

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

#487 Dept of Education

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 11-20 78 Temporary Rule ———

Resubmitted and Received _____

DUE DATE 12-10 78 ~~Call for req. documents~~ * 12/6

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved 12/6 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ✓ (N.A.)
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 N.A., as Commissioner, not Bd, to support adopt Rule.
13. Order Adopting ✓
14. Report of Chief Hearing Examiner* ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable N.A.
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable [redacted] ✓*
17. Petition by Public, where applicable N.A.

After a lengthy conversation w/ Chuck Mottl, I have approved these rules. ~~However, the 'fo~~ The concerns raised & resolved are as follows:

1.) The problems arising with set of rules ~~[illegible]~~ emanate from an incomplete statute. The statute talks about "approved programs" but gives no one auth. to approve programs (unless you read extremely broadly the Com of Educ. "circulla" auth.)

2.) Failure to ~~[illegible]~~ est. by rule circulla was addressed by the agency in response the trade assoc's petition to est. circulla by rule. The agency took the position by it didn't have stat. auth. to est by rule given no ref. to rule-making in ~~[illegible]~~ 144A.61, Subd. 3 (1977), whereas elsewhere in the statute the legis gave express rule-making auth. Also, history of not requiring educ. comm. or Bd to est circulla by rule.

Similarly, if circulla not by rule, subject of testing not by rule either as it would be based

(OVER)

or cirricula.

3.) Qualif. of Instructors : Mottl justified qualif. for instructors on basis that you've got to est. ~~[illegible]~~ educ. req. in part before you can exempt people from them. Secondly, the statute implies a very broad meaning of word "Cirricula".

§1.0113 Nursing assistant programs. Nursing assistant education programs shall use the curriculum developed by the commissioner of education as reviewed and evaluated by the board of nursing. The program shall include an individual written/oral test and performance evaluation, which shall be administered on a monthly basis by the department of education, through public area vocational technical institutes, and shall be 30 hours of planned learning activities, exclusive of the evaluation.

A. Definitions. For the purpose of this section, the following definitions shall apply;

1. Nursing assistant - an individual working in or employed by a nursing home, including, but not limited to, a nurse's aide or an orderly, who is assigned by the director of nursing to provide or assist in the provision of direct patient care services under the supervision of a registered nurse.

2. Curriculum - the aggregate of courses of study and planned learning activities developed by the commissioner of education to comply with Minn. Stat. §144A.61, subd. 3.

3. Completion of the program - successful completion shall be defined as the obtainment of 70 percent on the oral/written test and 70 percent on the performance evaluation.

4. Supplemental nursing service - an entity which recruits and employs nursing and ancillary health care personnel for temporary assignments to supplement the staff of health care institutions; and which is not an employment agency but the employer of all such personnel assigned.

5. Technical assistance - technical assistance by the department of education may include:

a. training of instructors;
b. utilization of the curriculum; and
c. instructional materials.

B. Instructional staff qualifications. Instructional staff for approved nursing assistant education programs offered in facilities other than the area vocational-technical institutes shall be exempt from §1.0112, B., and on January 1, 1979, shall meet the following qualifications.

1. A registered nurse with 2,000 hours of experience within the last five years, at least 500 hours of which must be in geriatric or rehabilitation nursing; or

2. A licensed practical nurse with 4,000 hours of experience within the last five years in geriatric or rehabilitation nursing.

3. As of January 1, 1982, the minimum requirement for instructional staff shall be a registered nurse with at least one year (2,000 hours) of experience, 500 hours of which must be in a geriatric or rehabilitation nursing setting. This section shall not apply to licensed practical nurses teaching this course in a nursing home as of January 1, 1979 who continue to teach this course in that same facility as of January 1, 1982.

C. Exempt categories. The following categories of nursing assistants shall not be required to comply with the education requirements of Minn. Stat. §144A.61 (Supp. 1977).

1. Nursing assistants who began employment in a nursing home on or before December 31, 1978, and who continue employment in the same nursing home in which they were employed on December 31, 1978.

2. Nursing assistants who have successfully completed, since January 1, 1976, a training program for nursing assistant employed in nursing homes, which utilized a program endorsed by the state department of education, unless employment has been interrupted for greater than five consecutive years.

3. Nursing assistants who have successfully completed a state approved nursing education program which prepares an individual for licensure as a registered nurse or licensed practical nurse if completion occurred no more than five calendar years prior to employment.

4. Persons who have successfully completed the individual oral/written test and performance evaluation, even though the course has not been taken.

5. Registered nurses or licensed practical nurses holding current licensure in the state of Minnesota.

6. Nursing assistants who began employment in a supplemental nursing service on or before December 31, 1978 and who continue employment in that same nursing service in which they were employed on or before December 31, 1978, and who have worked a minimum of twelve (12) hours per week for that same supplemental nursing service in a nursing home prior to December 31, 1978. Supplemental nursing services shall provide to the State Department of Health by January 15, 1979, a list of all nursing assistants employed by the supplemental nursing services who have worked 12 hours in a nursing home on or before December 31, 1978.


APPROVED AS TO FORM AND LEGALITY
DEC. 6 1978
WARREN SPANNAUS, ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL
STATE OF MINNESOTA
DEPARTMENT OF STATE
F I L E D
DEC - 7 1978
Secretary of State
8:58 AM

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Education
736 Capitol Square Bldg.

TO : Lee Sheehy
Special Ass't. Attorney General

G25 Administration Building

DATE: 11-16-78

FROM : Lois Steinhaus
Education Statistics Section

PHONE: 6-4428

SUBJECT: Approval for rules for nursing assistant education programs

Enclosed is the complete record of the hearing.

Also enclosed are four copies of the rules as adopted and four copies of the order for hearing. In addition are three copies each of the following:

1. Proposed rule
2. Notice of hearing
3. Affidavit of receipt of secretary of state's list
4. Certificate of delivery secretary of state's list
5. Affidavit of mailing
6. Statement of need and resonableness
7. Findings and Order adopting rules
8. Certificate of board's authorizing resolution
9. One copy of the mailing list
10. One copy of transcript

For your convenience, a copy is enclosed indicating the changes made from the proposed rule to the adopted rule.

Please call me when this is ready to be returned, so that I can send someone to pick it up. Thank you.

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of the proposed changes in the rules of the state board of education governing vocational education and the inclusion therein of programs for nursing assistants.

AFFIDAVIT OF MAILING

Harold E. Klecker, being first duly sworn, deposes and says:

That on the 4th day of August, 19 78, at the City of St. Paul, County of Ramsey, State of Minnesota, he 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.

Harold E. Klecker

Subscribed and sworn to before me
this 4th day of August,
1978.

Betty L. King

BETTY L. KING
Notary Public, Dakota Co. MN
My Commission Expires
June 13, 1983

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE HOWARD B. CASMEY
COMMISSIONER OF EDUCATION

In the Matter of the Proposed Adoption of Rules of the Commissioner of Education for Programs for Nursing Assistants

FINDINGS OF FACT AND ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Steve M. Mihalchick, Hearing Examiner assigned by the Chief Hearing Examiner, on September 7 and 13, 1978, in Room 83, State Office Building, St. Paul, Minnesota, after proper notice required by Minnesota Statutes, Section 15.0412, was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having reviewed all of the testimony, having considered all of the evidence adduced, having considered the Report of the Hearing Examiner, and upon all of the testimony and proceedings herein, and applicable statutory standards or criteria, having withheld action on the proposed Rules for the required period of time after receipt of the Report of the Hearing Examiner, and having confirmed the need for the above-captioned Rules, I find that the Findings of Fact of the Hearing Examiner accurately reflect the facts in the record.

NOW THEREFORE, BE IT RESOLVED that I hereby adopt the following Findings of Fact and Conclusions:

I. The Hearing Examiner concluded that the following Rules as proposed, modified by the Department of Education at the Hearing and modified by the Department in its post-hearing comments were both needed and reasonable. I concur and hereby adopt and incorporate herein the Findings of Fact, Conclusions and Recommendation of the Hearing Examiner, specifically Findings of Fact 1-8, 11, 21-28, and 31-33; and Conclusions 1, 2, 3 with regard to Finding No. 29, 4 and 5.

Based upon the foregoing, the following Rules are found to be both needed and reasonable:

> Rule 1.0113, including the introductory paragraph, subsections A and B in their entirety, and subsection C, clauses 1, 4, 5 and 6.

II. The Hearing Examiner concluded that Rule 1.0113 C.2. must be modified by substituting "five consecutive years" for "two consecutive years" based upon Minnesota Statute §144A.611, Subdivision 3(c)., Findings of Fact No. 29 and Conclusion No. 3. Inasmuch as the change is necessary in order to make it consistent with section 144A.611, subdivision 3(c), I find the proposed modification

to be both needed and reasonable. Rule 1.0113 C.2. is therefore modified to read:

> 2. Nursing assistants who have successfully completed, since January 1, 1976, a training program for nursing assistants employed in nursing homes, which utilize the program endorsed by the state department of education, unless employment has been interrupted for greater than five consecutive years.

III. Rule 1.0113 C.3. as proposed provides that:

> Nursing assistants who have successfully completed the state approved nursing education program which prepares an individual for licensure as a registered nurse or licensed practical nurse if completion occurred no more than two (2) calendar years prior to employment.

Since (a) the provisions of Rule 1.0113 C.2. are required to be modified in order to make them consistent with Minnesota Statute §144A.611, subdivision 3(c); (b) the period of interruption for those exempted by section 1.0113 C.2. has been increased from two (2) years to five (5) years; and (c) those individuals who have completed a state approved nursing education program for licensure as a registered nurse or a licensed practical nurse have taken training in excess of those exempted by Rule 1.0113 C.2, I find that it is reasonable to increase the two-year period proposed in Rule 1.0113 C.3. to five years. As a result of such amendment, Rule 1.0113 C.3. shall read:

> Nursing assistants who have successfully completed a state approved nursing education program which prepares an individual for licensure as a registered nurse or licensed practical nurse if completion occurred no more than five (5) calendar years prior to employment.

Except as modified immediately above, I concur with and hereby adopt and incorporate herein Findings of Fact No. 30 and the Conclusions and Recommendation of the Hearing Examiner relating thereto.

Having considered all other comments and suggestions, no other changes in the proposed Rules will be made at this time.

THEREFORE, IT IS ORDERED that these Rules identified as section 1.0113 as amended (attached hereto) are adopted this 13th day of November, 1978, pursuant to authority vested in me by Minnesota Statute §144A.61 (Suppl. 1977).

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

Ven Pallotta, Deputy

for HOWARD B. CASMEY
COMMISSIONER OF EDUCATION

Lee:
For your use. LB.

§1.0113 Nursing assistant programs. Nursing assistant education programs shall use the curriculum developed by the commissioner of education as reviewed and evaluated by the board of nursing. The program shall include an individual written/oral test and performance evaluation, which shall be administered on a monthly basis by the department of education, through public area vocational technical institutes, and shall be 30 hours of planned learning activities, exclusive of the evaluation.

A. Definitions. For the purpose of this section, the following definitions shall apply:

1. Nursing assistant - an individual working in or employed by a nursing home, including, but not limited to, a nurse's aide or an orderly, who is assigned by the director of nursing to provide or assist in the provision of direct patient care services under the supervision of a registered nurse.

2. Curriculum - the aggregate of courses of study and planned learning activities developed by the commissioner of education to comply with Minn. Stat. §144A.61, subd. 3.

3. Completion of the program - successful completion shall be defined as the obtainment of 70 percent on the oral/written test and 70 percent on the performance evaluation.

4. Supplemental nursing service - an entity which recruits and employs nursing and ancillary health care personnel for temporary assignments to supplement the staff on health care institutions; and which is not an employment agency but the employer of all such personnel assigned.

5. Technical assistance - technical assistance by the department of education may include:

a. training of instructors;
b. utilization of the curriculum; and
c. instructional materials.

B. Instructional staff qualifications. Instructional staff for approved nursing assistant education programs offered in facilities other than the area vocational-technical institutes shall be exempt from §1.0112, B., and on January 1, 1979, shall meet the following qualifications.

1. A registered nurse with 2,000 hours of experience within the last five years, at least 500 hours of which must be in geriatric or rehabilitation nursing; or

2. A licensed practical nurse with 4,000 hours of experience within the last five years in geriatric or rehabilitation nursing.

3. As of January 1, 1982, the minimum requirement for instructional staff shall be an registered nurse with at least one year (2,000 hours) of experience, 500 hours of which must be in a geriatric or rehabilitation nursing setting. This section shall not apply to licensed practical nurses teaching this course in a nursing home as of January 1, 1979 who continue to teach this course in that same facility as of January 1, 1982.

C. Exempt categories. The following categories of nursing assistants shall not be required to comply with the education requirements of Minn. Stat. §144A.61 (Supp. 1977).

1. Nursing assistants who began employment in a nursing home on or before December 31, 1978, and who continue employment in the same nursing home in which they were employed on December 31, 1978.

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4. Persons who have successfully completed the individual oral/written test and performance evaluation, even though the course has not been taken.

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State of Minnesota
Board of Education
(State Board for Vocational Education)

IN THE MATTER OF: The proposed adoption of rules governing the proposed changes in the rules for vocational education and the inclusion therein of programs for nursing assistants.

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

The 1978 Minnesota State Legislature made minor revisions in existing statutes which govern vocational-technical education. These revisions necessitate changes in the existing rules for vocational education.

The 1977 Minnesota State Legislature mandated that all nursing assistants, employed by or working in a nursing home after January 1, 1979, successfully complete an approved nursing assistant training program. This program is needed to upgrade the quality of health care in nursing homes and rehabilitation facilities, and is reasonable because the public has demanded that this amelioration take place. The commissioner of education is authorized to promulgate the necessary rules and develop a curriculum to implement this law.

In order to secure a broad base of input, the department of education sought recommendations from directors, supervisors, and all interested parties to construct the changes to existing vocational education rules.

In addition, in order to secure a broad base of input from which to prepare the nursing assistant rules, the department of education, vocational-technical division, formed a task force with representatives from the department of health, Minnesota Association of Health Care Facilities, Minnesota Hospital Association, Minnesota Board of Nurses, department of public welfare, Nursing Home Residents Advisory Council, Metropolitan Seniors Federation, Minnesota Board of Aging, Twin Cities Residents Council, a nursing home representative, and a representative from vocational education. The department of education encouraged input from all interested parties; meetings were open to the public; and minutes and drafts were furnished to whomever requested them.

All groups involved have endeavored to formulate rules which comply with federal and state regulations, and which can be implemented in an efficient and reasonable manner.

STATEMENT OF NEED AND REASONABLENESS FOR
PROPOSED CHAPTER FIVE-A: RULES FOR SECONDARY
VOCATIONAL EDUCATION

§1.0088 Contracts with public or private agencies for vocational programs.

Minnesota Statutes, 1977 Supplement, Section 124.573, was amended by adding a subdivision to read:

> *Subd. 3a. In addition to the provisions of subdivisions 2 and 3, a school district or cooperative center may contract with a public or private agency other than a Minnesota school district or cooperative center for the provision of secondary vocational education services. In the 1978-1979 school year and thereafter, the state shall pay each district or cooperative center 40 percent of the amount of a contract entered into pursuant to this subdivision. The state board shall promulgate rules relating to program approval procedures and criteria for these contracts and aid shall be paid only for contracts approved by the commissioner of education. For the purposes of subdivision 4, the district or cooperative center contracting for these services shall be construed to be providing the services. For the purpose of subdivision 5, aid for these contracts shall be distributed on the same basis as aids for salaries and travel.*

§1.0088 A. is prescribed in the cited statute and is suggested as a clarification of this statute. The proposed rule requires a legally binding contract to be in existence. Such contract is necessary to protect the state's interest due to the fact that it will be paying categorical aids on such contractual obligations of the district or cooperative center as well as protect the students involved so that such contracts for the provision of secondary vocational education services are enforceable by the district or cooperative center.

§1.0088 B. specifies that such educational programs offered by contracting public or private agencies must meet all rules that govern vocational education programs for which categorical aid is eligible. These rules are necessary to protect the students and state in this contracting relationship due to the fact that the district or cooperative center contracting for these services shall be construed to be providing the service.

§1.0088 C. clarifies the amount of aid to be paid to the district or cooperative center from state categorical aid funds on the basis of it being an approved contract. Specific directions in the previously cited statute prescribe the level of aid payment to be made.

§1.0088 D. clarifies that contracts entered into by districts or cooperative centers with public or private agencies for secondary vocational education programs must be submitted to the commissioner

of education for approval. It is necessary that such submission be at the same time as budget submission (February 1) so that vocational categorical aids may be obligated and subsequently paid to the district or cooperative center. It is reasonable to expect the submission of such contracts to the commissioner of education by that date because all other program and budgetary materials for the secondary vocational education programs of such districts or cooperative centers are required to be submitted by that date for the following school year.

§1.0102 L. relating to evaluation visits is being changed to reflect the prescribed number of evaluations necessary to occur to keep programs in the post-secondary area vocational-technical institutes in compliance with Public Law 94-482. Public Law 94-482, Title I-Vocational Education, Part A-State Vocational Education Programs, Section 112 (b)(1)(A) states:

> *each State shall, during the five-year period of the State plan, evaluate the effectiveness of each program within the State being assisted with funds available under this Act; and the results of these evaluations shall be used to revise the State's programs and shall be made readily available to the State advisory council;*

It is, therefore, necessary to reduce the rate of per-year evaluation visits from eleven to seven and is also necessary to increase the cycle time from three years to five years. These two changes allow increased time for more in-depth program evaluations while at the same time are sufficiently often to meet minimum evaluation requirements as set forth in Public Law 94-482.

§1.0104 F. 1. relates to deductible fees assessed to all students. It is necessary to strike the words identified in the proposed change because Minnesota Statute 124.562, subdivision 1, was amended to read:

> *A district shall receive post-secondary vocational foundation aid in the amount of $2,120 for fiscal year 1978 and $2,240 for fiscal year 1979, times the number of post-secondary vocational-technical pupils in average daily membership, as defined in subdivision 2, less the sum of (1) any amounts received as tuition and fees for post-secondary vocational-technical pupils, including application fees but not including student activity fees allowed pursuant to section 121.216, (2) the amount raised by the discretionary levy allowed by section 275.125, subdivision 13, for collection in the calendar year ending in that fiscal year.*

§1.0112 E. 2. and 3. as proposed require the submission to the commissioner of education of an application for exception to meeting the minimum enrollment requirement on an annual basis. Annual exceptions of programs not meeting minimum requirements was the intent of the Legislature but was not included in the existing rules for vocational education except in the administrative ratio. This addition would then treat all three exceptions on the same basis. The change is necessary because it will provide information to the state so that the state may assist such programs to meet the minimum enrollment by July 1, 1982. Each program is annually renewable for both program approval purposes and for budgetary purposes. The requirement for requesting an exception on an annual basis fits in with the program approval and budgetary management process of these programs.

§1.0113 Nursing Assistant Programs

The law mandates that the curriculum be developed by the commissioner of education. At first, this responsibility had been delegated to the Board of Nursing, but Minnesota Statute, 1977, Chapter 326, Sections 6-9 and Chapter 453, Section 26 transferred the authority for curriculum development, and changed the effective date of legislation from July, 1977, to January, 1979. Under the original law, a 120-hour training program had been proposed. With the current revision, however, Mr. James Swanson, Chairman of the House Health and Welfare Committee, stipulated that because of limited funds, the training program could be no more than 30 hours in length.

An examination following the course to ascertain competencies learned by the nursing assistants is necessary to provide evidence that the legislative intent of "improving quality of care" is being carried out. Consumer groups, such as the Senior Federation of the Twin Cities, requested the examination, and it is reasonable that such public interests be accommodated. Because of the difficulty in developing a viable 30-hour curriculum in this area, the examination is to be administered after completion of the 30-hour training program in order to allow as much time as possible for training. The department of health will enforce the program. This was established by Minnesota Statute, 1976, 144.A.01 through 144.A.07.

The ability of the department of education to effectively work with the department of health has already been established by precedent of the emergency medical technician (EMT) refresher course. The EMT program consists of 26 hours of instruction and four hours of examination, handled respectively by the department of education and the department of health.

The nursing assistant examination will be available in either an oral or written form. Since some people seeking nursing assistant positions may have limited composition skills, it is important to have the test available in a form which these people can effectively utilize. In addition, it is determined that the test will be offered regionally in Minnesota on a monthly basis so as to enable the nursing homes to comply with the law.

The department of education was requested by the Minnesota Association of Health Care Facilities to publish information as to the location, time, and frequency of the administration of these tests. Publication of such material in the form of rules and regulations is costly and inflexible; therefore, such a task is better delegated to the local level where it can be expedited in a more efficient, economical manner.

A. Definitions.

This section contains definitions of words and phrases used in this law in order to achieve clarity and consistency in its implementation.

1. Nursing Assistant: This definition includes the supplemental nursing services personnel, since subdivision 6 clearly intends that all people working in nursing homes providing direct patient care services should have training. Up to 20 percent of the nursing staff in metropolitan area nursing homes are composed of temporary help from the supplemental nursing service; therefore, this definition aids in effecting the legislative intent.

2. Curriculum: This is a definition of the word limited to its educational context so as to insure consistency in the implementation of the law.

3. Completion of Program: This is necessary to clarify the fact that a nursing assistant must pass an oral/written examination, a performance evaluation, and must evidence satisfactory completion of the course.

4. Supplemental Nursing Service: This has been defined in order that these services may also be covered by the provisions of the law. This was clearly the intent of subdivision 6. On a given day in some metropolitan nursing homes, 20 percent of the nursing assistants may be hired from a supplemental nursing service. Since supplemental nursing assistants without the requisite minimal training provide the same services as the non-supplemental nursing assistants, the quality of care may be questionable and inconsistent, thereby jeopardizing the safety and well-being of the patients.

These assistants often work in several different homes during the course of one week making it difficult to provide them with any on-going supervision. Moreover, there is no overall regulatory agency for them and their duties and responsibilities in nursing homes, private homes, and hospitals may all be quite different.

Hospitals, themselves, are excluded from this training requirement, because recognizing the need for such a program in their own industry, they have already developed and implemented training courses for their nursing assistants. It should be considered that there have not been complaints of abuse in hospitals on the level of those raised against nursing homes. In 1978 (January through June) 471 complaints were filed with the department of health against nursing homes, 91 percent of which were against the proprietary homes.

5. Technical Assistance: Training instructors, utilization of the curriculum, and instructional materials are all types of technical assistance that the department of education stands prepared to give upon request from nursing homes. This is needed to develop a quality training program. The requirement was mandated by Minnesota Statute 144.A.61, subdivision 4.

B. Instructional staff qualifications.

This section details the minimum educational requirements for instructors of the program. While Section 1.33-3 of the State Plan for Vocational-Technical Education requires full-time instructors in educational agencies to be registered nurses (RN's) with a minimum of three years experience, there is no such requirement for instructors in nursing homes. This is because of the employee recruitment problems which the homes face. Because nursing home instructors are not subject to the same high standard, the community should be informed of the discrepancy between the two standards.

1. The experience level required is necessary for an individual who wishes to teach. If these requirements were not specified, a recently graduated RN could be authorized to teach skills at which he/she has minimal experience. The instructors' work experience is considered to be an important compliment to their initial training, as they need to develop task proficiencies, become more thoroughly acquainted with nursing home operations, and learn about handling special situations. That a portion of their work experience takes place in a setting similar to the one in which they will teach is essential to their competence as an instructor. These requirements are reasonable because it is highly doubtful that task proficiencies can be acquired in less time. The 2,000-hour requirement is the standard figure used for one year by industry, in most bargaining contracts, and in the State Plan for Vocational-Technical Education. It is also necessary to establish an hourly standard by which several years of part-time work can be equivalent to a year of full-time employment.

2. RN's have a greater depth and breadth of training than do licensed practical nurses (LPN's); therefore, it is necessary to require LPN's to have more related experience with an emphasis on long-term care or rehabilitation. Because it is not the intent of this law to displace anyone from their position, LPN's currently teaching in nursing homes throughout the state may continue to do so notwithstanding future change in teaching requirements.

3. Professional sentiment which mandates the change in educational requirements for instructors as of January 1, 1982, is embodied in the following documents. First, the American Nurses Association recommended that all levels of nursing personnel receive their basic preparation in institutions of learning within the general system of education in an article entitled, "American Nurses Associations First Position on Education for Nursing." Second, studies such as the "Manual for Implementing a Nursing Assistant Program in the Community College," published by DeAnza College, have emphasized the importance of having a baccalaureate-prepared nurse instruct such a program.

A transition period of three years will provide nursing homes ample time to make necessary adjustments to avoid hardship with compliance to the rule in 1982. Furthermore, hardship due to job displacement is avoided by allowing LPN's presently teaching to continue in that capacity. Finally, the impact of the change is not dramatic due to the fact that approximately 77 percent of the instructors currently training nursing assistants are RN's according to a survey sponsored by the Minnesota Association of Health Care Facilities.

There is also the question of whether the nursing assistant instructors should be allowed to maintain the unique status of exemption from standards established for all other full-time vocational instructors. Because LPN's currently teaching will be permitted to continue, this requirement for change in 1982 stipulates that only those LPN's who leave their positions be replaced by RN's meeting the specified requirements. The nursing homes will neither be required to replace existing personnel, nor hire additional instructors to conform to this law. Again, this is provided so that people are not displaced from their jobs.

C. Exempt categories.

This section details which people will be exempt from the requirements of Minnesota Statute, 1977 Supplement, 114.A.61.

1. Subdivision one is necessary to exempt persons who continue uninterrupted employment after the date on which the department of health will begin evaluating compliance with the law. Since subdivision 6 of the law addresses only those hired on or after this date, the rule is needed to specify what will be expected of those already employed.

2. Subdivision two accommodates those people who took training in 1976 when this law was to have been implemented on July 1, 1977. This former course was longer in length than the present curriculum. If persons trained at this time have interrupted their employment for more than two years, however, it is important that they update their knowledge within the prescribed sixty-day period after re-employment.

3. Subdivision three is necessary to accommodate those persons who complete a training program for RN's or LPN's but are

unable to be employed as such until they have taken their licensure examination. Therefore, in the interim they seek employment as nursing assistants. Since their basic preparation is far greater than the 30-hour curriculum, it is unreasonable to expect that they take either the course or the exemption test. The two-year limitation again addresses the rapid turnover of knowledge in the health care field.

4. Subdivision four makes it possible for persons employed as nursing assistants, who have changed their place of employment after the enactment of the law, to continue serving in this capacity, even through they have lost their exemption status pursuant to subdivision one. If a person already possesses the necessary knowledge and skill, it is of little value for him/her to take the course. It is more economical for the state to allow an exemption test, since it leaves more funds available for individuals who really need the training. This exemption is reasonable because it would allow for quick and efficient validation of the skills of those individuals who have received training from another source equal to or greater than that provided by the 30-hour program.

5. Subdivision five applies to any qualified nurse who may seek employment as an RN or LPN in a nursing home in which there is no current opening for an RN or LPN. If he/she wishes to be employed as a nurses assistant until such time as there is an opening, this exemption would permit the nurse to do so without being required to take the training program. This is reasonable because the depth of training of a nurse overlaps that required by the 30-hour program.

6. Subdivision six is necessary to cover those individuals who work for supplemental nursing services, since they provide a substantial part of the staffing in some nursing homes especially those in the metropolitan area. This is structured similarly to subdivision one, with the exception that it adds a requirement for the number of hours an assistant must have previously worked. This is reasonable because these assistants are employed in various nursing homes, private homes, and hospitals for short periods of time, and do not have the same on-going supervision as an in-house assistant. The inservice efforts provided by various supplemental nursing services differ from service to service, and there is no overall regulatory agency provided for them.

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of the proposed changes in the rules of the state board of education governing vocational education and the inclusion therein of programs for nursing assistants.

CERTIFICATE OF DELIVERY
SECRETARY OF STATE LIST

I hereby certify that the attached 487 Labels 9 pages sheets constitute the complete list of persons, associations, and other interested groups who as of 8:00 o'clock A.M, this 2nd day of August, 1978, have requested pursuant to Minn. Stat. § 15.0412, subd. 4, (Supp. 1977), that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

By Norma Root

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of the proposed changes in the rules of the state board of education governing vocational education and the inclusion therein of programs for nursing assistants.

AFFIDAVIT OF RECEIPT OF SECRETARY OF STATE'S LIST

Lois E Steinhaus, being duly sworn on oath deposes and says:

1) That She is an employee of the Department of Education of the State of Minnesota.

2) That on the 2nd day of August, She went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. § 15.0412.

3) That on the 2nd day of August, 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.

Lois E Steinhaus

Subscribed and sworn to before me
this 2nd day of August
1978

Betty L. King

Notary Public
Dakota County, Minnesota
My Commission expires 6-13-83.

BETTY L. KING
Notary Public, Dakota Co. MN
My Commission Expires
June 13, 1983

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Howard B. Casmey, do hereby certify that I am secretary of the board of education (state board for vocational education), a board duly authorized under the laws of the State of Minnesota, and that the following is true, complete, and correct copy of a resolution adopted at a meeting of the board of education (state board for vocational education) duly and properly called and held on the 10th day of July, 1978; that a quorum was present at said meeting; and that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, that the board of education (state board for vocational education) shall call a hearing for the purpose of informing the public concerning the proposed changes in the rules governing vocational education and the inclusion therein of programs for nursing assistants; and that the commissioner or his deputy is authorized to sign an order and notice of such hearing to be conducted pursuant to Minnesota Statutes, chapter 15 and rules of the Hearing Examiner.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 10th day of July, 1978.

Howard B. Casmey
Secretary, Board of Education
(State Board for Vocational Education)

Henry E. Gruenes
Member, Board of Education
(State Board for Vocational Education)

Department of Education
State Board of Education and Commissioner of Education
(State Board for Vocational Education)

In the Matter of the Proposed Adoption
of Rules of the State Board of Education
(State Board for Vocational Education)
Governing the Proposed Changes in the
Rules for Vocational Education and the
Inclusion therein of Programs for
Nursing Assistants

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matters will be held in the State Office Building, Room 83, St. Paul, Minnesota on Thursday, September 7, 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 material may be submitted at the hearing. In addition, written material may be submitted by mail to Mr. Steve Mihalchick, Office of Hearing Examiner, 1745 University Avenue, Room 300, St. Paul, Minnesota 55104, telephone (612) 296-8112, before the hearing or after the hearing until the record is closed. The record will remain open for five working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if ordered by the Hearing Examiner.

A copy of the proposed rules is attached hereto. Most of the changes in the rules are designed to bring the rules into compliance with legislative mandates. Other changes are proposed for the purpose of clarification. One free copy may be obtained by writing to the Minnesota Department of Education, Room 541, Capitol Square Building, St. Paul, Minnesota, 55101. Additional copies will be available at the door on the date of the hearing. The Board's and the Commissioner of Education's authority to promulgate the proposed rules is contained in Minn. Stat. §121.11 subd. 12 and §144A.61 (Supp. 1977). A statement of need and reasonableness explaining why the Board believes the proposed rules are necessary and reasonable, and evidence outlining the testimony to be introduced, shall be filed with the Hearing Examiner's office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A (1976), 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 $250.00 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 $250.00 per year or five hours per month lobbying. The statute in question provides certain exceptions.

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

State of Minnesota
State Board of Education
(State Board for Vocational Education)

Howard B. Casmey, Secretary

July 13, 1978

STATE OF MINNESOTA
BOARD OF EDUCATION
(State Board for Vocational Education)

IN THE MATTER OF: The proposed adoption of rules of the state board of education (state board for vocational education) governing the proposed changes in the rules for vocational education and the inclusion therein of programs for nursing assistants.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the State Office Building Auditorium, Room 83, St. Paul, Minnesota on Thursday, September 7, 1978, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

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

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

STATE OF MINNESOTA
Board of Education
(State Board for Vocational Education)

Howard B. Casmey
Secretary

Date: July 13, 1978

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE HOWARD B. CASMEY
COMMISSIONER OF EDUCATION

In the Matter of the Proposed Adoption of Rules of the Commissioner of Education for Programs for Nursing Assistants

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Charles T. Mottl, 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.

Charles T. Mottl

CHARLES T. MOTTL
Special Assistant
Attorney General

Dated: Nov. 17, 1978

FOX RIVER BOND
25% COTTON

Department of Education
State Board of Education and Commissioner of Education
(State Board for Vocational Education)

In the Matter of the Proposed Adoption
of Rules of the State Board of Education
(State Board for Vocational Education)
Governing the Proposed Changes in the
Rules for Vocational Education and the
Inclusion therein of Programs for
Nursing Assistants

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A copy of the proposed rules is attached hereto. Most of the changes in the rules are designed to bring the rules into compliance with legislative mandates. Other changes are proposed for the purpose of clarification. One free copy may be obtained by writing to the Minnesota Department of Education, Room 541, Capitol Square Building, St. Paul, Minnesota, 55101. Additional copies will be available at the door on the date of the hearing. The Board's and the Commissioner of Education's authority to promulgate the proposed rules is contained in Minn. Stat. §121.11 subd. 12 and §144A.61 (Supp. 1977). A statement of need and reasonableness explaining why the Board believes the proposed rules are necessary and reasonable, and evidence outlining the testimony to be introduced, shall be filed with the Hearing Examiner's office at least 25 days prior to the hearing and will be available there for public inspection.

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

State of Minnesota
State Board of Education
(State Board for Vocational Education)

Howard B. Casmey, Secretary

July 13, 1978

Rules as Proposed
Chapter Five A: Secondary Vocational Education

§1.00811 Instructional program approval. The commissioner of education shall approve programs on the following basis:

A. Approval shall be on the basis of a complete program as defined in Section D., with the exception of programs set forth in Section G.3.b., c. and d.

B. The local education agency shall provide evidence that its curriculum is designed to meet vocational objectives which shall include:

1. In-depth exploration of occupations to assist in the career planning process, and

2. Development of occupational competencies designed to be recognized for advanced placement in post-secondary programs, and

3. Development of occupational competencies necessary to enter an occupation.

C. Each program shall have a vocational advisory committee to advise the instructor(s), the local authorized administrator, and the local board; the advisory committee shall meet at least two times a year.

D. Program components and time standards. All program components must be addressed in order to qualify for approval, however, emphasis shall be at the discretion of the local education agency with guidance from the program advisory committee. Daily time requirements may be converted to weekly equivalents.

1. Agriculture/agribusiness and natural resources occupations.

a. Programs. Instruction in safety, leadership, communications, personal development, decision making, job seeking skills, good work attitudes and habits shall be an integral part of an approved program.

(1) Agricultural mechanics occupations. Learning experiences concerned with the application of mechanical competencies to agriculture. Program components include: agricultural power; hydraulics; welding; machinery maintenance; electrification; mechanics shop; material handling; buildings and conveniences; soil and water management, irrigation; livestock and crop production; farm and business management and entrepreneurship as related to mechanics.

(2) Agricultural products, processing and marketing occupations. Learning experiences concerned with the application of processing and marketing principles, agricultural products. Program components include: evaluation, processing and marketing of dairy, livestock, poultry products, cereal grains and specialty crops; agricultural business management and entrepreneurship; agricultural mechanics principles.

(3) Agricultural supplies and service occupations. Learning experiences concerned with the provision of consumable supplies and services used in agriculture. Program components include: animal and crop production; soils and soil fertility; animal nutrition and health; chemicals, fertilizers and pesticides; mechanics shop; agribusiness organization; management; entrepreneurship; marketing; power; machinery.

(4) Forestry occupations. Learning experiences concerned with the growing, managing, protecting, harvesting, utilizing and marketing of trees. Program components include: tree production, harvesting, management, protection, measurement and marketing; operation and maintenance of forestry equipment; agribusiness management; intensive laboratory occupational experience.

(5) Horticultural occupations. Learning experiences concerned with the culture of plants used for ornamental, aesthetic and food purposes. Program components include: greenhouse and nursery management; turf, fruit and vegetable production; floral production; landscape design; construction; equipment operation, repair and maintenance; garden center materials; plant and soil sciences; agribusiness management; entrepreneurship.

(6) Natural resources occupations. Learning experiences concerned with the principles and processes involved in the preservation and/or improvement of natural resources such as air, forests, soil, water, fish and wildlife. Program components include: water; air; quantity analysis resources; fish; wildlife; animal waste; soil and water management; pollution control; guiding and park management; resort and recreation operation; mechanics shop; entrepreneurship.

(7) Production agriculture occupations. Learning experiences concerned with the principles and processes involved in the economic use of land, labor, capital and management. Program components include: crop, livestock and poultry production; power, hydraulics, welding machinery maintenance and electrification; building and conveniences; mechanics shop; materials handling; irrigation, soil and soil fertility and soil and water management; marketing; finance, recordkeeping, entrepreneurship and farm management.

(8) Other agriculture/agribusiness, natural resources occupations. Programs not otherwise defined which meet the vocational program criteria in 5 MCAR §1.00811 B., may be approved.

b. Implementation. When offering a vocational agriculture/agribusiness, natural resources program, the following considerations apply.

(1) Component emphasis shall be consistent with program objectives.

(2) The program shall include one of the following experience application options by the 1980-81 school year.

(a) Forestry occupations program shall include an intensive supervised laboratory experience of at least 280 hours, or

(b) Production agriculture occupations programs shall have a coop placement in a production agriculture operation either wage paying or entrepreneurship.

(c) All other programs in agriculture/agribusiness shall have an intensive supervised laboratory experience or a coop placement in a related agricultural business or industry either wage paying or entrepreneurship. An agriculture instructor-coordinator may supervise students in any vocational agriculture/agribusiness and natural resources occupations program.

(3) Various program components which meet approval criteria may be combined to develop a program to meet the needs of the local educational agency, including placement in a coop experience.

(4) Each program shall include one of the following options:

(a) The program shall consist of a minimum of 140 hours for the regular school year, with classes available to students in grades 10, 11, 12. The summer school segment of an approved vocational education program in this option shall provide for: cooperative supervised experience, internship, and/or classroom instruction. (Approved programs not currently meeting this rule must comply in the 1980-81 school year.) or

(b) The program shall consist of a minimum of two 140 hour classes and one 280 hour class for the regular school year. The summer school segment of an approved vocational education program in this option shall provide for: cooperative supervised experience, internship, and/or classroom instruction. (Approved programs not currently meeting this rule must comply in the 1980-81 school year.) or

(c) The program shall consist of a minimum of two 280 hour classes for one regular school year. The summer school segment of an approved vocational education program in this option shall provide for: cooperative supervised experience; internship, and/or classroom instruction. (Approved programs not currently meeting this rule must comply in the 1980-81 school year.) or

(d) Approved programs currently operating on a 280 hour intensive laboratory experience method of instruction, for the regular school year and 1, 2, or 3- 280 hour classes per year shall develop, by the 1980-81 school year, a comprehensive program. Summer components such as internship and classroom instructional program are strongly encouraged to support the coop component. (see community-based rules in 5 MCAR §1.00811 G.) or

(e) Any expansion of currently approved programs must meet agriculture/agribusiness and natural resources options b, 2a, b and/or c in the year for which approval is sought, or

(f) New program requests shall comply with an agriculture/ agribusiness and natural resources option b, 4a, b, and c by the third year of operation.

2. Business and office occupations. Instruction in human relations, leadership and organizational competencies, public relations, personal development, self-concept, work attitudes and job seeking skills shall be an integral part of instruction in each program.

a. Programs.

(1) General office typist occupations. Learning experiences concerned with the performance of a variety of office duties, including maintenance of the system and generation of reports. Program components include: typewritten communications; records filing and management; record-keeping (numerical data); machine transcription; office functions including supplies control, telephone techniques, mail handling, reprographics services, machine maintenance and operation.

(2) Secretarial occupations. Learning experiences concerned with coordination of office responsibilities, generation of communication and facilitation of office functions. Program components include: all in general office typist plus: business composition; meeting and travel arrangements; transcription from shorthand notes or machine (shorthand optional); word processing concepts; clerical accounting.

(3) Accounting/data processing occupations. Learning experiences concerned with systematizing information about financial transactions and quantitative records in a traditional or automated setting. Program components include: accounting for receivables, payables; payroll; billing/invoicing; inventory; purchasing; cash receipts and disbursements; communications; electronic computing; machine operation; business mathematics; records management; programming fundamentals; computer applications.

(4) Banking and finance occupations. Learning experiences concerned with banking or financial institutions services, the handling of money and negotiable instruments. Program components include: accounting for receivables; payables; billing/invoicing; inventory; purchasing; cash receipts and disbursements; communications; electronic computing; business mathematics; teller functions; finance and credit; decision making; data entry; records management.

(5) Supervisory/management occupations. Learning experiences concerned with managerial skills in planning, organizing, supervising, coordinating, determining work procedures and assigning duties. Program components include: accounting for receivables, payables, billing/invoicing, inventory, purchasing; cash receipts and disbursements; communications; electronic computing; management principles; business ownership; business law; economics; public enterprise systems; personnel management.

(6) Other business and office occupations. Programs not otherwise defined which meet the vocational program criteria in 5 MCAR §1.00811 B., may be approved.

b. Implementation. In offering a vocational business and office program, the following considerations apply:

(1) Component emphasis shall be consistent with the program objectives.

(2) The program shall include prior or concurrent classroom instruction in the occupational area plus one of the following application experience options:

(a) In school: model office - a minimum of 100 minutes per day for one school year. (Primarily for use with general office typist and secretarial occupations; see model office brochure for details.)

(b) In school: intensified laboratory - a minimum of 100 minutes per day for one semester; plus related instruction to comprise a minimum of 280 hours in one fiscal year.

(c) Employment related community-based education: See community-based rules in 5 MCAR §1.00811 G. A business and office instructor-coordinator can supervise students in any vocational business and office occupations program.

3. Health and environmental occupations.

a. Programs. Instruction in safety, equipment utilization, self-concept, work attitudes and behavior, leadership and job researching skills shall be an integral part of an approved program.

(1) Environmental occupations. Learning experiences concerned with identification, prevention and control of environmental hazards, environmental aspects of populations and society, natural resources, health and physical implications, technology involved in protecting and restoring the quality of modern environment, and exploring careers in environmental areas. Program components include: environmental services; industrial hygiene related to environmental hazards and toxicants; safety, minimizing accident hazards and promoting safe work habits in plants, mines, industrial, agricultural areas; interpretation and enforcement of environmental laws; environmental technology aspects including performing tests and making samples; option of treatment equipment; societal responsibilities concerned with energy; providing and maintaining safe water, foods, air.

(2) Health care occupations. Learning experiences concerned with health concepts related to the providers and consumers of health care, preventative health care, and the utilization of materials, instruments and equipment in the health care area. Program components include: health occupations orientation; preparation of health consumer records; laboratory procedures concerned with tests to provide data; performance of routine clinical laboratory procedures; direct care services; procedures designed to introduce concepts related to rehabilitation of people with physical or mental emotional disabilities; communications between health providers and consumers of health services; applied anatomy and physiology.

(3) Other health and environmental occupations. Programs not otherwise defined which meet the vocational program criteria may be approved.

b. Implementation. In offering a vocational health and scientific occupations program, the following considerations apply:

(1) Component emphasis shall be consistent with program objectives.

(2) The program shall include one of the following application experience options:

(a) In school: the program shall be offered for a minimum of 280 hours within one fiscal year.

(b) Employment related community-based education: see community-based rules in 5 MCAR §1.00811 G. A health occupations instructor-coordinator can supervise students in any vocational health and scientific occupations program.

4. Homemaking occupations.

a. Programs. Instruction in health and safety, multiple roles of both sexes, use of energy in the home and by families, development of self-concept, human relations, and leadership skills shall be an integral part of an approved program.

(1) Consumer-homemaking occupations. Learning experiences concerned with the work in one's own home environment including relating to family members and managing resources. Program components shall include: child development and parenting; individual and family life; home and family resource management and consumerism; consumer (individual and family) housing; consumer (individual and family) foods and nutrition; consumer (individual and family) clothing and textiles.

(2) Home and individual/family resource management occupations. Learning experiences concerned with the work in one's own home environment with emphasis on multiple roles of family members, managing resources, purchasing, using products and services. Program components shall include: family financial, time, energy, and human talent management; consumer buying; community resources; multiple roles of family members; housekeeping management skills; family decision making and goal setting.

(3) Individual/family life and parenting occupations. Learning experiences concerned with the work in one's own home environment with the emphasis on relationships, communication among family members; human growth and development and parenting. Program components shall include: relationships; marriage; family financial management and consumerism; human sexuality; alternate life styles, families throughout the life cycle; pregnancy and birth; growth and development; parent-child relationships; community services; family decision making and goal setting.

(4) Other homemaking occupations. Programs not otherwise defined which meet the vocational programs criteria may be approved.

b. Implementation. When offering a vocational homemaking occupations program, the following considerations apply:

(1) Component emphasis shall be consistent with program objectives.

(2) The following are in-school options which a district or center shall use to deliver homemaking occupations programs:

(a) For a consumer-homemaking program, simulation or laboratory and classroom methods shall be a minimum of 280 hours within two consecutive fiscal years. Each component shall be one or more separate courses. Each of the components shall constitute a minimum of 40 hours of instruction, or

(b) For a home and individual/family resource management or individual/family life and parenting program,

(i) simulation and classroom methods shall be a series of courses for a minimum of 140 hours in one fiscal year, or

(ii) simulation and classroom methods shall be a single course for a minimum of 140 hours within one fiscal year.

5. Industrial occupations.

a. Programs. Instruction in safety, tool usage, self-concept, work attitudes and habits, leadership skills, and job-seeking skills shall be an integral part of all instruction.

(1) Auto body repair occupations. Learning experiences concerned with the repair of automotive bodies, fenders, and frames. Program components include: metal straightening by hammering or machine; smoothing areas by filing, grinding, or sanding; concealment of imperfections; replacement of body components including trim; arc and gas welding; refinishing; glass replacement service; new and used vehicle preparation.

(2) Auto mechanics occupations. Learning experiences concerned with the inspection, diagnosis and repair of motor vehicle components. Program components include: engine tune-up; emission systems; lubrication and maintenance; power transmission; steering and suspension; brakes; electrical systems; diagnostic and testing equipment; parts; fuel and emission systems; cooling and heating systems; technical manuals.

(3) Communication/media technology occupations. Learning experiences concerned with the production and use of electronics and other media materials and equipment. Program components include audio-visual equipment and related production techniques; black/white photography; audio production, including equipment and recording; television equipment; television studio production; production distribution.

(4) Construction occupations - general. Learning experiences concerned with all major phases of residential construction from financing to finishing. A minimum of five of the following program components shall be included: finance; planning site development; masonry; carpentry; mechanical trades; pipe trades; finishing trades. If a residential unit is to be constructed as a learning experience in this program, it shall not exceed 1,200 square feet. An exception to the square footage maximum may be granted by the commissioner of education when there is a conflict with bona fide local ordinances. A program shall build no more than one unit per year and the unit shall be owned by the school district or center.

(5) Construction occupations planning and management. Learning experiences concerned with all business, planning and preparation essential to begin erection of a project. Program components include: real estate financing, appraising and insurance; small business management, sole proprietorship, limited partnership, corporate management; land surveying; civil technology; landscaping; heavy equipment operation; environmental enrichment; architectural drafting; construction drafting; codes and ordinances; soil testing and permits; equipment and materials; energy conservation factors.

(6) Carpentry occupations and finishing trades. Learning experiences concerned with rough carpentry and residential interior finishing. Program components include: material and fastening devices; form work; scaffolds, ladders and riggings; framing principles, roof framing, stair framing; exterior finish; insulation and dry wall; floor covering; paper hanging, painting and decorating. No residential unit shall be built in this program.

(7) Construction occupations mechanical trades. Learning experiences concerned with the trade areas dealing with heating, lighting, air exchange, and water. Program components include: air conditioning and heating; ventilation; sheet metal; construction electricity; plumbing; pipe fitting; mechanical blueprint reading.

(8) Construction occupations masonry trades. Learning experiences concerned with concrete and masonry areas. Program components include: brick laying; block laying; stone masonry; cement finishing; concrete technology.

(9) Electricity/electronics occupations. Learning experiences concerned with the design, construction, maintenance, and repair of electronic equipment. Program components include: basic electricity; residential/commercial wiring; motor controls; AC-DC electronics; digital electronics; industrial electronics; active devices (tubes and semiconductors); communications.

(10) Graphic arts occupations. Learning experiences concerned with the design, preparation, printing, and assembly of printed materials. Program components include: Layout and design; copy preparation; line photography; halftone photography; continuous tone photography; cold type composition; stripping; plate making; offset presswork; printing inks; paper; bindery; screen printing; letterpress.

(11) Machine shop occupations. Learning experiences concerned with metal properties, machining, and heat treating. Program components include: bench work; grinding principles; blueprint reading; set up and rigidity; machining principles; use of machinery handbook; cutting tools; feed speeds; drill press; horizontal cut of saw; lathe; horizontal and verticle milling; surface and cylindrical grinding; basic metalurgy, alloys, annealing, hardening, drawing, case hardening and foundry.

(12) Mechanical drafting occupations. Learning experiences concerned with visual communications skills to convey ideas and specifications necessary to manufacture or reproduce mechanical items. Program components include: equipment/instrument usage; sketching; geometric figures; multiview drawing; dimensioning; auxiliary views; pictorial drawing; sectional views; detail and assembly views.

(13) Recreational vehicle repair occupations. Learning experiences concerned with the maintenance and repair of recreational equipment such as snowmobiles, motorcycles, and marine engines. Program components include: principles of internal combustion engine operation; diagnostic and testing equipment and tools; snowmobiles; marine products; motorcycles; welding; machine tooling; parts; principles of power transmission; technical manuals.

(14) Service station occupations. Learning experiences concerned with the inspection service, maintenance, and minor repair of automobiles. Program components include: principles of internal combustion engine operation; engine tune-up; lubrication service; exhaust system service; cooling and heating system service; suspension system service; fuel system service; brake system service; diagnostic testing equipment; technical manuals.

(15) Small engine repair occupations. Learning experiences concerned with maintaining and repairing small engines used on portable power equipment. Program components include: 2 cycle fundamentals; 4 cycle fundamentals; rotary engine fundamentals; carburetion; ignition; cooling; lubrication; diagnostic testing equipment and tools; welding; machine tooling; parts; technical manuals.

(16) Welding occupations. Learning experiences concerned with the fusion or separation of metals for fabrication or repair purposes. Program components include: blue-print reading; rough grinding; electrode selection; identification of metals; arc welding (flat, horizontal, vertical down, and vertical up); oxyacetylene cutting; oxyacetylene welding; brazing and fabrication.

(17) Other industrial occupations. Programs not otherwise defined which meet the vocational program criteria in 5 MCAR §1.00811 B., may be approved.

b. Implementation. In offering a vocational industrial occupations program, the following considerations apply:

(1) Component emphasis shall be consistent with program objectives.

(2) The following are in-school options which a district or center shall choose when offering a vocational industrial education program:

(a) Summer program of 120 hours for programs 5, 6, 7, 8, 12, 14 and 16.

(b) 140 hours within one school year for programs 5, 6, 7, 8, 12, 14 and 16.

(c) 220 hours within one semester for all programs.

(d) 280 hours within one school year for all programs.

(e) 280 hours within two school years for programs 2, 3, 9, 10, 12, 13, 14, 15 and 16.

(f) Programs 13 and 15 can be combined to meet the 280 hour minimum requirement.

(3) Employment related community-based education: see community-based rules in 5 MCAR §1.00811 G. An industrial instructor-coordinator can supervise students in any vocational industrial occupations program.

6. Marketing and distribution occupations.

a. Programs. Instruction in marketing and distribution approved programs shall be composed of the following components as related to the

occupational area: advertising, communications, display, human relations, mathematics, merchandising, operations/management, product/service technology, selling, and job-researching skills, work attitudes and behavior.

(1) General merchandise retailing occupations. Learning experiences concerned with various marketing functions and tasks performed by retail employees and management in retail stores.

(2) General marketing occupations. Learning experiences concerned with the general application of marketing functions, principles, practices, and procedures without particular emphasis on the kind of environment in which the marketing functions are performed or the kind of products or services involved. The basic knowledge, skills and attitudes developed in this instructional program are applicable in a variety of industries. For example: advertising and display services; apparel and accessories marketing; automotive, recreational, and agricultural vehicles and accessories marketing; finance and credit services; floristry, farm, and garden supplies marketing; food marketing; food services marketing; hardware and building materials marketing; home furnishings marketing; hotel, motel, and lodging services; industrial and institutional marketing; insurance; personal services marketing; petroleum marketing; recreational marketing; real estate marketing; transportation and travel marketing; business services marketing; business ownership.

(3) Other marketing and distribution occupations. Instructional programs involving learning experiences which emphasize marketing functions and tasks performed by employees, including management personnel, not otherwise defined which meet the vocational program criteria may be approved.

b. Implementation. In offering a vocational marketing and distribution program, the following considerations apply:

(1) Component emphasis shall be consistent with the program objectives.

(2) The program shall include prior or concurrent classroom instruction in the occupational area plus a minimum of one of the following application experience options:

(a) In school: a minimum of 280 hours of simulated occupational experience in a one or two year period.

(b) Employment related community based education: see regular cooperative rules. A marketing and distribution instructor-coordinator can supervise students in any vocational marketing and distribution program.

(c) Other options: must meet all program approval criteria in 5 MCAR §1.00811 B.

7. Service occupations.

a. Programs. Instruction in safety, decisions in the use of energy, equipment utilization, self-concept, work attitudes and behavior, leadership and job researching skills shall be an integral part of an approved program.

(1) Child care/guidance and education occupations. Learning experiences concerned with human development in personal care institutions and agencies. Program components include: growth and development; interpersonal relationships of children and care-givers; supervision and guidance; health; nutrition and feeding; day care; nursery school; family day care; management/ organization, guidance skills; care of persons with exceptional needs; implications of health and welfare agencies on child care services.

(2) Community service occupations. Learning experiences concerned with social and economic services, resource management, rural, urban and community development, public safety, corrections and judicial services, and public transportation operation/management. Program components include: community and public services; service to people as individuals; preserving, managing and restoring natural and artificial environments within the public domain; chart and map preparation; land use studies; preparation of community relations materials; planning of water, sewer line, and transportation layouts; schools/playgrounds; protection of human rights; health, safety and welfare; property rights; exploration of community service careers.

(3) Fashion/apparel/textile occupations. Learning experiences concerned with use of equipment, textile design and production, methods of construction necessary for the production, maintenance, and alterations of clothing and/or industrial household goods. Program components include: clothing production; textiles; alterations; fashion design; selection and coordination; laundry; dry cleaning; accessories; tailoring; management skills.

(4) Food occupations. Learning experiences concerned with planning, preparing, and serving food on a quantity basis. Program components include: sanitation; commercial foods; institutional foods; food procurement; meal planning and nutrition; inter-personal relationships; front and back house operations; management skills.

(5) Grooming services occupations. Learning experiences concerned with services in the areas of personal appearance, skin and hair care. Program components include: Introduction to barbering; introduction to cosmetology; domestic animal grooming; introduction to death-related occupations; interpersonal relationships; management skills.

(6) Housing occupations. Learning experiences concerned with services in the areas of design, care and management of single family and multiple dwellings, commercial and institutional buildings. Program components include: housekeeping/management skills; cleaning/sanitation skills; interpersonal relationships; housing services; interior design/decorating; building/ apartment management; city planning/zoning; health and safety in building design and maintenance; elements and principles of design; housing and environment; careers in the housing industry.

(7) Tourism occupations. Learning experiences designed to provide instruction involving the operation of lodging facilities and travel services. Program components include: Planning and providing travel conveniences, recreation activities and leisure time activities; introduction to planning and operating a tourism enterprise; management skills; hospitality and service; tourism enterprise; conventions; interpersonal relationships; careers in the tourism industry.

(8) Other service occupations not otherwise defined which meet the vocational program criteria in 5 MCAR §1.00811 G., may be approved.

b. Implementation. When offering vocational service occupations programs, the following considerations apply:

(1) Component emphasis shall be consistent with program objectives.

(2) The program shall include a minimum of one of the following application experience options:

(a) In school: For all programs in service occupations except grooming services and community service occupations, a minimum of 220 hours in laboratory or simulation and classroom instruction shall be offered within one semester.

(b) In school: For tourism occupations programs, a minimum of 280 hours of laboratory or simulation and classroom instruction offered within two school years.

(c) In school: For grooming services, simulation and classroom methods shall be a series of courses for a minimum of 140 hours in one fiscal year.

(d) In school: For child care/guidance and education occupations programs, fashion/apparel/textile occupations programs, food occupations programs, housing occupations programs and community service programs, a minimum of 280 hours of laboratory or simulation and classroom instruction offered within one school year.

(e) Employment related community-based education: See regular cooperative rules. A hospitality/recreation personal service instructor-coordinator can supervise students in any vocational service occupations program. This program shall include prior or concurrent classroom instruction in the occupational area.

E. To be eligible for aid, the minimum student-instructor staff ratio for each program shall be ten students to instructor or instructor-coordinator. When more than one program section is in operation, enrollment shall average ten or more students per section. An exception to the minimum student/staff ratio may be granted by the commissioner of education for a maximum of one year to permit students to complete a sequential program, or during the first year of a new program.

F. A student shall be allowed to enter or withdraw from the program without completing all courses or components.

G. Community-based education. When a vocational program includes a segment in which students are placed on a paid or unpaid experience outside the vocational class or laboratory for more than 40 hours during the program, the local education agency shall meet the rules for the community-based education option of a program as stated below:

1. Single vocational area coop - regular coop.

a. The authorized local administrator shall assign coordination time for the instructor-coordinator in blocks of time large enough for efficiency, such that the staff can contact the employer during hours when the student is working. Preparation time for the instructor-coordinator shall be assigned separately from coordination time.

b. Training stations shall be available to at least half of the coop students prior to the commencement of the program.

c. The student shall be on the job a minimum of one hour per day, averaging no less than 10 hours per week during the school session. An exception for this rule may be granted by the commissioner of education for handicapped persons whose physical or emotional disability prevents them from working a two hour day.

d. The local education agency shall have a training agreement and training plan for each student on the job. The agreement and plan shall be signed by the student/parent or guardian (when the student is under 18), employer and instructor-coordinator, and shall remain on file locally for at least six months after the student completes the cooperative component of the program.

e. The coop experience shall include occupational relations, an employability seminar, or a related seminar which shall consist of a minimum of 50 minutes per day or 250 minutes per week. When the seminar convenes two or fewer times per week, a minimum of 200 minutes is required.

f. The coop experience shall include prior or concurrent classroom instruction in the occupational area except work experience for special needs students.

g. Age certificates shall be submitted to the Minnesota state department of labor and industry.

2. Multiple vocational area coop - diversified occupations/interrelated coop.

a. 5 MCAR §1.00811 G. 1 rules shall be met.

b. Diversified occupations/interrelated coop shall serve students from more than one vocational program area.

c. A student shall possess, or acquire concurrently, skill competencies related to his/her stated career objective(s) as stated in the component section of the vocational program area which relates to that stated objective.

3. Special needs coop - community-based education designed specifically to develop employability competencies for special needs students.

a. All programs shall meet the following criteria:

(1) 5 MCAR §1.00811 G. 1 rules shall be met.

(2) Students selected for these programs shall meet the definition of handicapped or disadvantaged. A committee consisting of teachers involved in general and vocational education, counselors and administrators shall participate in the identification of disadvantaged students. Handicapped students shall be identified through the special education child study process outlined in the state board of education rules and shall be limited to students who cannot succeed in regular vocational programs.

(3) Proof that all students enrolled in the program have been identified as handicapped or disadvantaged shall be kept on file locally for five years.

b. Work experience/career exploration.

(1) 5 MCAR §1.00811 G. 3a rules shall be met.

(2) Students who have reached age 14 and have not reached 16 are eligible for the work experience/career exploration. When students become 16 while enrolled, they may remain enrolled until the end of the school year.

(3) The maximum number of students enrolled in work experience/career exploration shall conform with federal regulations.

(4) The training agreement, not including the training plan, shall be submitted to the commissioner of education upon placement of the student.

(5) Employment certificates shall be submitted to the Minnesota department of labor and industry.

c. Work experience disadvantaged.

(1) 5 MCAR §1.00811 G. 3a rules shall be met.

d. Work experience handicapped.

(1) 5 MCAR §1.00811 G. 3a rules shall be met.

(2) The maximum number of students enrolled in the work experience handicapped coop shall be 23 students when the instructor-coordinator is responsible only for the vocational area of instruction. When the instructor-coordinator is responsible for the nonvocational areas of special education as well as the work experience coop, the maximum shall be 15 students as identified in the state board of education rules.

(3) The training agreement and training plan shall be in accordance with the special education individual educational plan in the state board of education rules EDU 120 A. 3. (5 MCAR §1.0120 A. 3.)

(4) The instructor-coordinator shall possess a valid special education license appropriate for the type of handicapped students being served if the instructor-coordinator is responsible for the nonvocational areas of special education instruction.

§1.0088 Contracts with public or private agencies for vocational programs.

A. When a school district or cooperative center contracts with a public or private agency other than a Minnesota school district or cooperative center for the provision of secondary vocational education services, a legally binding contract must exist.

B. Secondary vocational education programs offered by the contracting public or private agency shall comply with all rules governing vocational education in order to be eligible for aid.

C. A district or cooperative center shall receive aid in the amount of 40 percent of the amount of an approved contract entered into pursuant to this section.

D. Contracts with public or private agencies for secondary vocational education programs shall be submitted by the school district or cooperative center to the commissioner of education for approval at the time of submission of the budget for the following school year. (February 1).

§1.0102 Program approval. The following requirements will apply to all requests for initial and annual program approval. Only approved programs can be a part of the district's budget request.

A. Appropriate work stations for each student shall be provided in all post-secondary supervised cooperative education or internship programs.

1. Training agreements and training plans shall be used by all supervised cooperative education and internship programs and shall be on file in the area vocational-technical institute.

2. Training assignments and work stations shall be evaluated by the students, the employers and the staff and these evaluations shall be in writing. All programs, including cooperative and internships, shall be supervised by the appropriate area vocational-technical institute instructional staff.

3. Length of internship shall be established by the local board after receiving the recommendation of the program advisory committee and approved by the commissioner of education, except when the internship program is regulated by the accrediting agencies related to that program.

B. A program's advisory committee shall include membership of persons employed in that occupation or at a supervisory level of that occupation and shall be appointed by the local board.

1. The program advisory committee shall choose from its membership a chairperson and other officers as it deems necessary.

2. Each program advisory committee shall meet at least once a year and more often if deemed necessary by the advisory committee or the director.

3. The program advisory committee shall review annually the following appropriate criteria and make recommendations to the local board and the administration:

a. Curriculum;
b. Facility and equipment;
c. Staff recruitment;
d. Student recruitment;
e. Student placement;
f. Job availability.

4. Each program advisory committee membership list and minutes of each committee meeting shall be on file at the area vocational-technical institute and available for review by the commissioner of education.

C. All major program redirections shall be reviewed and approved by the commissioner of education prior to implementation.

D. The commissioner of education shall review and approve program title, length, and curriculum modifications.

E. The cost of the program shall be related to the benefits to students and business and industry.

F. Instructional programs shall have an enrollment of ten or more students per program. When more than one program section is in operation an average may be used. All vocational-technical programs shall be limited to a maximum of 24 students per section. Exemptions shall be given where licensure requirements are specifically established or on recommendation of other state industry groups. Exemption may be granted by the commissioner of education when adequately justified. Programs not meeting the minimum student requirement shall be placed on one-year probation during which enrollment must meet the ten-student criteria in order to receive subsequent approval.

G. Post-secondary instruction shall be provided on either a full-time or part-time basis by the local district.

1. Full-time student day means six-clock hours per day or a total of 30 hours per week in laboratory and shop subjects, technical subjects, related subjects, and supervised on-the-job work experience of cooperative or internship programs.

2. An extended time student shall have a maximum attendance of nine hours per day or 45 hours per week.

3. Part-time instruction means less than six hours per day, based on the needs of the student and the occupation being served. Provision for part-time students shall be at the descretion of the local district subject to the program approval process with the state board for vocational education.

4. A part-time student shall have a minimum attendance of five hours per week with a minimum of one hour in any one day.

5. Part-time student instructional hours shall be accumulative and computed to equal no less than six hours of instruction for one average daily membership equivalent for funding purposes. Foundation aid shall be paid on all part-time students with their hourly enrollment converted to average daily membership.

6. Part-time students shall be dropped from aid eligibility records when they have been absent all scheduled days of attendance in a 15 day period of full time operation.

H. Annual student placement shall be 51 percent or greater of students who have completed their educational objectives and are available for employment. However, special needs students may be exempt from the placement criteria. Placement and enrollment reports shall be submitted to the commissioner of education upon request.

I. The state board for vocational education may exempt students of certain programs from the 51 percent criteria if economic conditions, deemed to be temporary in character, are influencing placement.

J. The local district shall be responsive to current and projected manpower needs and the population groups to be served in the various geographic areas and communities of the state.

K. Each director of an area vocational-technical institute shall conduct an annual evaluation based on the goals and objectives of the vocational-technical programs as approved by the state board for vocational education for that local district. Those institutes with programs subject to review by national or state accrediting bodies shall 30 days prior to that review provide the date of the review and copies of all information required by the review body to the commissioner of education.

L. Evaluation visits shall be made by the commissioner of education at the rate of ~~11~~ seven area vocational-technical institutes per year, or more, for the purposes of conducting on-site evaluations of the existing programs in each institute. A cycle of program evaluations by experts from business and industry will be completed every ~~three~~ five years. On-site ~~&~~ self-evaluations shall be submitted by the institutes to the commissioner of education in the intervening years.

§1.0104 Foundation aid.

A. A school district operating an area vocational-technical institute shall be eligible to receive post-secondary vocational foundation aid for all students attending approved post-secondary vocational-technical programs.

B. Average daily membership estimates shall be included in the annual budget request. These estimates shall be derived from uniform student accounting reports and that shall be the basis for beginning foundation aid payments.

C. Changes in estimates as authorized in Minn. Stat. §124.11 shall be approved by the assistant commissioner of vocational-technical education before payment is authorized by the department.

D. Final adjustment data shall be submitted by August 15 of each year.

E. Only days in which school is open and students are under the supervision and guidance of teachers and for educational purposes are eligible for foundation aid. Snow days are not to be counted.

F. Tuition and fees.

1. Deductible fees shall include all charges that are uniformly assessed all students. Charges for materials or equipment that become the property of the student shall not be considered fees. ~~A non-refundable processing fee for application may be charged not to exceed $10.00, and the processing fee shall not be deductible from foundation aid.~~

2. All tuition paid in advance shall be refundable on a pro rata basis as of the day of official termination.

3. Students shall have their tuition prorated for less than or more than the regular instructional schedule.

4. Collection of tuition shall be on the basis of four periods per year as determined by the local calendar. No single period shall exceed 65 school days. Tuition may not be demanded more than 15 consecutive school days in advance of the time period but a student may pay in advance. Tuition may be delayed only upon initial application for tuition subsidy in any given year or guaranteed receipt from an agency.

5. A late penalty may be charged not to exceed $10.00 per period established pursuant to F. 4 of this rule. Penalty payments shall be deducted from foundation aid. The penalty assessment period is the period of time between the date tuition was demanded and the commencement of classes.

6. The total amount of tuition deducted from foundation aid shall be calculated on the total number of ADM's in the fiscal year. This calculation shall be made at the time of the final foundation aid adjustment, with tuition deficits being charged to local funds. Tuition loss due to deferrment during student application for tuition subsidy shall not be deducted from foundation aid. Students shall not apply for a tuition subsidy more than once during a collection period.

7. Students on internships shall pay tuition for the time period claimed for foundation aid. Daily hours shall not exceed six unless the students are fully supervised under personnel provided by the institute.

8. Each district shall have an attendance policy. Students who notify the school of their withdrawal shall be dropped from the roll upon date of notification. Students absent for 15 consecutive school days shall be classified as withdrawn.

9. Students in continuous enrollment programs may be maintained on the roll for a vacation or a personal leave not to exceed 15 consecutive school days.

Rules as Proposed
Chapter Six-A: Adult Vocational-Technical Education

§1.0112 Instructional program approval. The following requirements shall apply to all requests for initial and annual program approval. Only approved programs can be a part of the district's budget request.

A. An overall adult vocational-technical advisory committee or program advisory committees for each occupational area shall be maintained which shall meet one or more times a year. Nothing shall prevent a district or center from having both. Local school personnel shall not be members of advisory committees within the district or center except as ex-officio nonvoting members.

B. Instructional staff shall hold a valid adult vocational-technical license in the area for which aid is claimed. Adult instructors serving over 500 clock hours on an annual basis shall meet full-time licensure requirements.

C. Administrative services shall be provided to administer the adult vocational-technical program needs.

D. Part-time programs shall have an enrollment of ten or more enrollees per program. When more than one program section is in operation, enrollment shall average ten or more enrollees.

E. Programs with full-time adult enrollees shall meet the following criteria:

1. Shall employ a minimum of a 40 percent instructor.

2. Adult farm management shall have a minimum enrollment of 42 cooperators who have been enrolled six years or less. When more than one adult farm management education program is operated within a district, enrollment shall average 42 or more. Eighty percent or more of the cooperators who have been enrolled for one full year or more, as measured from July 1 of any calendar year, shall have an annual analysis of their farm accounts. Programs not meeting the minimum enrollment prior to July 1, 1982, may apply to the commissioner of education for an exception to this rule <u>on an annual basis</u> which may be granted if:

a. An exception would allow enrolled cooperators to complete their program of education, or,

b. The instructional quality and efficiency would be improved by the exception.

3. Small business management education programs shall have a minimum enrollment of 30 enrollees who have been enrolled three years or less. Eighty percent or more of the persons who have been enrolled for one full year or more, as measured from July 1 of any calendar year, shall have an annual analysis of their business accounts. Programs not meeting the minimum enrollment prior to July 1, 1981, may apply to the commissioner of education for an exception to this rule <u>on an annual basis</u> which may be granted if:

a. An exception would allow enrolled cooperators to complete their program of education, or,

b. The instructional quality and efficiency would be improved by the exception.

4. Full-time adult education programs except adult farm management and small business management shall have a minimum student enrollment of 14.

F. When an existing program does not meet the minimum enrollment, the program shall be placed on probation for one year.

G. The local district or center shall conduct an annual evaluation as prescribed by the commissioner of education. Programs subject to review by national or state accrediting bodies shall, 30 days prior to that review, provide the date of the review to the department of education and have on file copies of all information supplied to the review body.

§1.0113 Nursing assistant programs. Nursing assistant education programs shall use the curriculum developed by the commissioner of education. The program shall include an individual written/oral test and performance evaluation, which shall be administered on a monthly basis by the department of education, and shall be 30 hours of planned learning activities, exclusive of the evaluation.

A. Definitions. For the purpose of this section, the following definitions shall apply:

1. Nursing assistant - an individual working in or employed by a nursing home, including, but not limited to, a nurse's aide or an orderly, who is assigned by the director of nursing to provide or assist in the provision of direct patient care services under the supervision of a registered nurse.

2. Curriculum - the aggregate of courses of study and planned learning activities developed by the commissioner of education to comply with Minn. Stat. §144A.61, subd. 3.

3. Completion of the program - successful completion of individual oral/written test and performance evaluation.

4. Supplemental nursing service - an entity which recruits and employs nursing and ancillary health care personnel for temporary assignments to supplement the staff of health care institutions; and which is not an employment agency but the employer of all such personnel assigned.

5. Technical assistance - technical assistance by the department of education may include:

a. training of instructors;
b. utilization of the curriculum; and
c. instructional materials.

B. Instructional staff qualifications. Instructional staff for approved nursing assistant education programs offered in facilities other than the area vocational-technical institutes shall be exempt from §1.0112, B., and on January 1, 1979, shall meet the following qualifications.

1. A registered nurse with 2,000 hours of experience within the last five years, at least 500 hours of which must be in geriatric or rehabilitation nursing; or

2. A licensed practical nurse with 4,000 hours of experience within the last five years in geriatric or rehabilitation nursing.

3. As of January 1, 1982, the minimum requirement for instructional staff shall be an registered nurse with at least one year (2,000 hours) of experience, 500 hours of which must be in a geriatric or rehabilitation nursing setting. This section shall not apply to licensed practical nurses teaching this course in a nursing home as of January 1, 1979 who continue to teach this course in that same facility as of January 1, 1982.

C. Exempt categories. The following categories of nursing assistants shall not be required to comply with the education requirements of Minn. Stat. §144A.61 (Supp. 1977).

1. Nursing assistants who began employment in a nursing home on or before December 31, 1978, and who continue employment in the same nursing home in which they were employed on December 31, 1978.

2. Nursing assistants who have successfully completed, since January 1, 1976, a training program for nursing assistant employed in nursing homes, which utilized a program endorsed by the state department of education, unless employment has been interrupted for greater than two consecutive years.

3. Nursing assistants who have successfully completed a state approved nursing education program which prepares an individual for licensure as a registered nurse or licensed practical nurse if completion occurred no more than two (2) calendar years prior to employment.

4. Persons who have successfully completed the individual oral/written test and performance evaluation, even though the course has not been taken.

5. Registered nurses or licensed practical nurses holding current licensure in the state of Minnesota.

6. Nursing assistants who began employment in a supplemental nursing service on or before December 31, 1978 and who continue employment in that same nursing service in which they were employed on December 31, 1978, and who have worked a minimum of twelve (12) hours per week for that same supplemental nursing service in a nursing home prior to December 31, 1978.

~~§1.0113~~ §1.0114 No change, except rule number.

~~§1.0114~~ §1.0115 No change, except rule number.

~~§1.0115~~ §1.0116 No change, except rule number.

~~§1.0116~~ §1.0117 No change, except rule number.

~~§1.0117~~ §1.0118 No change, except rule number.

OFFICIAL NOTICES

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

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

Department of Commerce Banking Division

Banking Division Bulletin No. 1895, Maximum Lawful Rate of Interest for Mortgages for the Month of May, 1978

Notice is hereby given that the Banking Division, Department of Commerce, State of Minnesota, pursuant to Minn. Stat. § 47.20, the Conventional Home Loan Assistance and Protection Act, as amended by Laws of 1977, ch. 350, hereby determines that the maximum lawful rate of interest for home mortgages for the month of May, 1978, is nine and three-quarters (9.75) percent.

Robert A. Mampel
Commissioner of Banks

Department of Education Vocational-Technical Education Division

Notice of Intent to Solicit Outside Opinion Regarding Rules for Nursing Assistant Education Programs

The Department of Education, Division of Vocational-Technical Education, is drafting rules to implement Minn. Stat. §§ 144A.61-144A.611, which permit the Commissioner of Education to promulgate rules which establish criteria for approval of nursing assistant education programs as well as categories of nursing assistants who are not required to comply with the educational requirements of Minn. Stat. §§ 144A.61-144A.611 (1977).

The Department invites interested persons or groups to provide information, comment and advice on the subject in writing or orally to Mr. Robert Van Tries, Assistant Commissioner, 564 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101.

Written statements will be made part of the public hearing record.

Ethical Practices Board

Notice of Meeting

12:30 p.m. Monday, April 24, 1978 Room 14 State Office Building

Agenda

1. Minutes
2. Chairperson Report
3. Legal Counsel Report
4. Advisory Opinion Requested by George and Knickerbocker
5. Advisory Opinion Requested by Beauchamp
6. Advisory Opinion Requested by National Order Systems, Inc.
7. Advisory Opinion Requested by E. I. (Bud) Malone
8. Campaign Finance Rules
9. Economic Interest Rules
10. Executive Director Report
    a. Financial Statement/March
    b. Delinquent Economic Interest Filers
    c. Delinquent Campaign Finance Committees
    d. Delinquent Lobbyists
11. Other Business

Advisory Opinion #45

Approved by the Ethical Practices Board on April 13, 1978.

Issued to:

John Cairns, Counsel
People for Ann O'Loughlin
Minneapolis, Minnesota

Summary

45. Expenses personally paid by a candidate or by a principal campaign committee of a candidate to a day care facility are not campaign expenditures. Child care payments

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

October 24, 1978

Mr. Howard B. Casmey, Commissioner
Department of Education
7th Floor, Capitol Square Building
St. Paul, Minnesota - 55155

RE: In the Matter of the Proposed Adoption of Rules of the State Board of Education (STate Board for Vocational Education) Governing the Proposed Changes in the Rules for Vocational Education and the Inclusion therein of Programs for Nursing Assistants.
HE Docket No. EDU-79-001-SM

Dear Mr. Casmey:

I enclose herewith the Report of the Hearing Examiner in the above-entitled matter.

Yours very truly,

STEVE M. MIHALCHICK
Hearing Examiner

SMM/eag
Encs.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF EDUCATION
and
THE COMMISSIONER OF EDUCATION

In the Matter of the Proposed Adoption of Rules of the State Board of Education (State Board for Vocational Education) Governing the Proposed Changes in the Rules for Vocational Education and the Inclusion therein of Programs for Nursing Assistants.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing in St. Paul, Minnesota on September 7 and 13, 1978, before Steve M. Mihalchick, Hearing Examiner assigned by the Chief Hearing Examiner.

This proceeding is a rule hearing pursuant to Minn. Stat. Ch. 15 to determine whether proposed amendments and new rules codified as 5 MCAR §§ 1.0088, 1.0102, 1.0104, 1.0.112, and 1.0113 should be adopted.

Appearing for the Board and Commissioner were Lou Smerling, member of the State Board of Education; Robert P. Van Tries, Assistant Commissioner; Robert M. Madson, Alice Packer, Julie Eszlinger, Treveler Walsten, Randal Holbrook, and Dave McCullough, all of the Department of Education; and Charles Mottl, Special Assistant Attorney General.

Thirty-eight persons attending the hearings signed the hearing register. The hearings continued until all interested persons had had an opportunity to participate.

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

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

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

FINDINGS OF FACT

PROCEDURAL REQUIREMENTS

1. On July 14, 1978, the Department of Education filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A statement estimating the number of persons expected to attend the hearing.

2. On August 4, 1978, the Department mailed the Notice of Hearing and a copy of the proposed rules to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

3. On August 7, 1978, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 164.

4. On August 10, 1978, the Department filed the following documents:

(a) The Order for Hearing, and the Board's Authorizing Resolution;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Secretary of State's Certificate and List;
(e) The Affidavit of Mailing;
(f) The Statement of Need and Reasonableness, and
(g) Copies of documents to be relied upon at the hearing.

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

5. On August 15, 1978, the Department filed a Statement of Evidence with citations, witnesses, and documents to be called or relied upon.

6. On August 30, 1978, a copy of the Notice of Intent to Solicit Outside Opinion Regarding Rules for Nursing Assistant Educational Programs published at 2 State Register 1936 was filed. The responses to the Notice were filed on September 7, 1978, at the hearing.

7. Although the documents listed in Findings 5 and 6 were not filed 25 or more days prior to the date of hearing, no inquiries were made to the Office of Hearing Examiners regarding them. Therefore, such late filing was non-prejudicial and harmless error.

8. The record remained open through September 20, 1978 for the receipt of written comments and statements.

STATUTORY AUTHORITY

9. The authority for adopting 5 MCAR § 1.0088 is provided by Minn. Stat. § 124.573, as amended by Laws 1978, Ch. 764, § 71, which provides:

> "Subd. 3a. In addition to the provisions of subdivisions 2 and 3, a school district or cooperative center may contract with a public or private agency other than a Minnesota school district or cooperative center for the provision of secondary vocational education services. In the 1978-1979 school year and thereafter, the state shall pay each district of a cooperative center 40 percent of the amount of a contract entered into pursuant to this subdivision. The state board shall promulgate rules relating to program approval procedures and criteria for these contracts and aid shall be paid only for contracts approved by the commissioner of education. For the purposes of subdivision 4, the district or cooperative center contracting for these services shall be construed to be providing for these services. For the purposes of subdivision 5, aid for these contracts shall be distributed on the same basis of aids for salary and travel."

10. Authority for the adoption of 5 MCAR §§ 1.0102, 1.0104 and 1.0112 is provided by Minn. Stat. § 121.11, subd. 12, the general rulemaking authority of the Board.

11. Authority for the adoption of 5 MCAR § 1.0113 is provided by Minn. Stat. § 144A.61 (Supp. 1977), and is specifically delegated to the Commissioner of Education, not the State Board of Education. The Commissioner should seek the advice of his assigned attorney general to determine the proper form for executing the Order Adopting Rules.

§ 1.00811 - INSTRUCTIONAL PROGRAM APPROVAL.

12. The Board withdrew its proposed change to Rule 1.0081. Nevertheless, the Examiner did allow comment concerning Rule 1.0081 by Mr. Dan Moriarty, representing the MEA. The Board stated that his concerns would be considered in future rules. The Board promised similar consideration of comments made by the Minnesota Association of School Administrators and John V. Rollings (Exs. 8 and 9).

§ 1.0088 - CONTRACTS WITH PUBLIC OR PRIVATE AGENCIES FOR VOCATIONAL PROGRAMS

13. Rule 1.0088 A. specifies that a legally binding contract must exist between the school district or cooperative center contracting with a public or private agency. Such a requirement is reasonable because a contract enforceable by the district or cooperative center is necessary in order to protect both the State's interests as the source of categorical aid and the interests of students as the recipients of the state-funded services.

14. Rule 1.0088 B. requires that all programs offered by contracting public or private agencies meet all rules that govern vocational education programs eligible for categorical aid. The contracting school districts or cooperative centers will be considered themselves to be providing the contracted programs. Comment was made by Mr. Ron Hale of the South Washington County Schools that the implications of the Rule requiring contracted programs to comply with all rules governing vocational education were unclear. In particular, he was unsure what would be the implication of such contracting for private schools. Also, he was concerned that a program may be denied approval because it is for the benefit of too few students, although the fact that the program was needed for only a small number of students could be the very reason for contracting.

In response to this comment, the Department proposed a change in Rule 1.0088 B. to read:

> "B. Secondary vocational education programs offered by the contracting public or private agency shall comply with all rules governing vocational education, except for teacher-student ratios, in order to be eligible for aid."

So modified, the Rule is reasonable.

15. Rule 1.0088 C. reiterates the statutory mandate in 1978 Laws, Ch. 764, § 71, that the State shall pay each district or cooperative center 40 percent of the amount of the contract entered into pursuant to that statute and that aids shall be only paid for contracts approved by the Commissioner.

Minn. Stat. § 15.0412, subd. 1, prohibits an agency from adopting a rule duplicating language contained in Minnesota Statutes unless the hearing examiner determines that duplication of the language is crucial to the ability of a person affected by a rule to comprehend its meaning and effect.

It is the finding of the Hearing Examiner that no such degree of need exists for § 1.0088 C. The rule does not clarify the statutory language, and there is the further problem that the percentage prescribed in the statute may be amended. This subdivision should be deleted or, at least, modified to simply refer to the statute.

16. Section 1.0088 D. requires that all contracts be submitted to the Commissioner for approval at the same time as budgets are submitted. This is necessary so categorical aid may be obligated and subsequently paid. It is reasonable because all other program and budgetary materials are due at the same time.

AMENDMENT TO § 1.0102 PROGRAM APPROVAL

17. An amendment to § 1.0102 L. reduces the number of evaluation visits by the Commissioner to area vocational-technical institutes from 11 to 7 per year and increases the period in which a cycle of program evaluations by experts from business and industry will be completed from three to five years. Public Law 94-482, Title Ia-Vocational Education, Part A - State Vocational Education Programs, § 112(b)(1)(A), provides:

> "Each state shall, during the five year period of the State plan, evaluate the effectiveness of each program within the State being assisted with funds available under this Act; and the Results of these evaluations shall be used to revise the State programs and shall be made readily available to the State advisory counsel."

The changes are reasonable because fewer facilities must be visited per year, thus allowing more time for more in-depth program evaluations while still complying with the law.

18. Although no amendments were proposed to § 1.0102 B., comment was received from Mr. Donald Dee of the Minnesota State Pharmaceutical Association. He was concerned that the membership of program advisory committees did not necessarily include representatives of professional associations. The Department reasonably considers that such would be a needless restriction. The total group of eligible persons includes those employed in a given field regardless of their membership in private associations.

AMENDMENT TO § 1.0104 - FOUNDATION AID

19. Minn. Stat. § 124.562, subd. 1, as amended by Laws 1978, Ch. 764, § 64, expressly provides that the amount of student application fees must be deducted from post-secondary vocational foundation aid. The statute provides as follows:

> "A district shall receive post-secondary vocational foundational aid in the amount of $2,120.00 for fiscal year 1978 and $2,240.00 for fiscal year 1979 times the number of post-secondary vocational technical pupils in average daily membership, as defined in subdivision 2, less the sum of (1) any amounts received as tuition and fees for post-secondary technical pupils, including application fees, but not including student activity fees allowed pursuant to section 121.216. . . ."

Thus, the statute requires that 1.0104 F.1. be changed and the simple deletion of the final sentence prohibiting the deduction of a student application fee is thus not only reasonable but mandatory.

AMENDMENTS TO § 1.0112 - INSTRUCTIONAL PROGRAM APPROVAL

20. The inclusion of the phrase "on an annual basis" Rule 1.0112 E.2. and 3. is necessary and reasonable. The changes would require applications for exceptions to the rule requiring a minimum enrollment in adult farm management and small business management education programs to be made on an annual basis. Not only will such annual application provide information to the State so that the State may assist such programs to meet the minimum enrollment by June 1, 1982, but it will provide consistency with the annual program approval and budgeting management process of these programs.

§ 1.0113 - NURSING ASSISTANT PROGRAMS

21. The introductory paragraph of 1.0113 provides:

> "Nursing assistants education programs shall use the curriculum developed by the commissioner of education as reviewed and evaluated by the board of nursing. The program shall include an individual written/oral test and performance evaluation, which shall be administered on a monthly basis by the department of education through public area vocational-technical institutes, and shall be thirty hours of planned learning activities exclusive of the evaluation period."

The portions underlined are additions proposed in the Commissioner's posthearing comments (Ex. Z).

The thirty-hour figure, while less than what most persons considered desirable, is the result of limited funds available for the program, according to Representative James Swanson, Chairman of the House Health and Welfare Committee. Minn. Stat. § 144A.61, subd. 3, mandates that the curriculum be developed by the Commissioner of Education. Likewise, the statute mandates that the curriculum be reviewed and evaluated by the Board of Nursing. Thus, the change brings the rule in line with the statute.

It is necessary that an evaluation follow the course to ascertain competence in order that the legislative intent expressed in Minn. Stat. § 144A.61, subd. 1, to "improve in quality of care" to be carried out. It is reasonable that the test be administered by the Department, through its AVTIs, to insure the test's validity. A concern was voiced that the test be given at readily ascertainable locations throughout the State at an adequate rate of frequency. The proposed rule adequately meets those needs. The Minnesota Association of Health Care Facilities (MAHCF), was concerned that a monthly test was not frequent enough because some nursing assistants could complete the program at a nursing home and then not be able to work until the next test came up. Their concern is based upon a proposed Department of Health Rule (MHD 50(e)(7)(aa)) that would prohibit the nursing assistants from performing most services until they had completed the course or tested out of it (Ex. 18). Dr. Ellen Fifer, Deputy Commissioner of Health, pointed out that,

> "Since Minnesota Statute § 144A.61, subd. 6 (1976), does not include an absolute restriction on the performance of nursing assistant functions by an untrained individual, monthly evaluations would seem reasonable in terms of economics and logistics of state-wide testing." (Ex. 20)

The statute, as amended, provides:

> Subd. 6. Training program. Each nursing assistant hired to work in a nursing home on or after January 1, 1979, shall have successfully completed an approved nursing assistant

> training program or shall be enrolled in the first available approved training program which is scheduled to commence within 60 days of the date of the assistant's employment. Approved training programs shall be offered at the location most reasonably accessible to the enrollees in each class.

Dr. Fifer's comment seems to be correct - Health's proposed rule is, at this point, contrary to the statute which specifically allows the nursing assistants to begin work before completing the program. A 30-day test cycle is adequate to allow the requirements of the statute to be met.

MAHCF also requested that a central registry of persons successfully completing the program be maintained. The Commissioner stated that each AVTI would maintain its own list. This is reasonable because each school typically and continually maintains similar records. Dr. Fifer stated:

> "If each certificate were coded and numbered to identify the AVTI and the trainee, it would obviate the need for establishing a costly central registry as suggested at the public hearing." (Ex. 20)

The Commissioner should consider these ideas, but it is not necessary to establish the system by rule in order to make the rules proposed here reasonable.

22. Minn. Stat. § 144A.61, subd. 2, provides in part:

> For the purposes of sections 144A.61 and 144A.611 "nursing assistant" means a nursing home employee, including nurse's aide or an orderly, who is assigned by the director of nursing to provide or assist in the provision of direct patient care services under the supervision of a registered nurse.

Rule 1.0113 A.1. essentially duplicates that language but adds persons "working" in a nursing home and after the word "including", the phrase, "but not limited to", is added. The Examiner finds that the definition of "nursing assistant" is an essential and basic element of the entire rule and is, in fact, crucial to the ability of a person affected by the rule to comprehend its meaning and effect. Adding persons "working" in nursing homes, as opposed to "employed by", is necessary and reasonable to insure that supplemental nursing services personnel are included. However, adding the phrase "but not limited to", seems to this Examiner to be redundant, especially since the Legislature chose not to use it. It could as well be left out.

23. Rule 1.0113 A.2. defines "curriculum" in its educational context. MAHCF requested that the curriculum, itself, be adopted as a Rule and has petitioned for such a Rule (Exs. 18 and 19). Such a suggestion was opposed by Dr. Fifer and the Minnesota Nurses Association as being too inflexible. Lack of the curriculum being adopted as a rule does not make the rules proposed here unreasonable.

24. In response to MAHCF comments (see Ex. 18), the Commissioner proposes to modify 1.0113 A.3. to read:

> Successful completion shall be defined as the obtainment of 70 percent on the oral/written test and 70 percent on the performance evaluation. (Ex. Z)

While the change makes the rule more specific and is reasonable, it seems that the exigencies of the future may find such numerical definition too rigid, an objection raised at the hearing when discussing the curriculum.

25. The 1.0113 A.4. definition of "supplemental nursing service" is necessary to make clear that employees of such services are within the scope of the Act and the rules. It was modified at the hearing to require supplemen-

tal services to provide to the Department of Health by January 15, 1979, a list of all nursing assistants employed by the supplemental service who have worked 12 hours in a nursing home on December 31, 1978. The Commissioner has agreed with comments that the list should include those who have worked 12 hours on or before December 31, 1978. Such lists must be provided so the Board of Health can carry out its statutorily imposed duty of supervision and enforcement of the program, and, as modified, the rule is necessary and reasonable.

26. The instructional staff qualifications set forth in 1.0113 B. are necessary and reasonable for the reasons stated in the Statement of Need and Reasonableness. Generally, the rule reasonably balances the need for instructors with high degrees of training and experience against the limited supply of such instructors.

27. Minn. Stat. s 144A.61, subd. 2, gives the Commissioner the authority to establish by rule categories of nursing assistants who are not required to comply with the educational requirements of the statute. Rule 1.0113 C. lists six such exempt categories.

28. Rule 1.0113 C.1. exempts persons who continue uninterrupted employment at the same nursing home at the time the enforcement of the law becomes effective (January 1, 1979). This exemption is reasonable because otherwise an unbearable load of training would be required by nursing assistants presently employed which could not be met.

29. Rule 1.0113 C.2. accommodates those people who took training in 1976 when the Act was first adopted. The former approved course was longer in length than the present curriculum, and so the intent of the Act is met.

The rule does not permit the exemption if the person's employment has been interupted for more than two years. MAHCF requested that the period be made five years because Minn. Stat. § 144A.611, subd. 3(c) prohibits the Department of Welfare from reimbursing nursing homes or nursing assistants for retraining unless the nursing assistant has been absent from the labor market for at least five years (Ex. 19). The Commissioner's reply was to note that the five-year restriction, "does not relate to retraining of a nursing assistant but to nursing assistant training of a nurse." (Ex. Z) Perhaps there was some confusion as to which exemption MAHCF was addressing. Nonetheless, it is quite clear to this Examiner that DPW can not pay for retraining except after a five-year absence and that the "two-year clause" of § 1.0113 C.2. is contrary to the statute because it requires retraining if there is a two-year absence. It is, thus, unreasonable. It must be deleted or modified to "five" years.

30. Rule 1.0113 C.3. exempts those persons who have completed a training program for RNs or LPNs but who are unable to be employed as such until they have taken their licensure examination. Such persons sometimes seek employment as nursing assistants on an interim basis and their training has been far in excess of the 30-hour curriculum.

31. Rule 1.0113 C.4. exempts persons who have successfully completed the individual oral/written test and performance evaluation though they have not taken the course, itself. This exemption is reasonable because it allows for quick and efficient validation of the skills of those individuals who

have received training from another source or who have experience equal to or greater than the training provided by the 30-hour curriculum. This subdivision would make it possible for persons employed as nursing assistants who change their place of employment to continue working as a nursing assistant and economically insure that they have the required skills.

32. Rule 1.0113 C.5. exempts registered nurses or licensed practical nurses holding current licensure in the state of Minnesota. The Minnesota Nurses Association suggested that such an exemption was not necessary because it was assumed. It is a reasonable assumption and a reasonable exemption, but it must be specified in the rule in order to be legally binding. MAHCF suggested that RNs and LPNs licensed in neighboring states should also be exempt so that nursing homes near the borders, who employ such persons, could be accommodated. The Commissioner should consider such a revision.

33. Rule 1.0113 C.6. provides an exemption for nursing assistants employed by a supplemental nursing service before the effective date of enforcement of the law, and who remain working for the same supplemental nursing service for a minimum of 12 hours per week. Such services provide a substantial part of the staffing in some nursing homes, especially those in the metropolitan area. There were objections raised to this exemption, particularly by groups representing senior citizens. After considering the various comments, the Commissioner determined to continue to propose the exemption. (Ex. Z) The Examiner finds the proposed rule to be reasonable because it insures a level of minimum competency and would prevent large numbers of nursing assistants who are so employed from requiring immediate instruction and testing. This, again, could overburden the training facilities, put a large number of people out of work, and reduce the level of services provided in some nursing homes.

C O N C L U S I O N S

1. Due, timely and adequate notice of the hearing was properly served and published by the Board and the Commissioner. All other substantive and procedural requirements have been fulfilled.

2. The Board and Commissioner have demonstrated their statutory authority to adopt the proposed amendments and rules.

3. Except as found in Findings Nos. 15 and 29, the Board and Commissioner have demonstrated the need for and reasonableness of the proposed amendments and rules by an affirmative presentation of facts.

4. The modifications to the proposed rules made by the Department at the hearing and in its posthearing comments do not constitute substantial changes.

5. The suggestions made by the Examiner are not intended in any way to preclude the Board and Commissioner from making their own non-substantial changes and improvements to the proposed rules.

R E C O M M E N D A T I O N

That the proposed rules be modified as suggested in the Findings and that so modified, they be adopted.

Dated this 24th day of October, 1978.

STEVE M. MIHALCHICK
Hearing Examiner

EDU-79-001-SM

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF EDUCATION
and
THE COMMISSIONER OF EDUCATION

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE)
COMMISSIONER OF EDUCATION FOR)
PROGRAMS FOR NURSING ASSISTANTS)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, hearings were held on September 7 and 13, 1978, before Steve M. Mihalchick, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Education on October 24, 1978; and

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

WHEREAS, the Department of Education has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 110; and

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

NOW, THEREFORE, upon receipt of this Report, the Department of Education 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 15th day
of November, 1978.

DUANE R. HARVES
Chief Hearing Examiner

By: George A. Beck
GEORGE A. BECK
Hearing Examiner