a main element in rulemaking is necessarily the policy choice that the administrator must make. Adoption of a rule may require some understanding of facts, but it always requires legislating. Courts must leave administrators free to legislate, within the limits of rationality. And legislating inevitably involves the addition of something to the facts in the rulemaking record.

K. Davis, Administrative Law of the Seventies, (Cumulative Supp. 1977) (emphasis in original).

The Minnesota Supreme Court has recognized the difference between legislative facts and adjudicatory facts and has identified the support needed to uphold the two kinds of facts. In St. Paul Area Chamber of Commerce v. Minnesota Public Service Comm'n., 251 N.W.2d 350 (Minn. 1977), the Court said:

> . . .[H]owever, rate allocation is not a judicial or quasi-judicial function. Once revenue requirements have been determined it remains to decide how, and from whom, the additional revenue is to be obtained. It is at this point that many countervailing considerations come into play. The commission may then balance factors such as cost of service, ability to pay, tax consequences, and ability to pass on increases in order to achieve a fair and reasonable allocation of the increase among consumer classes. . . . It is clear that when the commission acts in this area it is operating in a legislative capacity, as the above cases have stated. The careful balancing of public policies and private needs is not a matter for the courts, unless statutory authority has been exceeded or discretion abused. . . .In ascertaining whether or not the statute has been contravened, the district court must give wide latitude to the commission in allowing it to consider many factors which might not ordinarily be considered by a court, as we have explained above. This is so because, while the court is qualified to review agency findings when an agency acts in a quasi-judicial manner in factual matters, it is not so qualified to review legislative judgments when social policies must be weighed in the balance.

Id. at 356-357.

In this rulemaking proceeding, many of the facts are legislative facts--policy decisions and judgments. The inclusion of certain components in the proposed formula is based upon Department policies regarding the goals of Title XX reimbursement. The components included in other formulae proposed by the counties are based on different policies. There is no one right answer--there are only reasonable answers.

In another Public Service Commission ratemaking case, Northwestern Bell Telephone Co. v. State, 253 N.W.2d 815 (Minn. 1977), the Minnesota Supreme Court distinguished the two kinds of facts involved in exercising a legislative function. There, the Court said:

> In determining the extent of the allowable adjustment, it appears that the PSC was acting in both a judicial and a legislative capacity. In finding as a fact the amount of the 1974 impact of the contract, the PSC's decision was amply supported by the evidence. In deciding to limit the adjustment to a one-year period, the PSC determined as a matter of public policy that changes occurring more than one year beyond the test year would best be considered in proceedings taking into account all of the facts necessary to accurately set Bell's rates. This determination cannot be said to be arbitrary or unjust. . . .

Id. at 822. See also, Northwestern Bell Telephone Co. v. State, 299 Minn. 1, 216 N.W.2d 841 (1974), and Reserve Mining Co. v. Herbst, 256 N.W.2d 808 (Minn. 1977).

Although the federal rulemaking process differs from that of Minnesota, it would be helpful to examine two federal cases. An example of a federal agency acting on legislative facts is Mourning v. Family Publications Service, Inc., 411 U.S. 356 (1973), where the U.S. Supreme Court upheld regulations of the Federal Reserve Board governing credit transactions of more than four installments. Professor Davis' discussion of the Mourning case is helpful:

> [T]he Supreme Court had no power to change "four" to three or five, because Congress had delegated that power to the Board and the Board had made its determination. On the question of what the number should be, the Court could do no more than determine whether "four" was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

K. Davis, Administrative Law of the Seventies, 206 (Cumulative Supp. 1977).

Dry Color Manufacturers' Ass'n. v. Department of Labor, 486 F.2d 98 (3rd Cir. 1973), involved temporary emergency standards of the Department of Labor intended to prevent exposure to 14 chemicals found to be carcinogens. In striking down the regulations, the Court essentially said the Department did not have sufficient reasons for the regulations. Davis, however, is critical of the Court's decision:

> If carcinogenicity of the chemicals in humans can be neither proved nor disproved by scientific evidence, the problem for rulemakers is not one of fact; it is one of making a legislative choice of policy in light of the absence of evidence. When an agency is assigned the task of making rules that are in the public interest, it seldom can prove with evidence what is in the public interest; it has to use its policy preferences when proof is lacking.

K. Davis, Administrative Law of the Seventies, 674 (1976).

Therefore, in making Findings of Fact and Conclusions, the Examiner has applied the foregoing standards in determining reasonableness and necessity.

Background

10. The Examiner believes that it is necessary to understand some of the background behind the Title XX reimbursement dispute

in order to more clearly understand the positions taken by the various counties. In 1962, the Federal government began reimbursing 75 percent of the cost of certain social services provided primarily to low-income people by the states. In 1967, Congress made additional amendments to Federal law which resulted in a significant increase in the amount of Federal funds available for those social services. In 1972, Congress placed a limit of $2.5 billion on the total amount of Federal funds that could be spent for such services. This money was to be allotted to each state on the basis of its percentage of the nationwide population. Between 1967 and 1972, when the ceiling on reimbursement was put into effect, there was an opportunity for those counties who chose to or had sufficient financial resources to expand their social services almost without limit based on 75 percent reimbursement.

In January, 1975, the President signed Public Law 93-647, known as Title XX "Grants to States for Services", which became effective on October 1, 1975. Title XX replaced the social service portions of Title IV-A, I, X and XIV of the Social Security Act. Title XX requires that the state develop a Comprehensive Annual Service Program Plan (hereinafter "CASP Plan") annually. The types of services which may be offered under Title XX include adoption service, chore services, counseling services for families and individuals, developmental achievement services for adults and children, day care services for adults and children, and educational assistance service, employability services, family planning service, foster care services for adults, foster care services for children, health services, home delivered and congregate meal services, homemaking services, housing services, informational and referral services, legal services, money management services, protection services for adults and children, residential treatment services, social and recreational services and transportation services. Some of these services are classified as mandatory, while others are priority or optional. These programs are outlines in greater detail in the CASP Plan covering

plan year October 1, 1977 to September 30, 1978. (Agency Ex. 14)

Following the enactment of an overall ceiling on reimbursement in 1972, it was unnecessary for Minnesota to allocate Title XX funds because the claims during fiscal 1973 and 1974 were below the state's total allotment. During fiscal 1975, the Department of Public Welfare developed a formula for allocation of Title XX funds which provided that each county's allocation was based 40 percent on the county's social service expenditures for the previous year; 40 percent on each county's planned social service expenditures for the coming year; and 20 percent on each county's public assistance case load. (Agency Ex. 19) On May 21, 1975, a Complaint for Declaratory Judgment and Injunctive Relief was filed in United States District Court by Blue Earth, Brown, Faribault, LeSueur, Martin, Nicollet, Sibley and Waseca Counties against the Commissioner of Public Welfare and all others acting for or in her behalf as defendants. That Complaint alleged that the allocation of Title XX funds was unlawful because it did not provide for equitable treatment of individuals in similar circumstances throughout the state. Hennepin and Ramsey Counties were intervenors in that action. On July 2, 1976, the matter was settled by stipulation of the parties. The stipulation (Agency Ex. 20) provided, in relevant part, that the Department of Public Welfare would continue to work toward the development of an equitable statewide method of allocation of Federal social service funds among the counties of the State of Minnesota during the five-year period commencing on the date of the stipulation. It also provided that the factors to be considered would include, but not be limited to, past and anticipated levels of service development, population to be served, availability of local matching funds and a determination of local priorities.

The allocation of Title XX funds to counties for plan years 1976 and 1977, used the same allocation as was used in 1975, because the Department believed it was inappropriate to develop a new formula while the matter was being litigated.

On September 24, 1976, the Department of Public Welfare

requested the County Welfare Directors Association to appoint 12 members to serve on a Title XX allocation formula advisory committee to the Department. (Agency Exs. 21 and 22) Although the group was intended to represent the County Welfare Directors Association, at its first meeting the members of the committee indicated that each would serve only as individuals representing the respective county viewpoints. This group reviewed 13 different formulae consisting of various combinations of six different factors with a variety of weightings assigned to each factor. (Attachment V to Department Post-Hearing Comments)

The factors considered were social service expenditures, population, public assistance case load, social service case load, county ability to pay and population below 115 percent of the state median income. Each of these factors were expected to bring specific considerations into focus in determining the appropriate allocation. Social service expenditures, defined as Title XX reimburseable expenditures for the previous fiscal year, were considered to be the best available indicator of the level of service development in each county. Population was considered because it is an indicator of the potential users of social service plans. Public assistance case load was considered because Title XX social services are intended primarily for persons in low-income and public assistance groups. Social service case load was considered as a factor because it represented the actual number of clients receiving services. County ability to pay as indicated by the equalization aid formula ranking of counties was considered because it was an indication of each county's ability to provide local funding for social service programs necessary to obtain the 75 percent Federal funds. Population below 115 percent of the state median income was considered because Title XX regulations provide that service, on a fee for service basis, can be provided to persons with an income up to that level. Department staff combined their recommendations with that of the advisory group and developed a four-part formula for plan year October 1,

1977 to September 30, 1978, based 35 percent on population, 35 percent on previous years social service expenditures, 15 percent on social service case load, and 15 percent on ability to pay based on the equalization aid formula ranking of counties.

Title XX allocation has been the subject of legislative consideration on both the state and national level. In January, 1977, Representative Paul McCarron introduced H.F. 1, (Agency Ex. 25) which contained a formula for allocation of Title XX funds. This bill did not pass, but was continued until the 1978 Legislative Session. During the 1978 Legislative Session, two bills establishing a new Title XX allocation formula, H.F. 2033 (Agency Ex. 26) and S.F. 2209 (Agency Ex. 27), were introduced. Neither bill passed, although further legislative consideration of the issue is likely in the 1979 Session. At the time of the hearing, the Fraser-Keyes bill which would increase the total amount of Title XX available to the states was being considered by Congress.

Policy Considerations

11. Testimony by the Department indicates that the formula contained in the proposed rule is based upon three policies. First, the policy of equal access to services by persons throughout the state. Second, the policy of taking into account the counties' ability to pay as some counties are rich in property and other counties are poor in property requiring a greater tax levy to raise an equivalent amount of funds. Third, recognition of the counties' past efforts to provide services to their residents. Thus, four factors are included within the formula. The need within the community is measured by public assistance case load and population. The ability to pay is measured by the equalization aid formula. The recognition of past efforts is measured by past expenditures.

It is noted by the Department that the basic problem embodied in this and any allocation formula is determining how to make funds available to counties whose programs need expansion in amounts sufficient to permit reasonable expansion and at the same time to

avoid drastically reducing funds of those areas who have more expansive programs. Given the fact of the total amount of funds is substantially insufficient, the most that can be hoped for is to develop an allocation method that will redistribute funds equitably among all of the counties. The Department also testified that it was an important policy for any changes or redistributions to be made on a gradual basis so that those counties which would have incremental funds could develop their programs gradually and those counties which had decreased funds would be able to adjust to the decrease gradually.

Statutory Authority

12. The Department has cited as authority for the proposed rule Minn. Stat. § 393.07, subds. 1, 2 and 3 (1976).

Subdivision 1 provides that the county welfare boards shall administer a program of social services and financial assistance to be known as the public child welfare program in order to assist in carrying out the child protection, delinquency prevention and family assistance responsibilities of the state. Subdivision 1 also provides that the public child welfare program shall be supervised by the Commissioner of Public Welfare and administered by the County Welfare Board in accordance with the law and with rules and regulations of the Commissioner.

Subdivision 2 provides, in relevant part, as follows:

> The county welfare board, subject to the supervision of the commissioner of public welfare, shall administer all forms of public welfare, both for children and adults, responsibility for which now or hereafter may be imposed on the commissioner of public welfare by law, including general assistance, aid to dependent children, county supplementation, if any, or state aid to recipients of supplemental security income for aged, blind and disabled, child welfare services, mental health services, and other public assistance or public welfare services,. . . .The duties of the county welfare board shall be performed in accordance with the standards, rules and regulations which may be promulgated by the commissioner of public welfare to achieve the purposes intended by law and in order to comply with the requirements of the federal social security act in respect to public assistance and child welfare services, so that the state may qualify for grants-in-aid available under that act. . . .

Subdivision 3 provides in relevant part as follows:

> The county welfare board shall be charged with the duties of administration of all forms of public assistance and public child welfare or other programs within the purview of the federal social security act, other than public health nursing and home health services, and which now are, or hereafter may be, imposed on the commissioner of public welfare by law, of both children and adults. The duties of such county welfare boards shall be performed in accordance with the standards, rules and regulations which may be promulgated by the commissioner of public welfare in order to achieve the purposes of the law and to comply with the requirements of the federal social security act needed to qualify the state to obtain grants-in-aid available under that act. . . .

The Department also cites as authority for promulgation of the proposed rule, 45 C.F.R. § 228.6(a), which provides, in relevant part, that the state plan shall provide for the designation of the state agency with authority to administer or supervise the administration of the state's program under Title XX. The Department has been designated as that state agency in Minnesota.

The Examiner finds that the combined effect of Minn. Stat. § 393.07, subds. 1, 2 and 3 and the federal regulation cited establishes sufficient authority in the Commissioner of Public Welfare to promulgate the proposed rule.

Proposed Amendments

13. At the hearing, the Department proposed the following changes to the proposed rule:

> Section B.5. For the period of October 1, 1978 through September 30, 1979, no county shall receive a reduction greater than 7.5% of the previous year's allocation. For the period of October 1, 1979 through September 30, 1980, no county shall receive a reduction greater than 10% of the previous year's allocation. For the period of October 1, 1980 through September 30, 1981, no county shall receive a reduction greater than 10% of the previous year's allocation.

The Department testified that the change is necessary because use of the January 1, 1979 date can cause a mathematical error in determination of the protection factor. Thus, the amendment provides a technical correction in clarifying the computation of the reduction limitation. The Department indicated that it was their intent that the 7.5 percent reduction limitation would apply to the full

program year of October 1, 1978 through September 30, 1979, rather than the nine-month period from January 1, 1979 through September 30, 1979 (Tr. at 29). On the other hand, the Department also testified that since the allocation applies to nine months rather than 12, the reduction is 7.5 percent rather than 10 percent (Tr. at 31). The Department also testified that the formula will not go into effect prior to January 1, 1979, pursuant to B.4. because local tax levies for matching county funds for the calendar year 1978 were based on a previous allocation formula.

The Examiner believes that this amendment does little to clarify the application of B.5., and is in conflict with the language of B.4., which indicates that the formula in part C. of the rule becomes effective as of January 1, 1979. If the formula resulting in the allocation will not be used until January 1, 1979, how can the protection formula which readjusts that allocation become effective three months earlier? If the allocations covers a nine-month period, the protection factor should also cover a nine-month period. If the protection factor for a full year is 7.5 percent, will the protection factor actually applied for nine months be 5-5/8 percent? The Examiner finds that the proposed amendment to the rule is unreasonable because it is unclear and conflicts with section B.4. of the rule. Also, the Department did not make an affirmative presentation of facts regarding the need for the amendment, but only asserted a possible mathematical error without further explanation. The rule as originally proposed will be discussed at Paragraph 22.

Discussion of the Rules as Proposed

14. Section A.1. of the rule sets forth the purpose of Rule 162 and the authority under which it is promulgated. There was no comment on this section at the hearing or in written testimony. The Examiner finds that this section of the rule is reasonable and necessary.

15. Section A.2. of the rule sets forth the method by which the amount of federal financial participation (defined at A.5.e.) governed by the rule is determined. It states that the federal

financial participation governed by the rule is limited to Minnesota's share of the amount authorized and appropriated by Congress each year to carry out the programs of Title XX less an amount determined necessary by the Commissioner of Public Welfare for state administrative expenses, special projects and state administered purchase of service contracts. During the course of the hearing, testimony was introduced regarding this section and B.1. questioning whether the Commissioner of Public Welfare had unlimited discretion to determine the amount which could be taken by the Department for stated purposes. It was also suggested that a ceiling, either by specific dollar amount or by percentage, should be placed on the amount of funds available to the Commissioner. The Department testified that the Legislature requires certain monies to be used out of Title XX funds for other projects, including $2.9 million for daytime activity centers during fiscal year 1978, and for deposit in the State General Fund. The Department testified that they were willing to set a specific percentage or dollar amount for state administrative expenses in the rule. However, it was possible that inclusion of those figures would require the rule to be amended on an annual basis. The Examiner suggests that it would be helpful if this portion of the rule were amended to reflect the fact that certain monies are required to be spent out of Title XX funds by legislative mandate. If inclusion of a percentage or dollar ceiling on administrative expenses would require annual amendments of the rule, such an amendment should not be included. The proposed amendment clarifies the existence of state mandated use of certain funds and would not be a substantial change. The Examiner finds that this section of the proposed rule is reasonable and necessary.

16. Section A.3. of the rule provides that the formula shall be used to determine the allocation of any additional funds appropriated by Congress pursuant to Title XX. In reviewing the rule, the Examiner finds that it is unclear whether "this method" refers to the formula for allocation in section C. or the reallocation of

of funds in section D. It is also unclear as to whether the protection factor would apply. The section should be amended to clarify those matters. The Examiner finds that the proposed section, if amended, would be reasonable and necessary.

17. Section A.4. of the rule provides that it does not govern Title XX funds authorized and appropriated by the federal Congress for staff development and Southeast Asian Refugee Programs. The Examiner finds that the word "federal" preceding the word "Congress" is unnecessary and not consistent with prior references to the United States Congress in other portions of the rule. In addition, the Examiner suggests that section A.3. and section A.4. should specifically indicate whether they refer to additional funds which could be used for Title XX services which may be provided or released by the State of Minnesota after adoption of the proposed rule. However, while this amendment would clarify the rule, it is not necessary. The Examiner finds that the proposed section is necessary and reasonable.

18. Section A.5. contains definitions which are necessary to interpret the rule uniformly. The Examiner suggests that federal financial participation seems like an unnecessarily obscure way to refer to Title XX funds available to the counties for reimbursement. The Examiner finds that this section of the proposed rule is reasonable and necessary.

19. Section B. of the rule deals with allocation procedures. Section B.1. provides that the Commissioner of Public Welfare shall determine the amount of general or supplemental Title XX funds necessary for state administrative expenses, special projects and state administered purchase of service contracts, and that the balance left after subtracting those amounts from the total Title XX funds will be used to determine each local social service agency's allocation. The Examiner finds that the comments addressed to section A.2. of the rule at Paragraph 15 would also apply to the section. Furthermore, the language used is not clear. Specifically, it would be much simpler to say something like the following:

> The total amount of Title XX funds to which the formula in part C. of this rule shall be applied, shall be determined by subtracting from the total general or supplemental Title XX funds an amount equal to state administrative expenses, special projects and state administered purchase of service contracts as determined by the Commissioner of Public Welfare and the Legislature.

Although the Examiner believes that this language would clarify the rule, the section, as proposed, is reasonable and necessary.

20. Section B.2. provides that the Department must notify each local social service agency of the amount of federal financial participation it may claim reimbursement for during the program year beginning October 1, by April 1 of that year. The Examiner finds that the language is unclear because the counties are not reimbursed for federal financial participation as the rule states, but for the cost of providing certain Title XX services. The concept of notifying counties in April of the amount of reimbursement they will receive in the following program year is reasonable and necessary. The proposed section as amended would be reasonable and necessary.

21. Section B.3. provides that counties administratively organized under a multi-county human services board or joint county welfare board may receive an allocation equal to either the sum of each county's separate allocation or an allocation based on combined data, depending upon the method normally used to report data to the Department. The Examiner notes that within this section "State Agency" is not capitalized as it is in other sections. The Examiner finds that the section, as proposed, is reasonable and necessary.

22. Section B.4. of the rule provides that the allocation formula becomes effective as of January 1, 1979. It also provides that the first year of computation shall be for the period January 1, 1979 through September 30, 1979, although for each program year thereafter the full program year applies. The Department testified at the hearing that it is reasonable and necessary for the formula to become effective on January 1, 1979, rather than October 1, 1978, because local tax levies for matching county

funds for the calendar year 1978 were based on the present administrative formula for allocating Title XX funds. The Department felt that it would be unreasonable to allocate funds for three months of the calendar year based on the new formula when local tax levies for the present year have already been established. Although the Examiner has questions as to whether most counties operate on a calendar year rather than a fiscal year, the greatest probelm with this section is its inconsistency with section B.5., as amended. (See, Paragraphs 13 and 23) Assuming that inconsistency is corrected, this section, as proposed, is reasonable and necessary.

23. Section B.5. provides a protection factor over a period of three years for those counties whose allocations would be decreased. The Department testified that a protection factor is necessary so that those counties which would lose money under the new formula can adjust to the decrease more gradually. This concept is both necessary and reasonable. Hennepin County submitted comments indicating that the percentage decrease per year should be smaller. The problems with the proposed amendment to B.5. are set out at Paragraph 13. The Hearing Examiner has found that sections B.4 and B.5., as amended, when read together are so confusing that a person would be unable to determine their appropriate application from reading the rule. Also, there is no provision in section B.5. for determining where the money for the protection factor will come from. The Examiner finds that this is a serious defect since the absence of a specific provision would permit the Department to take protection money from selected counties or to use a different method during each of the three relevant years. The amendments proposed by St. Louis and Ramsey Counties attempt to deal with this problem, and are discussed at Paragraph 24 herein. The Examiner finds that section B.5. of the proposed rule, as amended, is unreasonable because it is unclear and that section B.5. as proposed is unreasonable because it does not specify the source of or method of calculation for the protection money, but that it is necessary.

24. St. Louis and Ramsey Counties proposed that section B.5. be renumbered B.5.a. and that two subsections be added as follows:

> b. No county shall receive less than the smaller of the amount calculated pursuant to the formula in part C. of this rule or the amount allocated in the period October 1, 1977 through September 30, 1978.
>
> c. The monies required to provide the protection granted in paragraphs B.5.(a) and (b) of this rule will be obtained by reducing the allocation to all counties not covered by this protection. The reduction will be a common percentage arrived at by dividing (the total of all the calculated allocations to each county, based on the formula in part C. plus the protection amounts determined in paragraph B.5. minus the total Title XX funds available to the counties) by (the total Title XX funds available to the counties).

The purpose of the proposed subsection b. is to clarify that counties which lose money from the initial allocation will not lose more money to provide protection for other counties. Testimony by both St. Louis County and Ramsey County indicated that in addition to losing funds under the allocation formula in part C., they lost additional funds as a result of the application of the protection formula. This resulted in those counties having a substantial drop in funds during the first year, smaller decreases during the second and third years, and finally, a return to the full allocation to which they were entitled under section C. in 1981. At the hearing, the Department noted that they had not been aware that the protection formula would have this effect on those counties. In its post-hearing written statement, the Department accepted amendment B.5.b.

Proposed subsection B.5.c. provides a formula by which the common percentage by which the reimbursement for those counties which do not fall within the protection classification of B.5.a. or b. must be reduced in order to provide the necessary protection factor to those counties which are covered by subsections B.5.a. or b. Section B.5. of the rule as proposed by the Department did not contain any provision regarding the source of or method of calculation for the funds needed to provide the protection factor.

However, the Examiner has been unable to determine whether the specific formula in the proposed amendment is reasonable or necessary to accomplish those ends.

The Examiner finds that the Department has failed to make an affirmative presentation of fact with regard to the reasonableness of and necessity for proposed amendments B.5.b. and B.5.c. If the Department chooses to adopt the amendments it should be noted that there may be a problem of substantial change.

25. Section C. of the rule sets forth the formula by which the counties' Title XX allocations shall be determined using four factors. 1/

Section C.1.a. defines county public assistance factor as a mathematical value which represents an unduplicated count of the county's total population receiving Aid to Families with Dependent Children (AFDC), Supplementary Security Income (SSI), Minnesota Supplemental Assistance (MSA), and Medical Assistance (MA), in proportion to the state's total population by the latest available data from the Department of Public Welfare. The Department testified that this factor is a reliable indicator of need because recipients of public assistance are a specific population group for whom Title XX services are intended and Federal regulations require that 50 percent of Title XX funds must be used for public assistance recipients. Public assistance population substitutes for the social services recipients factor, used in the current formula for which the data is not as reliable on a statistical basis or as an indicator of need. Hennepin County submitted written comments questioning the exclusion of general assistance recipients, of whom more than half are residents of Hennepin County, from the county public assistance factor. It is the position of the Department that the proposed definition is consistent with the definition

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1/ In order to facilitate discussion of the numerous comments, a summary of comments regarding the formula as a whole are found at Paragraph 29 herein and findings regarding the formula at Paragraph 30.

contained in the Federal regulations governing Title XX. The Examiner finds that the meaning of "an unduplicated count" is unclear. If the ambiguity is corrected, the Examiner finds that this section of the proposed rule is necessary and reasonable.

26. Section C.1.b. defines county population factor as a mathematical value which represents the county's total population in proportion to the state's total population as determined by the latest available data from the State Demographer's Office. The Department testified that county population is included as the best indicator of the total population group from which recipients of services under Title XX may come, since certain services must be provided regardless of income. The Examiner believes it is unclear from the testimony and from the definition whether the total population referred to is, in fact, total population regardless of income or total population whose income does not exceed 115 percent of the state median income. This ambiguity stems from testimony (Tr. at 33) referring to those persons whose income does not exceed 115 percent of the state median income. The Examiner would suggest that if total population is less inclusive than it appears on its face, that the definition should be modified accordingly. Subject to that clarification, if necessary, the Examiner finds that this section is reasonable and necessary.

27. Section C.1.c. defines the expenditure factor as a mathematical value which represents the county's total reported Title XX earnings in proportion to the total of all counties' reported Title XX earnings as determined by the latest available data from the State Department of Public Welfare. The Department testified that the expenditure factor was the best available indicator of past level of effort and of the level of development of services in each county because there is a direct correlation between the amount of expenditures for services and the quality of services actually provided. The dispute regarding expenditures stems from its inclusion in the formula, rather than its definition, and is

discussed at Paragraph 29 herein. The Examiner finds that the proposed section is reasonable and necessary.

28. Section C.1.d. defines the equalization aid factor in the formula as a mathematical value based upon the index for each county derived from the equalization aid formula. The section also includes an extensive explanation of the method by which the equalization aid factor is computed. The Department testified that it is necessary to include the method in the rule in order to establish a common understanding of the steps followed to arrive at the particular factor. The Department testified that the equalization aid formula is the best available indicator of county ability to pay as evidenced by the fact that it has been used by the State Legislature since 1969, as a basis for appropriating money to be distributed to distressed counties in the state. The objections raised regarding the equalization aid factor were primarily with regard to its inclusion in the formula and are discussed at Paragraph 29 herein, rather than with regard to its definition. The Examiner finds that this section as proposed is reasonable and necessary.

29. Section C.2. of the rule sets forth the relative weight to be given to each factor in the allocation formula as follows: 40 percent to county public assistance, 20 percent to county population, 20 percent to expenditures, and 20 percent to equalization aid. The Department testified and presented written evidence that in the course of its deliberations and those of the advisory committee that it considered some 16 different formulae weighting six different factors (Attachment V, Post-Hearing Statement). The Department believes that this formula provides the most equitable treatment of all parties while fulfilling the policy goals of the Department discussed at Paragraph 11, herein. The positions taken by the various counties and their representatives fell into four separate, but not mutually exclusive, categories.

First, there are some counties which favor the formula in the proposed rule. These include Clay, Big Stone, Mahnomen, Beltrami,

Mille Lacs, Kanabec, Cass, Winona, Clear Water and Koochiching Counties. St. Louis County supports the proposed rule subject to the adoption of amendments which they proposed at section B.5. Dodge County supports the proposed rule, but prefers a formula based 50 percent on population and 50 percent on public assistance case load.

The second group of counties, and by far the largest on a numerical basis, favors a formula based 50 percent on population and 50 percent on public assistance case load. These counties include Kittson, Roseau, Marshall, Pennington, Red Lake, Polk, Norman, Clay, Becker, Wilkin, Ottertail, Wadena, Morrison, Todd, Douglas, Grant, Traverse, Stevens (which also feels there should be equal reimbursement per capita), Pope, Stearns, Benton, Chisago, Anoka, Washington, Wright, Meeker, Swift, Lac Qui Parle, Yellow Medicine, Renville, McLeod, Dakota, Wabasha, Goodhue, Rice, LeSueur, Sibley, Nicollet, Brown, Redwood, Lyon, Lincoln, Pipestone, Murray, Cottonwood, Watonwan, Blue Earth, Waseca, Steele, Dodge, Olmstead, Houston, Mower, Freeborn, Faribault, Martin, Jackson, Nobles, Lake and Rock Counties. The specific arguments which they raised may be summarized as follows:

(1) Population and public assistance case load are a firm, reliable measure of both need and ability to pay.

(2) Use of a formula including only those two factors results in a formula which is simple and easy to understand.

(3) A formula based on population and public assistance case load is more consistent with Federal regulations than the proposed rule since the amount of Title XX reimbursement received by each state is based on population and 50 percent on all Title XX expenditures must be for public assistance recipients.

(4) Population and public assistance case load are completely non-manipulable.

(5) Population should be given substantial weight because child protection, information and referral, and family planning services which account for a large portion of some counties's

expenditures, are required to be made available to the population as a whole.

(6) Population and public assistance case load are more stable factors on a long-range basis and would assist in planning.

(7) A formula which includes expenditures perpetuates past inequities resulting from the early development of Title XX programs in urban areas during a period when full 75 percent reimbursement was virtually unlimited. Thus, it continues to penalize those counties who are attempting to expand their social services programs under less favorable conditions.

(8) The expenditure factor can be manipulated by reporting the maximum amount of Title XX expenditures. The thrust of this argument seemed to be that it was easier for larger urban counties with their computer capabilities, large staffs and available private agencies for purchase of services to "load" their Title XX expenditures. Examples of manipulation provided in written testimony included: (a) reporting residential treatment of emotionally disturbed children as Title XX expenditures, rather than under the Minnesota cost of care program where there is only 15 percent reimbursement; (b) purchasing services from United Way funded agencies which are eligible for Title XX reimbursement; and (c) opening cases and establishing eligibility for 500 elderly persons currently receiving transportation services under revenue sharing funds, which could be Title XX services.

(9) Expenditures do not accurately reflect the quantity or quality of social services or past effort. Many counties testified that they do not have the time or staff available to report those Title XX expenditures for which they know they will not receive reimbursement. Therefore, their reporting does not accurately reflect either the social services program or the actual expenditure level. These counties reiterated their position that the computerized reporting of larger urban areas permitted complete reporting of Title XX expenditures with relatively less cost in staff time.

(10) Equalization aid should not be used as a front end factor in determining allocation because that is contrary to the use for which the factor was developed.

(11) Inclusion of equalization aid in the formula results in a double loading of the expenditure and welfare recipients factors.

(12) The equalization aid factor is based in part upon per capita income figures which are based on unreliable data and are subject to wide fluctuation on an annual basis.

(13) The equalization aid factor is volatile because small changes in any of the factors used to calculate the equalization aid index may result in a substantial change in a county's absolute ranking. Therefore, budget planning become difficult.

(14) The equalization aid factor exagerates small differences between counties by ranking them in an absolute order and, thus, is a poor indicator of ability to pay.

Third, representatives of Hennepin and Ramsey Counties partially supported by some other counties, took the position that reimbursement should be allocated solely on the basis of expenditures and that each county should be reimbursed an equal percentage of their expenditures. It was noted that this would be consistent with Federal regulations which require Title XX reimbursement to be earned by expenditures. Hennepin County indicated that it was inappropriate to include equalization aid or any factor dealing with the county's ability to pay because Title XX is not a revenue sharing plan. Hennepin County also suggested that there should be full 75 percent reimbursement to all counties for all mandatory Title XX services and that only the remaining funds should be allocated pursuant to the formula. It should be noted that many written comments and part of the testimony at the hearing was submitted by or on behalf of various programs, primarily in Hennepin County, which are funded under Title XX. The general substance of both comments and testimony was that rule 162 should not be adopted because it would result in a decrease in necessary services.

The Department's position is that the rule deals with allocation of Title XX funds only and that decrease in Title XX reimbursement to any county will result in a decrease in services only if that county chooses to permit that result.

Fourth, representatives of Hennepin County, Ramsey County and the DFL Health and Human Services Caucus proposed that the Department should postpone adoption or implementation of the proposed rule pending action by the Minnesota Legislature during its 1979 Session. These people felt that selecting the method of allocating Title XX funds represents a policy decision which is more appropriately made by the Legislature.

30. The Department has responded to these comments at length in its testimony and post-hearing statement. The Department believes that its formula is the only one which implements the policies set forth at Paragraph 11, herein.

The Department takes the position that equalization aid should be a factor because it is reasonable to include a factor in the formula that relates to the availability of county resources for funding services because of the need to provide additional support to those counties least able to finance services from local tax levies. The Department takes the position that a formula which considers only expenditures is inequitable and does not recognize necessary policies including equal access and ability to pay. The Department takes the position that despite increased interest in the Legislature with regard to Title XX allocation, it would be remiss in waiting for possible legislative action since that would result in the utilization of the 1977 formula for an additional year. The Department noted adoption of the proposed rule did not preclude the Legislature from acting during the 1979 Session. The Examiner believes that many of the comments raise valid criticisms of the proposed rule. However, as noted at Paragraph 9, herein, the rule need not be the most necessary and reasonable choice. The Examiner finds that section C.2., as proposed, is necessary and reasonable.

31. Section D. of the rule sets forth procedures for reallocation of funds. Section D.1. provides that the Department shall reallocate all surplus funds initially allocated to local social services agencies in order to fully utilize Title XX funds. The Examiner finds that the proposed section is reasonable and necessary.

32. Section D.2. provides that the county welfare or human services boards shall certify to the Commissioner of Public Welfare within 30 days of the close of the quarter ending December 31, the portion of the initial allocation they expect to earn during the program year and the amount of additional Title XX funds they could earn above their initial allocation. This will enable the Commissioner to determine the amount of funds available for reallocation and to identify those local social services agencies which have the capability to use additional funds. The Examiner finds that the proposed section is reasonable and necessary.

33. Section D.3. provides that the Commissioner may withhold Title XX reimbursement from counties who have not certified the materials required in Section D.2. by January 31. The Department feels that the Commissioner must have such a procedure to ensure compliance with the procedure and the availability of Title XX funds to counties which could utilize additional funds under a reallocation. The Examiner finds that this provision is reasonable and necessary.

34. Section D.4. provides that the Commissioner may determine the surplus and reallocate projected surplus funds based on the certifications provided under section D.2. to counties which certify they can earn more Title XX funds than provided for them in the initial allocation. The Examiner finds that this provision is necessary and reasonable.

35. Section D.5. provides that funds shall be reallocated in the same proportion as the formula provided for in part C. of this rule up to the amount each local social services agency certifies it can earn above its allocation and excluding those local social services agencies unable to earn their allocation. At the

hearing and in written testimony, there was extensive confusion as to whether those counties who were already receiving funds in excess of their allocation as a result of the protection factor should be or were included in the initial reallocation of surplus funds under the proposed rule. This confusion was not in any way alleviated by the dialogue between the panel and participating members of the public (Tr. at 90-93). There was similar confusion regarding section A.3. The Examiner concludes that this section of the rule is sufficiently unclear that its operation cannot be understood. It also appears to be unable to be explained. On that basis, the Examiner finds that it is unreasonable, though necessary.

36. Section D.6. provides that the Commissioner may make a final reallocation of surplus funds at the close of the program year based on formula in part C. of this rule. Hennepin County submitted written comments indicating that the proposed reallocation procedure would result in an endless cycle of reallocations and that a different method is needed to achieve a final reallocation. This comment should be examined. The Examiner finds that this section suffers from the same inadequacies as section D.5., and that as a result it is unreasonable, though necessary.

37. Section D.7. provides that no county with reimburseable earnings less than its allocation shall be considered for reallocation funds. The Examiner finds that this section of the rule is reasonable and necessary.

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

CONCLUSIONS

1. That the Department of Public Welfare gave proper notice of the promulgation of the proposed rule.

2. That the Department of Public Welfare has statutory authority to take the action proposed, to wit, the promulgation of the proposed rule.

3. That the Department of Public Welfare has fulfilled all

relevant, substantive and procedural requirements of law or rule.

4. That the Chief Hearing Examiner granted a 30-day extension for issuance of the Hearing Examiner's Report pursuant to a joint request by the Examiner and the Commissioner of Public Welfare.

5. That the Department has demonstrated the need for and reasonableness of the proposed rule by an affirmative presentation of facts in the record with those exceptions noted at Paragraphs 13, 23, 24, 35 and 36, herein.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the proposed rule be adopted by the Department of Public Welfare with consideration given to the Findings of Fact, herein.

Dated: July 10, 1978.

NATALIE L. GAULL
Hearing Examiner

N O T I C E

Pursuant to Minn. Stat. § 15.0412, subd. 4 (as amended by Minn. Laws 1977, Chapter 443), this Report will be available to all persons upon request for at least five working days before the Department takes any final action on the rule.

The Department of Public Welfare shall, if it proposes to adopt the rule as proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five working days subsequent to the receipt of this Report. This submission shall also clearly indicate any changes made to the rule 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 within ten calendar days.

Thereafter, the Department shall be responsible for filing the rule with the Attorney General. The Department must give notice to all persons who request to be informed that the hearing record has been submitted to the Attorney General.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD J. DIRKSWAGER, JR.

COMMISSIONER OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rule 162 of the Department of Public Welfare Governing the Allocation of Title XX Funds to County Welfare and Human Service Boards.

ORDER ADOPTING RULE 162

The above-entitled matter came on for hearing before Hearing Examiner Natalie L. Gaull on April 20, 1978, in the Auditorium of the State Office Building, Room 83, Wabasha Street, Saint Paul, Minnesota 55155. The hearing continued on April 21, 1978, in the same location. Pursuant to Minn. Stat. § 15.0412, subd. 4 (Supp. 1977), all persons, associations, and other interested groups registered with the Secretary of State for that purpose received notice of the hearing.

The hearing considered proposed Rule 162 as published at 2 State Register 1751. The following persons testified for the Department of Public Welfare: Commissioner Edward J. Dirkswager, Jr.; Gary Haselhuhn, Acting Assistant Commissioner of the Community Services Bureau; Don Gullingsrud, Fiscal Management Section; Herb Cashdollar, Supervisor, Division of Social Services; and Charles Fecht, Assistant Director, Division of Social Services.

The hearing continued until all interested groups and persons had an opportunity to be heard. Pursuant to the order of the Hearing Examiner, the record remained open for 20 days to allow the submission of written material.

Based upon the records and proceedings, the Hearing Examiner made Findings of Fact, Conclusions, and a Recommendation that are contained in the July 10, 1978, Report of Hearing Examiner, attached hereto as Exhibit A. Pursuant to Minn. Stat. § 15.0412, subd. 4 (Supp. 1977), the Report was available to all affected persons for at least five days.

The Hearing Examiner numbered her Findings of Fact 1 through 37. For ease of comparison, the Commissioner's Findings of Fact will deal with the relevant Findings of Fact made by the Hearing Examiner in the order in which they appear in the Examiner's report.

NOW THEREFORE, IT IS ORDERED that the Findings of Fact, Conclusions, and Recommendation of the Hearing Examiner are hereby adopted and incorporated herein except as modified or rejected below.

The Commissioner of Public Welfare, based upon all of the records and proceedings herein, makes the following:

FINDINGS OF FACT

1. (This finding concerns Number 13 of the Hearing Examiner's Findings of Fact relative to Section B.5. of Rule 162.[1])

The Department proposed an amendment to Section B.5. changing the date of January 1, 1979, in the first line of the section to October 1, 1978. This amendment was intended to clarify the application of this portion of the rule. The Hearing Examiner stated that this amendment does little to clarify the application of B.5. and is in conflict with the language of B.4. The Hearing Examiner found that the proposed amendment to the rule is unreasonable because it is unclear and conflicts with Section B.4. of the rule.

In reexamining this amendment, the Department accepts the Examiner's finding that the language of the amendment is unclear and conflicts with Section B.4. The Department withdraws the amendment. However, the Department adds clarifying language to Section B.5. to eliminate any confusion and make it consistent with Section B.4. The first sentence of B.5., with clarifying language, reads as follows:

> For the period of January 1, 1979, through September 30, 1979 (3/4 of the program year), no county shall receive a reduction greater than 7.5% of the previous full program year's allocation.

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[1]Hereinafter, references to the Hearing Examiner's Findings of Fact and the sections of Rule 162 with which they deal will be abbreviated to the following form, "Finding 13, section B.5."

2. (Finding 15, section A.2.) The Examiner suggested that language be added to reflect the fact that certain Title XX monies are spent according to legislative mandate. The Department accepts the Examiner's findings. Section A.2. is amended to read as follows:

> The federal financial participation governed by the rule is limited to Minnesota's share of the amount authorized and appropriated by Congress each year to carry out the programs of Title XX less an amount ~~determined necessary by the Commissioner of Public Welfare for~~ equal to the state administrative expenses, special projects and state-administered purchase of service contracts as determined by the Commissioner of Public Welfare or mandated by the Minnesota State Legislature.

3. (Finding 16, section A.3.) The Examiner found that this proposed section is reasonable and necessary if amended to clarify whether the protection factor applies to additional funds appropriated by Congress pursuant to Title XX. The Department accepts the Hearing Examiner's finding. Section A.3. is amended to read as follows:

> In the event the Congress authorizes and appropriates any additional funds to carry out the general purposes or specialized purposes of Title XX of the Social Security Act, the Department of Public Welfare shall use ~~this~~ the method established in Sections B, C, and D of this rule to determine the amount of such additional federal financial participation for which each local social services agency may claim reimbursement during the program year or years for which such funds are intended.

4. (Finding 17, section A.4.) The Examiner found that the word "federal" preceding the word "Congress" is unnecessary and not consistent with prior references. The Department accepts the Examiner's finding. The word "federal" is deleted from this section of the rule.

5. (Finding 18, section A.5.e.) The Examiner suggested that the term "federal financial participation" seems to be an unnecessarily obscure way to refer to Title XX funds available to counties for reimbursement. The Department appreciates this suggestion but believes this term is generally understood in the public welfare system and is commonly used in Social Services Programs for Individuals and Families: Title XX of the Social Security Act, 45 CFR § 228 (1978). (Department's Hearing Exhibit 12)

6. (Finding 19, section B.1.) The Examiner found that the language used in Section B.1. is not clear and suggested substitute language. The Department accepts the Examiner's finding and adopts the suggested language. Section B.1. is amended to read as follows:

~~To determine the~~ The total amount of Title XX funds, ~~available to the counties, the Commissioner of Public Welfare shall first determine the amount of~~ to which the formula in part C of this rule shall be applied, shall be determined by subtracting from the total general or supplemental Title XX funds ~~that are necessary for~~ an amount equal to the state administrative expenses, special projects, and state-administered purchase of service contracts ~~The formula in part C of the rule is then applied to the balance to determine each local social service agency's allocation.~~ as determined by the Commissioner of Public Welfare or mandated by the Minnesota State Legislature.

7. (Finding 20, section B.2.) The Examiner found that the language in Section B.2. regarding federal financial participation is unclear. The Department accepts the Examiner's finding and has modified the language for clarification. Section B.2. is amended to read as follows:

By April 1 of each year, the State Agency shall advise each local social services agency of the amount of ~~federal participation it may claim reimbursement for during~~ its allocation for the program year beginning the following October 1.

8. (Finding 21, section B.3.) The Examiner notes that the words "State Agency" are not capitalized as they are in other sections. The Department accepts the Examiner's finding and has capitalized these words to be consistent.

9. (Finding 22, section B.4.) The Examiner questions whether counties operate on a calendar year rather than a fiscal year. The program years and fiscal years in the public welfare system are confusing because there are several in effect at once. The federal fiscal year is October 1 through September 30. The state fiscal year is July 1 through June 30. The county fiscal year is January 1 through December 31. To be consistent with the federal fiscal year, the state and county Title XX program year is October 1 through September 30.

The Examiner identified the problem of a conflict between Section B.4. with Section B.5. This conflict is corrected in the Department's first Finding of Fact. Also, the Department is deleting the word "year" from the second sentence of Section B.4., to clarify the language of this sentence. With these changes, the conflict is eliminated.

Section B.4. is amended to read as follows:

> The formula in part C of this rule becomes effective as of January 1, 1979. The first ~~year~~ computation shall be for the period of January 1, 1979, through September 30, 1979. For every program year thereafter, the full program year applies.

10. (Finding 23, section B.5.) The Examiner found that the concept of a protection factor is both reasonable and necessary. However, the Examiner found that Sections B.4. and B.5., as amended, when read together are confusing. The Examiner found that B.5., as proposed, is unreasonable because it is unclear and it does not specify the sources of or method of calculation for the funds needed to provide the protection factor. The Department accepts the Examiner's findings on all of the above issues.

The Department has eliminated the confusion with Sections B.4. and B.5. by deleting the word "year" from the second sentence of Section B.4. and by withdrawing the amendment proposed for Section B.5. and adding clarifying language. (See Finding of Fact Number 1 above.)

The problem of the lack of specificity regarding the source of funds for the protection and the method of calculation of the protection factor is resolved by adopting the second of two amendments to Section B.5. offered by St. Louis and Ramsey Counties (the first of these two amendments, B.5.b., is addressed in Findings of Fact Number 11 below and deals further with the concept of the protection factor). This amendment, Section B.5.c., responds to the Examiner's statement that she has been unable to determine whether the specific formula in the proposed amendment accomplishes the ends of establishing where protection funds will come from and how the protection will be calculated.

The Department finds that the first sentence of Section B.5.c. indicates the source of the protection funds. It states, "The monies required to provide the protection granted in paragraphs B.5.a. and b. of this rule will be obtained by reducing the allocation to all counties not covered by this protection." The second sentence of Section B.5.c. explains the formula by which the protection will be calculated. The Department finds that the language of the second sentence of the Section B.5.c. amendment is confusing. For purposes of clarification, the Department adopts the following language:

> The reduction shall be a common percentage ~~arrived at~~ computed by dividing ~~(~~the total of all ~~of the calculated allocations to each county, based on the formula in part C. Plus the~~ protection amounts determined in paragraphs B.5.a. ~~minus the total Title XX funds available to the counties)~~ and B.5.b. by ~~(~~the total ~~Title XX funds available~~ allocations to the nonprotected counties derived from the formula in part C.~~)~~

The addition of Section B.5.c. does not constitute a substantial change from the rule as originally proposed. (See discussion in Finding of Fact Number 11 regarding the lack of a substantial change produced by the addition of Section B.5.b.) Section B.5.c. naturally follows from Sections B.5.a. and B.5.b. since B.5.c. merely sets forth the means for implementing the protections created by Sections B.5.a. and B.5.b. The small reallocation to derive protection funds logically must be from those counties not needing protection from funding reduction to those counties needing protection from funding reduction. To avoid any substantial change or impact on the funds available to any county contributing to the funds used for protection, B.5.c. provides for the use of a common percentage.

The Department accepts this amendment as modified. Section B.5. is renumbered and the entire section will be restructured to accommodate the inclusion of the amendments into the rule. Sections B.5.a. and B.5.c. are amended to read as follows:

> 5. Protection Factor
>
> This section of the rule provides a protection factor for counties whose allocations will be reduced as a result of the implementation of the rule, identifies the source of funds for the protection factor and specifies the method of calculation of the protection factor.

Section B.5. has been renumbered to B.5.a. and changed to read as follows:

> a. For the period of January 1, 1979, through September 30, 1979 (3/4 of the program year), no county shall receive a reduction greater than 7.5% of the previous full program year's allocation. For the period of October 1, 1979, through September 30, 1980, no county shall receive a reduction greater than 10% of the previous year's allocation. For the period of October 1, 1980, through September 30, 1981, no county shall receive a reduction greater than 10% of the previous year's allocation. Thereafter, no reduction percentages apply.

Section B.5.c. will be changed from the amendment as originally proposed to read as follows:

> c. The monies required to provide the protection granted in paragraphs B.5.a. and B.5.b. of this rule will be obtained by reducing the allocation to all counties not covered by this protection. The reduction shall be a common percentage ~~arrived at~~ computed by dividing ~~(~~the total ~~of all of the calculated allocations to each county, based on the formula in part C. Plus the~~ protection amounts determined in paragraphs B.5.a. ~~minus the total Title XX funds available to the counties)~~ and B.5.b. by ~~(~~the total ~~Title XX funds available~~ allocations to the nonprotected counties derived from the formula in part C.~~)~~

11. (Finding 24. section B.5.b.) Ramsey and St. Louis Counties offered amendment B.5.b. to protect those counties that lose funds in the initial allocation from again losing funds as a result of the protection provided by Section B.5.a. This amendment reads as follows:

> b. No county shall receive less than the smaller of the amount calculated pursuant to the formula in part C of this rule or the amount allocated for the period October 1, 1977, through September 30, 1978.

This amendment is both reasonable and necessary as the record amply demonstrates. Representatives of Ramsey and St. Louis Counties testified that under the terms of the formula as originally proposed, they lose funds in the initial allocation and would again lose funds as a result of the protection factor.

Mr. Abts, Ramsey County Welfare Department, testified, "Rule 162 if adopted would reduce Ramsey County's allocation which is currently at 6.6 million to 6.1 million for federal fiscal year 1979. This further reduction of $499,000 or half a million dollars in federal funds would result in either a severe reduction in purchase and/or direct services or a substantial increase in both of the monies to provide the needy services in our county. Moreover, the reduction due to the protection

clause is greater than the reduction due from the raw formula as proposed in Rule 162. Well, the raw formula as outlined in the proposed Rule would reduce our allocation from 6.6 million to 6.4 million the protection clause outlined under Section B.5. would reduce our allocation even further to 6.1 million. Of that approximate half a million dollar deduction, only $180,000 is due to be changed in the formula. The remaining $320,000 deduction is due to the protection clause. Under the formula being proposed in the Rule today, only about 3 to 8 - some relatively small number of counties, are in need of the initial protection granted under the protection clause." Transcript of Hearing in Matter of Rule 162 of the Department of Public Welfare at 177-178 (hereinafter cited as "Transcript"). He also testified, "In addition, monies required to provide for the protection granting in paragraph B., would be obtained by reducing the increased allocation to all counties not covered by the protection. This change in the Rule would assure that counties already losing money under the proposed formula would not again be penalized by having -- by taking additional money to protect counties included in the protection clause. In other words, protection money would come from those counties receiving the allocation increase due to the formula and not from these counties already receiving a reduction under the proposed formula. We believe that these proposed changes are fair and equitable and would permit us to earn Title XX funds needed to provide adequate social services to the citizens of Ramsey County." (Transcript at 178-179.)

Mr. Miles Wangensteen, St. Louis County Welfare Department, testified, "We would be in view of my previous comments in favor of the proposed Rule 162 with this addition. We feel this addition is necessary because the Rule does not spell out where the money is to come from to grandfather the few counties who would then lose money. We would like part -- and we've given this to you in writing -- but we would like Part B.5. changed and added little (b), no county shall receive less than the smaller of the amount calculated pursuant to the formula in Part C. of this Rule or the amount allocated in the period October 1st, 1977, through September 30, 1978." (Transcript at 200-201.)

A further effect of the original proposal is that counties giving up funds for the protection would drop below their 1978 allocation and then be brought back up to it over the next two-year period (Transcript at 204-206). Mr. Haselhuhn testified, "...as the Rule presently is stated in Section B., that there would be a drop one year from the present allocation that some counties are receiving and then when the formula takes full effect by 1981, a rise back up. It has a kind of up and down kind of effect on services." (Transcript at 205.)

Mr. Roger Elverhoy, St. Louis County Welfare Department, testified, "We'd lose money to the formula and we'd also lose again in order to protect -- like Hennepin County and Olmsted and some of those and then as their protection drops in the second year, we go up a little bit." (Transcript at 205.)

The Department testified that it was unaware of this effect. Mr. Haselhuhn testified, "It sounds as though this is the same thing that Mr. Abts was talking about yesterday for Ramsey from Ramsey County in his testimony. And as we have thought further about this, the recommendations that he made yesterday and now the ones that Mr. Wangensteen is making today, do make a good deal of sense to the Department. And it's consistent -- what this would do is consistent with what our intention about how the formula would in fact work. We put the language in the Rule, in the proposed Rule, that limits the reductions to 10% a year so that any county that does undergo a substantial reduction from their present allocation are in fact reduced in steps over a three-year period so that there is not an immediate total impact of the reduction on either local taxes or local level of service provision. But in doing that and because of the way the language to accomplish this apparently is stated in the Rule, some counties will undergo this up and down or boomerang kind of effect that you've brought out. That is, a drop from their present 1978 allocation and then a rise back up when the formula is in effect which could have -- well, would have an impact either on reduction of services or having to come up with local funding at least for a period of time in there. It was not our intention that this would happen, that the formula would, in fact,

have that up and down kind of effect. And I have to say that as we prepared for this Hearing, as we examined the potential impact of the formula, it didn't occur to us that this kind of effect was there, and if it had we probably would have put language in the Rule ourselves that would have prevented this kind of a technical aberration or deviation from occurring." (Transcript at 206-207.)

Commissioner Dirkswager addressed the issue of a protection factor when he testified that counties losing funds should be brought down slowly and that minimal disruptions should occur. He stated, "We determined that since some counties would lose under this formula, it was very important to bring those counties down slowly. It was regretable from our point of view that we were dealing with a fixed amount of money. And, given the fact that there was a fixed amount of money, if there was an inequitable distribution prior to the establishment of a formula, that would mean that some counties would have less resources in the future than they've had in the past; but it would mean a more equal access on the part of all Minnesotans to that kind of a service. But we determined that it was very important to do this slowly, to be the minimal disruptions so that counties could make decisions themselves about whether or not to increase their own resources going towards these programs or develop alternative means for this service delivery." (Transcript at 61.)

Mr. Haselhuhn also testified to this principle. He stated, "It is reasonable and necessary to place a limit on the amount of the reduction that any county would sustain as a result of this formula. This limitation is intended to prevent a sudden and drastic curtailment of services which would be detrimental to persons receiving such services. This reduction limitation would give affected counties an opportunity to gradually increase county tax levies to offset decreased federal financial participation or to gradually reduce services if it was necessary." (Transcript at 30.) And, "...and also to let down counties slowly in terms of those that might have to take a decrease under the formula by including the ten percent limitation to reduction per year." (Transcript at 119.)

In response to testimony by Mrs. W. Holguin, Executive Director of Metropolitan Child Development, Mr. Haselhuhn stated, "We again have built several factors into the formula to insure that cut backs will not occur drastically and instantaneously when the formula goes into effect, the limit of the seven and a half percent deduction and the limit to the ten percent deduction the following year." (Transcript at 82.) And, in response to testimony by Ms. Maggie Brown, League of Women Voters, he stated, "I would just like to comment that your point -- I think it was your first point, that 'no formula should drastically upset the system', I believe was the way it was stated -- that yes, we do agree very much with this. And this is the reason that we have put the provision in the Rule that would phase any reductions that counties have to not be in excess of 10% over each of the years over the three-year period that it will take to fully implement the formula." (Transcript at 288.)

Mr. Charles Melberg, Director of the Beltrami County Welfare Department, testified that the Beltrami County Welfare Board "...support the fact that no county should receive a reduced amount in all that big a hurry." (Transcript at 40.)

The Hearing Examiner found that the concept of a protection factor is a reasonable and necessary one. The Department has testified to the need for a protection factor (Transcript at 30, 61, 82, 119, 206, 207, and 288) and recognizes the value of the amendment offered. The Department believes that the amendment offered is consistent with the Department's intent in promulgating this rule. The Department also believes that the amendment corrects what would otherwise be an unfortunate technical aberration. Affirmative testimony has been given establishing the need for the proposed amendment and the reasonableness and necessity of it (Transcript at 30, 61, 82, 119, 177, 178, 179, 200, 201, 205, 206, 207, and 288). The Department adopts the proposed amendment.

The Department believes that the addition of Section B.5.b. does not constitute a substantial change from the rule as originally proposed for the following reasons:

1. There are 59 counties not protected by Sections B.5.a. and B.5.b. All of these counties receive an increase in allocation over the previous year. To provide protection for the remaining counties, each of the 59 counties will have their increased allocation reduced by 6%. This is not a substantial reduction in the increased allocation to each county.
2. The percentage reduction (6% for program year 1978-79) will decline during the three-year implementation period. During each year of this period, the number of counties affected by this reduction will decrease significantly.

Amendments B.5.b. and B.5.c. were presented and discussed at the hearing on this rule. The interests of protected and nonprotected counties were well represented since fourteen individual counties and a spokesperson representing a coalition of sixty counties appeared and testified. Consequently, the small change in funds to be allocated by these amendments received consideration and the affected counties had opportunity to respond.

12. (Finding 25, section C.1.a.) The Examiner found that the term "Unduplicated Count" was unclear. The Department adds the following sentence at the end of paragraph C.1.a., for clarification: "The term 'upduplicated count' means that each recipient is counted only once even if receiving assistance under more than one of the programs listed above."

The Department found that an incorrect program title was inadvertently used in this section. The correct program title is Minnesota Supplemental Aid, not Minnesota Supplemental Assistance. This does not constitute a substantial change. The rule is corrected accordingly.

13. (Finding 26, section C.1.b.) The Examiner believes that the definition of county population factor is unclear and questions whether it means total population regardless of income or population whose income does not exceed 115 percent of state median income. The Examiner suggested that if the definition of total population is less inclusive than it appears on its face, the definition should be modified accordingly. The definition is no less inclusive than it appears on its face. No modification of the definition is necessary.

14. (Finding 35, section D.5.) The Examiner found that this section of the rule was sufficiently unclear, that its operation cannot be understood, and that dialogue between the panel and participating members of the public (Transcript at 90-93) did not alleviate the confusion.

The Department acknowledges that the questions and answers during the first day of the hearing (Transcript at 90-93) were unclear and confusing.

The confusion concerns whether those counties who were already receiving funds in excess of their allocation as a result of the protection factor should be included in the initial reallocation of surplus funds under the proposed rule. However, the Department presented clarifying testimony during the second day of the hearing. Testimony on pages 298 and 299 of the transcript reads, in part, as follows: "And the protection factor does not apply to the reallocation formula. The protection factor appears in Part B. of the proposed Rule. This section, Section D. refers only to Part C. which is the factors of the Rule."

The Department also provided an example of how the reallocation formula is applied in Attachment III of the Memorandum of the Department dated May 11, 1978 (hereinafter cited as "Attachment III"). Attachment III was submitted at the request of the Hearing Examiner following the public hearing and entered into the official record. Attachment III demonstrates that all counties with sufficient earnings receive a common percentage reallocation.

The process of reallocation is the same whether it is for Section D.5. or for Sections D.6. and D.7. The difference is that D.5. reallocates initial funds not claimed by counties in the certification process and D.6. and D.7. reallocate unused surplus funds at the close of the fiscal year. The method of calculation is the same in both instances. The testimony and Attachment III apply to both types of reallocation.

The Department believes that the testimony given on the second day of the hearing, together with the document entered into the official record, clarify who will receive funds under the reallocation and explain what the process is for distributing reallocated funds. The Department concludes that the clarifying testimony substantiates the reasonableness of this section.

15. (Finding 36, section D.6.) The Examiner found that this section suffers from the same inadequacies of lack of clarity as Section D.5. Also, the Examiner referred to written comments by Hennepin County stating that the proposed reallocation procedure "would result in an endless cycle of reallocations".

Department testimony quoted in Finding 35, section D.5., is also applicable to Section D.6. In addition, the process demonstrated in the Attachment to the Department's Memorandum referred to in Finding 35 applies to the reallocation of surplus funds in the same manner as reallocation of funds not certified as being needed by counties.

Regarding Hennepin County's comment that the reallocation formula "would result in an endless cycle of reallocations", the Department has demonstrated in Attachment III that this is not the case. The reallocation formula in the proposed rule will produce only one set of reallocated amounts. The Department concludes that the clarifying testimony substantiates the reasonableness of this section.

Having considered all of the evidence adduced and upon the records, files, and proceedings herein, and the applicable statutory standards and criteria, and having confirmed the need for the above-captioned rule and its reasonableness,

NOW THEREFORE, IT IS ORDERED that those Findings of Fact, Conclusions, and Recommendations of the Hearing Examiner contained in the Report of the Hearing Examiner that have been accepted by the Department as indicated above are hereby adopted and incorporated herein.

It is further ordered, that this rule identified as Rule 162 of the Rules of the Minnesota Department of Public Welfare is adopted this 14 day of September, 1978, and after this day Rule 162 shall read in its entirety as set forth in the attached Exhibit B, pursuant to the authority vested in me, and pursuant to Minn. Stat. Chapters 15, 252, 256 and 393.

Dated: Sept. 14, 1978

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Edward J. Dirkswager, Jr.
Commissioner

CE/JB

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Alan Held, 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 has been followed. Any exceptions are noted below.

Alan A. Held

Special Assistant Attorney General

Dated: September 29, 1978

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULE 162 OF THE)
DEPARTMENT OF PUBLIC WELFARE)
GOVERNING THE ALLOCATION OF)
TITLE XX FUNDS TO COUNTY)
WELFARE AND HUMAN SERVICE)
BOARDS.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, the above-entitled matter came on for hearing on April 20 and 21, 1978, before Natalie L. Gaull, a Hearing Examiner of the State Office of Hearing Examiners, 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 July 10, 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 September, 1978.

DUANE R. HARVES
Chief Hearing Examiner