

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File # 598

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 5/2 DUE DATE 5/22

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State 5/22
b. Approved 5/22 Date Sent Back to Agency 5/22

- -

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 11.30.79
   Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency not submitted
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓ 10.25.79
10. Publication in State Register ✓ copy not submitted ~~but~~ see HE rpt. page 2.
    At least 30 days prior to hearing 10.29.79 ✓
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓ SR 5.15.78
20. Petition by Public, where applicable N/A

ADMIN 1000 (Rev. 1/78) Our File: 598

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : RICHARD A. WEXLER
Assistant Attorney General

DATE: May 22, 1980

FROM : Joanne E. Hinderaker JEH
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: Rules as Approved In the Matter of the Proposed Amendments to 7 MCAR §§ 1.536 to 1.540, the Rules Governing the Procedures for Determining Regulation of Human Services Occupations

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

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

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

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

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

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

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

JEH:mb

Enclosure
cc: Duane Harves
Susan Robertson

Department of Health

Manpower Division

Adopted Amendments to Rules of Procedures for Determining Regulation of Human Services Occupations

Amendments as Adopted

DEPARTMENT OF HEALTH

RULES OF PROCEDURES FOR DETERMINING REGULATIONS OF HUMAN SERVICES OCCUPATIONS

Chapter Thirty: 7 MCAR §§ 1.536-1.540 Human Services Occupations, Part I

7 MCAR § 1.536 General

A. Declaration of purpose and scope. 7 MCAR §§ 1.536-1.540 establish the process to be used by the Commissioner of Health and the Human Services Occupations Advisory Council in carrying out the charges of Minn. Stat. §§ 214.001, 214.13 and 214.14. They specify the procedures by which human services occupations are identified and decisions are made regarding the State's need to regulate persons in specific occupations. This rule applies to all human services occupations that are not now credentialed by the State.

B. Definitions. For the purposes of 7 MCAR §§ 1.536-1.540, the words, terms and phrases listed below in this subdivision shall have the meaning stated herein, unless the language or context clearly indicates that a different meaning is intended.

1. "Administrative authority" means the state agency responsible for administering the law and rules establishing a credential for a human services occupation.

2. "Applicant group" means an occupational group that has submitted a letter of intent to begin the regulatory process.

3. "Career progression" means opportunity to move up a career ladder or enter a related profession without loss of credit for previous education and experience.

4. "Commissioner" means the Commissioner of Health.

5. "Competence" means possession of requisite abilities to fulfill work obiligations.

6. "Conflict of interest" means:

a. A direct or indirect financial or self-serving interest in the matter under consideration so that the member is not so free from personal bias, prejudice or preconceived notion as to make it possible for the member to consider objectively the evidence presented and base a decision solely on such evidence.

b. Circumstances such that a member finds it difficult, if not impossible to devote himself or herself to a consideration of the matter with complete energy, loyalty, and singleness of purpose to the general public interest.

7. "Continuing education" means education or training beyond the individual's pre-credentialing preparation for an occupation.

8. "Council" means the Human Services Occupations Advisory Council.

9. "Credentialing" means licensure or registration and the process by which they are obtained and administered.

10. "Department" means Minnesota Department of Health.

11. "Function" means a special task, duty or performance required in the course of work or activity.

12. "Functional differentiation" means those functions carried out by a particular occupational group that distinguish that group from others.

13. "Human Services Occupations" means an occupation whose principal functions are performed customarily for remuneration on behalf of individuals, families or groups to assist in achieving:

a. Optimal economic security through the provision of employment services, income security services and income maintenance and ancillary supportive services;

b. Optimal health through the provision of maintenance, diagnostic, treatment and ancillary supportive services in the area of physical health, environmental health, mental health and developmental disabilities;

c. Optimal knowledge and skills through the provision of formal educational services, supplementary educational services, and ancillary supportive services; or

d. Optimal social functioning through the provision of social adjustment services, social development services, protective services, correctional services, services to victims of abuse, neglect, exploitation or crime, and ancillary supportive services.

14. "Letter of intent" means an applicant group's written expression of aim to pursue regulation.

15. "Licensure" means a system whereby a practitioner must receive recognition by the state that he or she has met predetermined qualifications, and persons not so licensed are prohibited from practicing.

16. "Not now credentialed" means those occupations whose members are not currently licensed or registered by the state and those occupations whose members are currently licensed or registered by the state but who seek to expand or apecialize their functions within that licensed or registered occupation such that the group members seek further state recognition by new, expanded or specialty licensure or registration.

17. "Occupational group" means human service workers who have common occupational functions.

18. "Public Forum" means public meeting(s) called to obtain comments on an applicant group's questionnaire. The meeting is open to the public, but it is not a hearing and does not require the hearings notification procedures called for by Minnesota Statutes.

19. "Questionnaire" means document designed to provide information about an occupational group for purposes of aiding in making a regulatory determination.

20. "Registration" means a system whereby practitioners who will be the only persons permitted to use a designated title are listed on an official roster after having met predetermined qualifications.

C. Prohibition. A Council member may not be appointed to a subcommittee, may not participate in subcommittee or council discussions, and may not vote on any matter in which he or she has a conflict of interest.

D. Factors for determining the necessity of regulation. In the review of an applicant group questionnaire, the subcommittee, council, and Commissioner shall base their recommendation or decision as to whether or not the applicant group shall be regulated upon the factors contained in Minn. Stat. § 214.001, subd. 2.

1. In applying the factor of whether the unregulated practice of an occupation may harm or endanger the health, safety, and welfare of citizens of the state and whether the potential for harm is recognizable and not remote, at a minimum the relevance of the following shall be considered:

   a. Harm shall be construed to be a condition representative of physical, emotional, mental, social,financial, or intellectual

impairment resulting from the functions rendered or failed to be rendered by the applicant group.

b. Potential for harm may be recognizable when evidenced by at least one or more of the following:

(1) Expert testimony;

(2) Client, consumer, or patient testimony;

(3) Research findings;

(4) Legal procedents, financial awards, or judicial rulings;

c. Potential for harm may be recognizable when evidenced by at least one or more of the following characteristics of the applicant group;

(1) ~~(5)~~ Inherently dangerous nature of the applicant group's functions;

(2) ~~(6)~~ Dangerous nature of devices or substances used in performing applicant group's functions;

(3) ~~(7)~~ Exercise by practitioners of the applicant groups of an observable degree of independent judgment when:

(a) Identifying or evaluating a consumer's or client's symptoms;

(b) Formulating a plan for consumer or client care, service delivery or treatment; and/or

(c) Providing consumer or client care, delivering service or implementing a plan of treatment.

d. ~~c.~~ Potential for harm may be remote when evidenced by at least one or more of the following:

(1) Infrequent or rare instances of impairment;

(2) Impairment which is minor in nature; or

(3) Secondary or tertiary effects of the applicant group's function.

2. In applying the factor of whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability, the existence of the following items shall be considered as indicating that specialized skill or training or their continuation is required:

   a. That the functions performed by the practitioner are several and their performance necessitates a thorough understanding of the complex relationship between those functions;

   b. That the one or more functions performed by the practitioner requires a detailed understanding of the specific components of the function and the relationship between the functions and the symptoms, problem or condition that function is intended to address or ameliorate;

   c. That the absence of specialized skill or training is likely to increase the incidence and/or degree of harm as defined in 7 MCAR § 1.536 D. 1. to the consumer as client.

   d. That there occurs frequent or major changes in areas of skilled knowledge and technique of which the practitioner must keep informed in order to meet current standards.

3. In applying the factor of whether the citizens of this state are or may be effectively protected by other means, at a minimum the relevance of the following shall be considered:

   a. Indicators of protection by other means shall include but not be limited to:

(1) Supervision by practitioners in a regulated occupation;

(2) Existence of laws governing devices and substances used in the occupation;

(3) Existence of laws governing the standard of practice;

(4) Existence of standards for professional performance;

(5) Employment in licensed human service facilities which are required to employ competent staff;

(6) Existence of federal licensing as credentialing mechanism;

(7) Existence of civil service procedures which effectively screen potential employees for competence;

(8) Graduation of members of the applicant group from an accredited educational institution or training program;

(9) Mandatory participation in on-the-job training programs which are required by law or by professional organization of the occupation;

(10) Existence of professional credentials and standards of performance which effectively sanction malpractice;

(11) Existence of a national certification process which effectively attests to the competency of recognized professionals.

b. Indicators of protection by other means shall be assessed and evaluated at least in view of the extent to which they:

(1) Address all practitioners within an occupational group;

(2) Appear sufficient to protect the general public from harm caused by the practice of the occupation in question;

(3) Appear to be permanent and ongoing mechanisms.

4. 7 MCAR § 1.536 D.1.-3. shall be considered nonlimiting guidelines to be used in applying the statutory factors contained in Minn. Stat. § 214.001 subd. 2. Additional elements may be considered if necessary to permit a thorough review and evaluation of an applicant group questionnaire in light of the statutory factors; provided, however, that the additional elements shall be identified during the course of the review and evaluation process, all interested persons given the opportunity to comment thereon, and shall be specifically addressed in the Commissioner's written decision required by 7 MCAR § 1.538 B.6.

7 MCAR § 1.537 A. Applicant initiated identification.

. . .

3. The applicant group shall submit the completed Questionnaire to the Commissioner within six months or shall make a written request for an extension of the time period. Failure to comply with either of those conditions during the six month period voids the original letter of intent and discontinues the regulatory decision process. The applicant group shall submit a new letter of intent of it desires to pursue regulation.

. . .

7MCAR § 1.538 B. Immediate consideration.

. . .

5. Council action. The Council will review the subcommittee recommendation and approve or modify it as necessary. A Council final report and recommendations, along with supporting documents, will be sent to the Commissioner for action. The Department report and recommendations, with supporting documents, will accompany the Council report.

6. Commissioner actions. The Commissioner, upon review of the Council report and recommendations, will take one of the actions listed below. The Commissioner's action will be accompanied by a report giving the reason for

the decision. Notification of the action will be made in the same manner as that of the public forum as called for in 7 MCAR 1.538 B.3.d.

. . .

c. If the Commissioner determines that an occupational group shall be regulated by registration, with the Commissioner acting as administrative authority, the Commissioner shall establish procedures and adopt rules to implement the decision. The rules will include, if appropriate, but not be limited to, the items contained in 7 MCAR 1.538 B. 6. a. (1) through (9).

. . .

APPROVED AS TO FORM AND LEGALITY

MAY 22 1980 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Joanne Hinderaker
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 22 1980
Joan Anderson Growe
Secretary of State
2:26 PM

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

Office Memorandum

TO : Jerry Anderson
Special Assistant
Attorney General

DATE: May 8, 1980

FROM : Richard A. Wexler
Assistant Attorney General

PHONE: 341-7272

SUBJECT: Amendments to Health Department Rules Governing the Procedures for Determining Regulation of Human Services Occupations

By memorandum of April 29, 1980, I forwarded to you the above-subject rules for your review pursuant to Minn. Stat. § 15.0411, subd. 4. It occurred to me, as a result of a comment you made at a recent Administrative Law Committee meeting, that I did not indicate in the material that I sent over to you the format used for typing the rules as adopted as opposed to the rules as proposed.

The rules as proposed actually constitute amendments to existing rules. Consequently, any words which are struck out are those proposed for deletion from existing rules and anything underlined indicates what was proposed for addition to the existing rules. The Department, in typing up the rules as adopted, followed the same procedure as required by the State Register. Accordingly, if an item was proposed to be struck and was actually struck, those words do not now appear in the adopted version. Likewise, if an item was proposed to be added to the rules and was adopted as such, the underlining was removed and the words appear there without any indication that they were added. Consequently, anything in the rules as adopted version which is struck indicates only a change between the rules as proposed and those as adopted. Similarly, anything underlined indicates items which have been adopted and added which were not proposed for addition in the version of the rules which went to hearing. (It should be pointed out, however, that the Chief Hearing Examiner did approve those additions as not constituting a substantial change.)

I trust that the foregoing information will assist you in reviewing these rules.

RAW:sil

RECEIVED
MAY 12 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

PRINTED ON RECYCLED PAPER

Department of Health

Manpower Division

Proposed Amendments to Rules of Procedures for Determining Regulation of Human Services Occupations

Amendments as Proposed

DEPARTMENT OF HEALTH

RULES OF PROCEDURES FOR DETERMINING REGULATIONS OF HUMAN SERVICES OCCUPATIONS

Chapter Thirty: 7 MCAR §§ 1.536-1.540 Human Services Occupations, Part I

§ 1.536 General.

A. Declaration of purpose and scope. 7 MCAR §§ 1.536-1.540 establish the process to be used by the Commissioner of Health and the Human Services Occupations Advisory Council in carrying out the charges of Minn. Stat. §§ 214.001, 214.13 and 214.14 ~~(1976)~~. They specify the procedures by which human services occupations are identified and decisions are made regarding the State's need to regulate persons in specific occupations. This rule applies to all human services occupations that are not now credentialed by the State. ~~Determination of a mode of regulation, if any, for an occupational group shall be based on the factors contained in Minn. Stat. § 214.001, subd. 2, at all levels of the recommendation-decision process, to wit: subcommittees, Council and Commissioner.~~

B. Definitions. For the purposes of 7 MCAR §§ 1.536-1.540, the words, terms and phrases listed below in this subdivision shall have the meaning stated herein, unless the language or context clearly indicates that a different meaning is intended.

1. "Administrative authority" means the state agency responsible for administering the law and rules establishing a credential for a human services occupation.

2. "Applicant group" means an occupational group that has submitted a letter of intent to begin the ~~credentialing~~ regulatory process.

3. "Career progression" means opportunity to move up a career ladder or enter a related profession without loss of credit for previous education and experience.

4. "Commissioner" means the Commissioner of Health.

5. "Competence" means possession of requisite abilities to fulfill work obligations.

6. "Conflict of interest" means:

a. A direct or indirect financial or self-serving interest in the matter under consideration so that the member is not so free from personal bias, prejudice or preconceived notion as to make it possible for the member to consider objectively the evidence presented and base a decision solely on such evidence.

b. Circumstances such that a member finds it difficult, if not impossible to devote himself or herself to a consideration of the matter with complete energy, loyalty, and singleness of purpose to the general public interest.

7. "Continuing education" means education or training beyond the individual's pre-credentialing preparation for an occupation.

8. "Council" means the Human Services Occupations Adivsory Council.

9. "Credentialing" means licensure or registration and the process by which they are obtained and administered.

10. "Department" means Minnesota Department of Health.

11. "Function" means a special task, duty or performance required in the course of work or activity.

12. "Functional differentiation" means those functions carried out by a particular occupational group that distinguish that group from others.

13. "Human Services Occupations" means an occupation whose principal functions are performed customarily for remuneration on behalf of individuals, families or groups to assist in achieving:

a. Optimal economic security through the provision of employment services, income security services and income maintenance and ancillary supportive services;

b. Optimal health through the provision of maintenance, diagnostic, treatment and ancillary supportive services in the area of physical health, environmental health, mental health and developmental disabilities;

c. Optimal knowledge and skills through the provision of formal educational services, supplementary educational services, and ancillary supportive services; or

d. Optimal social functioning through the provision of social adjustment services, social development services, protective services, correctional services, services to victims of abuse, neglect, exploitation or crime, and ancillary supportive services.

~~13.~~ 14. "Letter of intent" means an applicant group's written expression of aim to pursue ~~credentialing~~ regulation.

~~14.~~ 15. "Licensure" means a system whereby a practitioner must receive recognition by the state that he or she has met predetermined qualifications, and persons not so licensed are prohibited from practicing.

~~15.~~ 16. "Not now credentialed" means those occupations whose members are not currently licensed or registered by the state and those occupations whose members are currently licensed or registered by the state but who seek to expand or specialize their functions within that licensed or registered occupation such that the group members seek further state recognition by new, expanded or specialty licensure or registration.

~~16.~~ 17. "Occupational group" means ~~a group of~~ human service workers

~~that~~ who have common occupational functions~~, practices, and roles in the delivery of human services~~.

~~17.~~ 18. "Public Forum" means public meeting(s) called to obtain comments on an applicant group's questionnaire. The meeting is open to the public, but it is not a hearing and does not require the hearings notification procedures called for by Minnesota Statutes.

~~18.~~ 19. "Questionnaire" means document designed to provide information about an occupational group for purposes of aiding in making a regulatory determination.

~~19.~~ 20. "Registration" means a system whereby practitioners who will be the only persons permitted to use a designated title are listed on an official roster after having met predetermined qualifications.

C. Prohibition. A Council member may not be appointed to a subcommittee, may not participate in subcommittee or council discussions, and may not vote on any matter in which he or she has a conflict of interest.

D. Factors for Determining the Necessity of Regulation. In the review of an applicant group questionnaire, the subcommittee, council, and commissioner shall base their recommendation or decision as to whether or not the applicant group shall be regulated upon the factors contained in Minn. Stat. § 214.001, subd. 2.

1. In applying the factor of whether the unregulated practice of an occupation may harm or endanger the health, safety, and welfare of citizens of the state and whether the potential for harm is recognizable and not remote, at a minimum the relevance of the following shall be considered:

   a. Harm shall be construed to be a condition representative of physical, emotional, mental, social, financial, or intellectual

impairment resulting from the functions rendered or failed to be rendered by the applicant group.

b. Potential for harm may be recognizable when evidenced by at least one or more of the following:

(1) Expert testimony;

(2) Client, consumer, or patient testimony;

(3) Research findings;

(4) Legal procedents, financial awards, or judicial rulings;

(5) Inherently dangerous nature of the applicant group's functions;

(6) Dangerous nature of devices or substances used in performing applicant group's functions;

(7) Exercise by practitioners of the applicant group of an observable degree of independent judgment when:

(a) Identifying or evaluating a consumer's or client's symptoms;

(b) Formulating a plan for consumer or client care, service delivery or treatment; and/or

(c) Providing consumer or client care, delivering service or implementing a plan of treatment.

c. Potential for harm may be remote when evidenced by at least one or more of the following:

(1) Infrequent or rare instances of impairment;

(2) Impairment which is minor in nature; or

(3) Secondary or tertiary effects of the applicant group's function.

2. In applying the factor of whether the practice of an occupation requires specialized skill or training and whether the public

needs and will benefit by assurances of initial and continuing occupational ability, the existence of the following items shall be considered as indicating that specialized skill or training or their continuation is required:

a. That the functions performed by the practitioner are several and their performance necessitates a thorough understanding of the complex relationship between those functions;

b. That the one or more functions performed by the practitioner requires a detailed understanding of the specific components of the function and the relationship between the functions and the symptoms, problem or condition that function is intended to address or ameliorate;

c. That the absence of specialized skill or training is likely to increase the incidence and/or degree of harm as defined in 7 MCAR § 1.536 D. 1. to the consumer as client.

d. That there occurs frequent or major changes in areas of skilled knowledge and technique of which the practitioner must keep informed in order to meet current standards.

3. In applying the factor of whether the citizens of this state are or may be effectively protected by other means, at a minimum the relevance of the following shall be considered:

a. Indicators of protection by other means shall include but not be limited to:

(1) Supervision by practitioners in a regulated occupation;

(2) Existence of laws governing devices and substances used in the occupation;

(3) Existence of laws governing the standard of practice;

(4) Existence of standards for professional performance;

(5) Employment in licensed human service facilities which are required to employ competent staff;

(6) Existence of federal licensing as credentialing mechanism;

(7) Existence of civil service procedures which effectively screen potential employees for competence;

(8) Graduation of members of the applicant group from an accredited educational institution or training program;

(9) Mandatory participation in on-the-job training programs which are required by law or by professional organization of the occupation;

(10) Existence of professional credentials and standards of performance which effectively sanction malpractice;

(11) Existence of a national certification process which effectively attests to the competency of recognized professionals.

b. Indicators of protection by other means shall be assessed and evaluated at least in view of the extent to which they:

(1) Address all practitioners within an occupational group;

(2) Appear sufficient to protect the general public from harm caused by the practice of the occupation in question;

(3) Appear to be permanent and ongoing mechanisms.

4. 7 MCAR §1.536 D.1.-3. shall be considered nonlimiting guidelines to be used in applying the statutory factors contained in Minn. Stat. § 214.001 subd. 2. Additional elements may be considered if necessary to permit a thorough review and evaluation of an applicant group questionnaire in light of the statutory factors; provided, however, that the additional elements shall be identi-

fied during the course of the review and evaluation process and specifically addressed in the commissioner's written decision required by 7 MCAR 1.538 B. 6.

7 MCAR § 1.537 A. 3. is Proposed to be Amended to Read as Follows:

A. Applicant initiated identification.

. . .

3. The applicant group shall submit the completed Questionnaire to the Commissioner within six months or shall make a written request for an extension of the time period. Failure to comply with either of those conditions during the six month period voids the original letter of intent and discontinues the regulatory decision process. The applicant group shall submit a new letter of intent if it desires to pursue ~~credentialing~~ regulation.

. . .

7 MCAR § 1.538 B. 5. is Proposed to be Amended to Read as Follows:

B. Immediate consideration.

. . .

5. Council action. The Council will review the subcommittee recommendation and approve or modify ~~them~~ it as necessary. A Council final report and recommendations, along with supporting documents, will be sent to the Commissioner for action. The Department report and recommendations, with supporting documents, will accompany the Council report.

. . .

7 MCAR § 1.538 B. 6. c. is Proposed to be Amended to Read as Follows:

6. Commissioner actions. The Commissioner, upon review of the Council

report and recommendations, will take one of the actions listed below. The Commissioner's action will be accompanied by a report giving the reason for the decision. Notification of the action will be made in the same manner as that of the public forum as called for in 7 MCAR § 1.538 B. 3. d.

. . .

c. If the Commissioner determines that an occupational group shall be ~~credentialed~~ regulated by registration, with the Commissioner acting as administrative authority, the Commissioner shall establish procedures and adopt rules to implement the decision. The rules will include, if appropriate, but not be limited to, the items contained in 7 MCAR 1.538 B. 6. a. (1) through (9).

. . .

HLTH-80-014-GB

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to 7 MCAR §§ 1.5346 to 1.540, the Rules Governing the Procedures for Determining Regulation of Human Services Occupations.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck at 9:30 a.m. on Friday, November 30, 1979, in Room 105 of the Minnesota Department of Health Building, 717 Delaware Street Southeast, City of Minneapolis, County of Hennepin, State of Minnesota.

This report is a part of a rule hearing procedure pursuant to Minn. Stat. §§ 15.0411 to 15.0417 and 15.052 to determine whether the proposed rule amendments should be adopted and given the force of law. A copy of this Report may be obtained from the Office of Hearing Examiners for the cost of reproduction.

Members of the agency panel appearing at the hearing included: Larry Woods, Manpower Division, Minnesota Department of Health and Richard A. Wexler, Assistant Attorney General, representing the Department of Health.

Fourteen persons signed the hearing register. Four public witnesses spoke at the hearing. The Department submitted eight written exhibits and five written comments were received from the public.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five days. Thereafter, the Commissioner of Health shall, if he proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4 (1978). The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Commissioner on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 (1978) within ten calendar days. The Commissioner will 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 testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On October 4, 1979, the Department of Health filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On October 29, 1979, the Notice of Hearing and a copy of the proposed rule amendments were published at 4 State Register 718.

3. On October 25, 1979, the Notice of Hearing was mailed by the Department to all persons and associations who had registered their names with the Secretary of State to receive such notice as well as to all members of the Minnesota Legislature and to a supplementary mailing list maintained by the Department.

4. On November 2, 1979, the Department filed the following documents with the Hearing Examiner:

(a) The Order for Hearing.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list and the list.
(d) The Affidavit of Mailing of the Notice of Hearing.
(e) The Statement of Need and Reasonableness.
(f) A Notice of Intent to Solicit Outside Opinion published at 2 State Register 2033 on May 15, 1978, to which no responses were received.

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

5. The record remained open through December 20, 1979 for the receipt of written comments and statements.

6. The Department cites Minn. Stat. § 214.13, subd. 1 (1978), as statutory authority for the promulgation of proposed rule amendments. That subdivision provides in part:

> The commissioner shall, consistent with section 214.001, establish procedures for the identification of human service occupations not now credentialed by the state, recommend appropriate regulatory modes, and promulgate by rule standards and procedures relating to the credentialing of persons practicing in the affected occupations.

Minn. Stat. § 214.13, subd. 3 (1978) also states that:

> Rules promulgated by the commissioner pursuant to subdivision 1 may include procedures and standards relating to the registration requirement, the scope of authorized practice, fees, supervision required, continuing education, career progression and disciplinary matters. These rules shall not be in conflict with provisions of chapter 214 and Laws 1976, Chapter 222, Sections 1 to 7.

7. Aside from a few minor changes in terminology, this rule proceeding seeks to accomplish two goals. First, a definition of "human services occupations" is proposed and secondly, a subsection is proposed which would further define the factors listed at Minn. Stat. § 214.001, subd. 2 (1978), which are to be considered in determining the necessity of regulation. Both of these amendments were requested by participants in the original rule hearing held on April 20, 1977. The proposed amendments were drafted by a Rules Task Force convened by the Human Services Advisory Council. Its report was submitted as Appendix A to the Statement of Need and Reasonableness.

Definition of Human Services Occupations - 7 MCAR § 1.536 B.13.

9. The Department states that a definition is needed to assist the Commissioner and the public in accurately identifying which occupations provide human services. The four basic areas of economic security, health, knowledge and skills, and social functioning were determined by reference to an executive order, statutory language and a national study. No specific criticism was addressed to this amendment. It has been shown to be needed and reasonable. As a matter of drafting the word "or" might be added at the end of 13a. and b.

Factors for Determining the Necessity of Regulation - 7 MCAR § 1.536 D.

10. Section 1.536 D.1. elaborates upon the factor of when an unregulated occupation may harm or endanger the health, safety, and welfare of citizens by first defining harm and then indicating when potential for harm may be either recognizable or remote. The Department states that independent judgment is one characteristic which may greatly increase the potential for harm.

The Minnesota State Employees Union, Council No. 6 ("Council 6") commented that because the rule lists types of evidence (e.g., expert testimony) along with general descriptions of group functions (e.g., dangerous nature of devices or substances) the rule may be interpreted to mean that potential for harm is recognizable simply because a certain type of evidence is submitted. Council 6 also suggested that the rule place a burden of proof upon the applicant and establish a standard of proof. (Ex. B) The Department replied that a decision regarding the potential for harm is dependent upon the existence of evidence which supports that decision. The Department also stated that a burden of proof would be inappropriate in a non-adversary review process. (Ex. 8)

The Minnesota Association of Optometrists and Opticians (MAOO) addressed its comments to the proposed definition of harm at 7 MCAR § 1.536 D.1.a. They do not believe that a detailed and artificial definition of the term is necessary and suggest that such a definition cannot anticipate all future problems. (Ex. D) The Department stated that in order to amplify the factor considered here the question of what is meant by harm or endangerment must be answered. (Ex. 7, p. 8)

It is concluded that the subsection has been shown to be needed and reasonable. The Department should, however, seriously consider dividing D.1.b. into two sections, one to indicate types of acceptable evidence and the other to list characteristics of applicant groups. Although the subsection as written may not be so vague as to amount to a violation of due process, it would be greatly clarified by the suggested redrafting.

11. 7 MCAR § 1.536 D.2. sets out the items to be considered in regard to the factor of specialized skill or training. Council 6 suggested that the subsection might conflict with the federal Uniform Guidelines on Employee Selection Procedures which require selection procedures to be validated so as to avoid discrimination. Council 6 believes that the rule should require applicant groups to produce reliable studies to show that skill and training are necessary to their function. (Ex. B) The Department replied that the proposed subsection does not relate to the establishment of minimum selection

criteria to be used by employers but only to determining whether an occupation should be regulated. (Ex. 8, p. 2)

The subsection is needed and reasonable as proposed. The Department may consider the comments made by Council 6.

12. 7 MCAR § 1.536 D.3. lists the items to be considered in regard to the factor of whether citizens are protected by means other than state regulation. No comments were specifically addressed to this subsection. The Department has demonstrated the need and reasonableness in support of the subsection.

13. 7 MCAR § 1.536 D.4. states that the items mentioned in the prior subsections are "non-limiting guidelines". It is also specifically provided that additional elements may be considered provided that they are identified during the review and evaluation process and addressed in the Commissioner's written decision. This section, together with the "at a minimum" language in Section 1.536 D.1. and 3., the "may be" language in Section 1.536 D.1.b. and c., and the "but not be limited to" language of Section 1.536 D.3., raises the question of whether or not structuring the rules in this may place so much discretion in the Department so as to amount to a violation of due process. Simply put, if a rule allows the administrator to rely on criteria not stated in the rule, what is to prevent completely arbitrary action on his part toward a person or group governed by the rule? The Department argues that such a procedure is permissible in a legislative as opposed to a quasi-judicial procedure and relies upon City of New Brighton v. Metropolitan Council, 306 Minn. 425, 237 N.W.2d 620, 625 (1975) for the proposition that it is the type of decision to be made that determines the appropriate procedure.

While it is true that the decision-making process here is essentially legislative, opposition to regulation can be expected which would create an adversary atmosphere. This would presumably be more likely where the Commissioner initiated an investigation to determine whether regulation would be appropriate. (See, 7 MCAR § 1.537 B.) It must be kept in mind, however, that the outcome of this procedure is not disciplinary action against an individual which might necessitate stricter due process safeguards, but a legislative decision as to whether or not to regulate an occupational group. In this situation, administrative flexibility is a necessary concomitant of the legislative function. The provision in the rule that any additional elements be identified and addressed is an important safeguard on any potential abuse. One more step should be taken, however. The rule should provide that any additional elements to be considered shall be identified in the notification of the public forum, and earlier if possible. (See, 7 MCAR § 1.536 B.3.) This would assure that interested persons would have an opportunity to address the additional criteria during the review and evaluation process. As the rule is written, the additional elements might be identified as late as Council final report or even the Commissioner's written report itself. See, Exhibit A, p. 3-4 for an example of the need to identify criterion early to permit an adequate response.

One further matter of legality bears discussion. The use of the word "guidelines" in the subsection seems to imply that none of the proposed rules are intended to have the force of law as contemplated by Minn. Stat. § 15.0413

(1978) or to bind the agency to follow the rules as Minnesota case law has traditionally required. (See, State v. Johnson, 65 N.W.2d 668, 673 (1954)) A recent decision of our Supreme Court, Minnesota-Dakotas Retail Hardware Ass'n. v. State, 279 N.W.2d 360 (Minn. 1979) states that interpretive rules ("mere statements of agency policy") are to be promulgated pursuant to the APA, but will not have the force and effect of law. The Department should clarify what it believes is the status of these rules. If they are intended to have the force of law, it may be appropriate to delete the word "guidelines" and to replace the word "may" with the word "shall" in Section 1.536 D.1.b. and c.

See F. of F page 4 not changed

14. The Minnesota State Pharmaceutical Association and the Minnesota Optometric Association expressed general support for the proposed amendments. (Exs. C, E) The Physical Assistants Applicants Group supported a definition of the statutory factors. (Ex. A)

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

CONCLUSIONS

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

2. That the Department of Health has statutory authority to promulgate the proposed rule amendments.

3. That the Department of Health has, except as noted at Finding of Fact No. 13, fulfilled all relevant, substantive and procedural requirements of law or rule.

4. That the Department of Health has demonstrated the need for and the reasonableness of the proposed rule amendments by an affirmative presentation of facts in the record.

5. That the finding of need and reasonableness in regard to any particular rule amendment should not preclude or discourage the Department from modifying the language based upon a further examination of the public comments, provided that no substantial change is made, and provided that the rule finally adopted is based upon facts appearing in the record.

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

RECOMMENDATION

It is recommended that the proposed rule amendments be adopted with attention to the Findings of Fact set out herein.

Dated: January 15, 1980.

GEORGE A. BECK
State Hearing Examiner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of the Proposed Amendments to 7 MCAR §§ 1.536 to 1.540, the Rules Governing the Procedures for Determining Regulation of Human Services Occupations

ORDER ADOPTING AMENDMENTS TO RULES

The above-entitled matter came on for hearing before George A. Beck, Hearing Examiner from the Office of Hearing Examiners, on the 30th day of November, 1979, at 9:30 AM in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, after proper notice required by Minn. Stat. § 15.0412 (1978) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose, notice was also served upon other persons, associations and groups of which the Commissioner of Health was aware of as possibly having an interest in the above-captioned rules, and following timely publication of the proposed rule amendments and Notice of Hearing in the State Register.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard and considered all of the testimony and evidence adduced and upon the records, files and proceedings herein, having considered the applicable statutory standards or criteria, having confirmed the need for and reasonableness of the above-captioned rules, and based upon the Findings and Conclusions,

NOW, THEREFORE, IT IS ORDERED that these rule amendments to 7 MCAR §§ 1.536 to 1.540, the Rules Governing the Procedures for Determining Regulation of Human Services Occupations, are adopted this 31 day of March, 1980, pursuant to authority vested in me by Minn. Stat. §§ 15.0412, subd. 3, and 214.13 (1978).

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

George R. Petterson MD

GEORGE R. PETTERSEN, MD
Commissioner

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

Office Memorandum

TO : Jerry Anderson
Administration Division

DATE: April 29, 1980
Hand-delivered 5/2/80

FROM : Richard A. Wexler
Assistant Attorney General

PHONE: 341-7272

SUBJECT: Amendments to Rules of the Department of Health Relating to Procedures for Determining Regulation of Human Services Occupations

Attached are the above subject rules plus all of the supporting documents required by the Administrative Procedure Act, the Rules of the Office of Hearing Examiners, and the Rules of the Attorney General Relating to Rulemaking which are submitted to you for approval as to form and legality pursuant to Minn. Stat. § 15.0411, subd. 4. The specific documents attached are listed below. In each case three copies are enclosed unless a different number is indicated.

1. Rules as Adopted (five copies).
2. Rules as Proposed.
3. Statement of Number of Persons Expected to Attend and Length of Hearing.
4. Order for Hearing.
5. Notice of Hearing.
6. Affidavit of Mailing with Affidavit of Receipt of the Secretary of State's List and copy of the list attached as an exhibit.
7. Statement of Need and Reasonableness.
8. Notice of Intent to Solicit Outside Opinion.
9. Report of Hearing Examiner.
10. Findings and Conclusions (of the Commissioner).
11. Order Adopting Rules.
12. Statement of Compliance With Manual of Rulemaking Procedures.

13. Report of Chief Hearing Examiner.

14. Exhibits and other items submitted at the hearing or prior to the close of the record (one copy).

A transcript of the hearing was not prepared. Neither do I or the Health Department have the tapes for the hearing. I presume that they have been maintained by the Hearing Examiner's office.

The basic statutory authority for these rule amendments is contained in Minn. Stat. §§ 15.0412, subd. 3, and 214.13, subd. 1 (1978). The latter section directs the Commissioner of Health to promulgate rules for establishing procedures for the identification of human services occupations not now credentialed by the state and for determining whether or not they should be regulated in some mode. The procedural rules were promulgate about two years ago. What is now before you are amendments to those rules which basically amplify what was already there. While, as with just about any set of rules, some questions and comments were raised during the rulemaking process, I do not believe that there are really any significant issues raised by this set of rules.

Notice of submission of these rules to your office was sent by the Department of Health to those who had requested it at least no later than the day this memorandum and the attached documents were sent to you.

If you have any questions, please feel free to call me.

RAW:sd

Attachments

cc: Connie Larson
Larry Woods

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of the Proposed Amendments to 7 MCAR §§ 1.536 to 1.540, the Rules Governing the Procedures for Determining Regulation of Human Services Occupations

FINDINGS AND CONCLUSIONS

The above-entitled matter came on for hearing before George A. Beck, Hearing Examiner from the Office of Hearing Examiners, on the 30th day of November, 1979, at 9:30 AM, in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, after proper notice required by Minn. Stat. § 15.0412 (1978) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose, notice was also served upon other persons, associations and groups of which the Commissioner of Health was aware of as possibly having an interest in the above-captioned rules, and following publication of the proposed rule amendments and Notice of Hearing in the State Register.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard and considered all of the testimony and evidence adduced and upon the records, files and proceedings herein, and having considered the applicable statutory standards or criteria, the Commissioner makes and enters the following findings:

1. The Report of the Hearing Examiner (hereinafter "Report") dated January 15, 1980, paragraphs 1 to 14 is hereby adopted and made a part hereof with the following exceptions:

a. The last sentence of paragraph 9 is deleted. Given that the word "or" appears at the end of 7 MCAR § 1.536B.12.c., it need not be repeated after 13.a. and b.

b. Paragraph 13 is deleted in its entirety with the reasons therefor explained in paragraphs 2 and 3 herein.

2. The amendment contained in 7 MCAR § 1.536D.4. recognizes that the function of determining whether or not an occupational group should be regulated is legislative and not judicial in nature. Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226 (1908); City of New Brighton v. Metropolitan Council, 306 Minn. 425, 237 N.W.2d 620 (1975). When an administrative agency performs a legislative function, it may act on a wide range of factors and may even look beyond criterial it has developed on which to make its decisions. In fact, the factors relied upon to make its legislative decisions need not even be promulgated as rules. City of New Brighton v. Metropolitan Council, supra, St. Paul Area Chamber of Commerce v. Minnesota Public Service Commission, 253 Minn. 822, 251 N.W. 350, 354 (1977). Accord, Northwestern Bell Telephone Co. v. State, 299 Minn. 1, 216 N.W.2d 641 (1974); Anderson v. Commissioner of Highways, 267 Minn. 308, 126 N.W.2d 778 (1964); Gnecchi v. State, 58 Wash.2d 467, 364 P.2d 225 (1961). It is significant to note that this conclusion holds regardless of whether or not there is opposition to a proposal thus creating an adversary atmosphere. The purest example of legislative decisions are those made by the Legislature. Controversy and adversarily atmospheres surround many of those decisions yet they are legislative decisions nevertheless. Thus, it is the nature of the decision, and not the amount of controversy (as suggested by the Hearing Examiner) surrounding the issue being considered, that marks the decision as either legislative or judicial.

Cases not of "on point"

Based upon the cases cited above, the Commissioner would not have had to amplify the statutory factors contained in Minn. Stat. § 214.001, subd. 2 as was done in 7 MCAR § 1.536D.1. to 3. The Commissioner, however, decided that to promulgate presently known items that would be considered as coming under the statutory factors would be useful and helpful to all parties concerned in a review of an occupational group. It was also recognized that it would be almost impossible to

identify every conceivable item that might possibly be raised under the statutory factors. In fact, it was this very concern that lead the Minnesota Association of Optometrists and Opticians to object to one of the proposals because it could not "anticipate all problems that may arise in the future." Pub. Ex. No. D.

It is for this reason that 7 MCAR 1.536D.4. is being adopted. It recognizes that in order to fully review some occupational group in the future that some item not listed in 7 MCAR § 1.536D.1. to 3. yet nevertheless relevant under Minn. Stat. §§ 214.001, subd. 2 might have to be considered. Given that the decision is legislative in nature, to consider such additional items would be perfectly proper. Rule 7 MCAR § 1.536D.4. simply informs the public that additional items which are relevant will be considered. It goes on to state that if additional items are brought into the decision making process that they will be identified during the course of review and evaluation.

The Hearing Examiner expressed concern that the rule does not specify the point at which the additional items might be identified and suggested that it might happen so late that interested persons would be prevented from commenting on them. (Report at paragraph 13) This result was not at all intended by the Commissioner. The Hearing Examiner suggested that the rule be modified so as to require identification early in the process. Presumably, if not then identified, they could not be raised and considered later on in the process. Such a result is undersirable when it is in the public interest to have as comprehensive evaluation of an occupational group as possible.

In order to clarify the provision to assure that it reflects the Commissioner's initial intention and thus also addresses the Hearing Examiner's concern, the rule has been modified slightly to read as follows:

> 7 MCAR § 1.536D.1.-3. shall be considered nonlimiting guidelines to be used in applying the statutory factors contained in Minn. Stat. § 214.001, subd. 2. Additional elements may be considered if necessary to permit a thorough review and evaluation of an applicant group questionnaire in

light of the statutory factors; provided however, that the additional elements shall be identified during the course of the review and evaluation process, all interested persons given the opportunity to comment thereon, and shall be specifically addressed in the Commissioner's written decision required by 7 MCAR § 1.538B.6.

(New language underlined.) Thus, this would permit identification of new items as late as the review by the Commissioner at which point the matter would be remanded for further consideration and comment by interested persons. The change more clearly spells out what was the intent of the rule when proposed.

3. The Hearing Examiner also questioned whether 7 MCAR § 1.536D.1. to 4. was intended to have the force and effect of law thus binding the agency to follow the rules or whether they were intended to be merely "interpretive" rules. The question was raised due to use of words like "guidelines" and "may."

These are substantive rules intended to have the force and effect of law. Words such as "criteria" or "standards" could have been used instead of "guidelines" but the later seemed more appropriate in that the rule was intended to be merely an amplification of the statutory review factors contained in Minn. Stat. § 214.001, subd. 2. Furthermore, noting that the Commissioner "may" use the guidelines is intended to express that not every element contained in 7 MCAR § 1.536D.1 to 3. will apply to every occupational group. Thus, the Commissioner will evaluate the need for regulation of an occupational group upon only those elements contained in 7 MCAR § 1.536D.1 to 3. which are relevant and applicable.

In addition, to change the word "may" to "shall" in 7 MCAR § 1.536D.1.b., c., and d. as suggested by the Hearing Examiner would mean that the Commissioner would have to make the finding indicated by the mere fact one of the items in those rule subsections was demonstrated. Thus, for example, the Commissioner would have to find that the potential for harm was recognizable simply because an expert testified in that vein. Such a result is not intended because as happens frequently in cases such as for malpractice the finder may find the expert testimony unconvincing. Thus the word "may" is appropriate as the rule sections in question only list the ways harm or lack thereof may be indicated.

4. In paragraph 10 of the Report, the Hearing Examiner noted that the Department should consider dividing 7 MCAR § 1.536D.1.b. into two sections. The suggestion has been adopted and the clarifying change made. The content of the rule remains unchanged.

5. Pursuant to Minn. Stat. § 15.0412, subd. 4, the Report has been made available for review to all affected persons upon request for at least five working days.

CONCLUSIONS

1. The Conclusions contained in the Report are hereby adopted and made a part hereof with the following exceptions:

a. Conclusion number 3 of the Report is amended to read: "That the Department of Health has fulfilled all relevant, substantive and procedural requirements of law or rule."

b. Conclusion number 4 of the Report is amended to read: "That the Department of Health has demonstrated the need for and the reasonableness of the rule amendments by an affirmative presentation of facts in the record. The Statement of Need and Reasonableness and the letter of December 18, 1979, from the Department to the Hearing Examiner are hereby adopted and made a part hereof as demonstrating the justification for the rule amendments as adopted."

Dated: March 31, 1980

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

George R. Pettersen MD

GEORGE R. PETTERSEN, MD
Commissioner

HE No. HLTH-80-014-GB

STATE OF MINNESOTA

OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Amendments to 7 MCAR §§ 1.536 to 1.540, the Rules Governing the Procedures for Determining Regulation of Human Services Occupations

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on November 30, 1979, before George A. Beck, 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 Commissioner of Health (hereinafter "Commissioner") on January 15, 1980; and

WHEREAS, the Commissioner has now determined to adopt the rule amendments pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Commissioner has submitted the rule amendments to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rule amendments are not substantially different from those proposed at the public hearing and that the Commissioner has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Commissioner has the responsibility of submitting the complete hearing record and the rule amendments as adopted by himself to the Attorney General and to publish them in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 17th day of April, 1980.

DUANE R. HARVES
Chief Hearing Examiner

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Assistant Attorney General Richard A. Wexler, do hereby declare that I have examined the proposed rule amendments relating to 7 MCAR §§ 1.536 to 1.540, the Rules Governing the Procedure for Determining Regulation of Human Services Occupations, and all related documents and that, based on such examinations and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has without exception been followed.

Dated: ~~March~~ April 25, 1980

RICHARD A. WEXLER
Assistant Attorney General

Dept. Exhibit No. 1
File No. H/Th-80-014-C

Department of Natural Resources Minerals Division

Notice of Request for Proposals for an Ecological and Floristic Study of the Peatland Vegetation of Northern Minnesota

Estimated cost: $33,000

Contact person: Barbara Coffin, 296-4807

Submission deadline: May 17, 1978

William Nye
Commissioner

Minnesota Teachers Retirement Association

Notice of Availability of Actuarial Consultant Contract for the Period Beginning July 1, 1978 and Ending June 30, 1980

Contact Person: Harvey W. Schmidt, Minnesota Teachers Retirement Assn., 302 Capitol Square Building, St. Paul, Minnesota 55101, telephone (612) 296-2409.

Description: Provide actuarial consultant services to Association; prepare and submit actuarial valuations, actuarial surveys and reports as required by Minn. Stat. § 356.215; assist in the preparation of the certification of funds required from the state; consult with the Director of the Board and staff on any matters of actuarial nature; make any necessary special statistical studies in connection with proposed legislation; and perform any other services of an actuarial nature which the Board may deem desirable.

Estimated cost: Approximately $17,500.00.

Final submission date: May 29, 1978.

Board of Cosmetology

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Continuing Education of Senior Instructors and the Practice of Cosmetology in Nursing Homes

Notice is hereby given that the Minnesota State Board of Cosmetology is seeking information or opinions from sources outside the Board in preparing to propose the adoption of rules governing the continuing education of senior instructors and the practice of cosmetology in nursing homes and other possible amendments to the cosmetology rules. Any interested persons may submit information on these subjects in writing or orally to:

Cynthia Allen
Minnesota State Board of Cosmetology
500 Metro Square Building
St. Paul, Minnesota 55101
(612) 296-9405

Any written material received by the Board shall become a part of the hearing record in the event rules governing these subjects are promulgated.

May 2, 1978

Department of Health Health Manpower Division

Notice of Intent to Solicit Outside Opinion Concerning Procedures for Determining Regulations of Human Services Occupations; Hospital Administrator Registration Program; Registration of Various Human Services Occupations; and Obtaining of Information from Licensed or Registered Health Manpower

Notice is hereby given, pursuant to the provisions of Minn. Stat. § 15.0412 subd. 6 (Supp. 1977) that the Minnesota Commissioner of Health will propose the adoption of new rules and the amendment and revision of existing rules as indicated below.

All interested parties desiring to submit data, views, opinions, comments or other related information concerning the proposed adoption, amendment or revision of the rules noted below should write or telephone the persons indicated below at the Minnesota Department of Health, Division of Health Facilities, 717 Delaware Street S.E., Minneapolis, Minnesota 55440. Evidence submitted for consideration should be pertinent to the matter at hand. Written material

received by the Department of Health will become part of the hearing record.

1. Proposed amendments to the Rules Regarding Procedures for Determining Regulation of Human Services Occupations, 7 MCAR §§ 1.536 to 1.538 (Minn. Rules MHD 536-538), to: (a) define "human services occupations"; (b) make more explicit or define the factors specified in Minn. Stat. § 214.001 subd. 2 (1976) to be used in evaluating whether a human services occupational group should be regulated; and (c) establish criteria for choosing a national standardized test for each occupational group registered. Contact Colleen Coghlan; telephone (612) 296-5393.

2. Proposed amendments to and general revision of the rules relating to the Hospital Administrators Registration Program, 7 MCAR §§ 1.036-1.038 (Minn. Rules MHD 36-38). Contact Collin Eid; telephone (612) 296-5393.

3. Proposed new rules establishing a registration form of regulation, including but not limited to the scope of authorized practice, supervision required, continuing education, career progression, disciplinary procedures, and the development of administration and grading of examinations to verify the qualifications of applicants, pursuant to Minn. Stat. §§ 214.001, 214.13, and 214.14 (1976), for the following human service occupational groups: (a) chemical dependency specialists; (b) speech pathologists; (c) audiologists; (d) emergency medical technicians; (e) environmental health specialists; and (f) contact lens technicians. Contact Colleen Coghlan; telephone (612) 296-5393.

4. Proposed new rules regarding the types of information to be collected and the forms to be used for the collection of data on individuals licensed or registered by the Commissioner or health-related licensing boards. The information is to be collected pursuant to Laws of 1978, ch. 759, for the purpose of making decisions pertaining to health manpower. Contact Mary Volk; telephone (612) 296-5393.

Any materials submitted will be reviewed and considered by the Department of Health during the preparation of the proposed rules. Notice of the public hearing on the proposed rules will be published in the *State Register* and given to all interested parties who have registered with the Secretary of State's Office in accordance with the provisions of the Administrative Procedure Act.

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

May 5, 1978

Warren R. Lawson, M.D.
Commissioner

Department of Public Welfare
Income Maintenance Division

Notice of Intent to Solicit Outside Opinion Concerning Proposed Amendment of DPW Rule 55, General Assistance

Notice is hereby given that the Minnesota Department of Public Welfare is considering proposed amendments to DPW Rule 55 (12 MCAR § 2.055), General Assistance. The General Assistance rule is designed to provide financial assistance and services to persons unable to provide for themselves, who have not refused suitable employment, and who are not otherwise provided for by Law; to strengthen and preserve the family unit; to aid those persons who can be helped to become self-supporting or to attain self-care; and to provide property tax relief by providing state financing for some welfare costs historically financed by county property tax levies.

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

Wally Goettl
Department of Public Welfare
Client Eligibility Unit
4th Floor, Centennial Office Building
St. Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-3340.

All statements of information and comment must be received by June 5, 1978. Any written material received by the Department shall become part of the hearing record.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to 7 MCAR §§ 1.536 to 1.540, the Rules Governing the Procedures for Determining Regulation of Human Services Occupations

STATEMENT OF NEED AND REASONABLENESS

The Minnesota Commissioner of Health (hereinafter "Commissioner"), pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), hereby affirmatively presents facts establishing the need for and reasonableness of the above captioned proposed amendments to 7 MCAR §§ 1.536 to 1.540, the Rules Governing the Procedures for Determining Regulation of Human Services Occupations. Words, terms, and phrases used herein which are defined in 7 MCAR 1.536 B. will have the same meaning as given in the rule unless the language or context clearly indicates that a different meaning is intended.

I

THE NEED FOR THE PROPOSED AMENDMENTS

On April 20, 1977, a hearing was held pursuant to the Administrative Procedure Act to consider proposed rules of the Department of Health specifying the procedures governing the process for determining which human services occupations should be regulated. (The rules, 7 MCAR §§ 1.536 to 1.540, went into effect on March 18, 1978.) At the rules hearing a number of persons criticized the rules for not defining "human services occupations" and for not clarifying or explaining in the rules the factors cited in Minn. Stat. § 214.001, subd. 2 and referenced in Minn. Stat. § 214.13 upon which regulatory decisions are to be based. The Commissioner's position was then and remains that neither of these objections was pertinent to the establishment of these original rules and that the requested additions were not legally necessary in order for the review process specified in

section 214.13 to operate. Notwithstanding this position, the Commissioner viewed the objections as representing public concerns and decided that they should be accommodated. Thus the basis for the need for the proposed amendments is the expressed concern of members of the public which was in essence a request that these changes be made.

II

THE DRAFTING OF THE PROPOSED AMENDMENTS

The Commissioner asked the Human Services Occupations Advisory Council to advise him in these matters. The Council subsequently convened a Rules Task Force of fourteen persons to consider the issues and to formulate recommendations. The "Report of the Rules Task Force" (hereinafter "Report") is attached hereto as Appendix A and made a part hereof. Although citation will be made to specific portions of the Report, it is submitted in its entirety as further support for the reasonableness of the proposed amendments.

The constituency of the Rules Task Force consisted of one representative each from the Department of Public Welfare, State Planning Agency, Department of Corrections, Office of Economic Security, Department of Education, Department of Health, Senate, and House, and six representatives from the Human Services Occupations Advisory Council.[1/] The membership of the Rules Task Force was designed to include representatives of three kinds of groups:

(1) State agencies which regulate or distribute money to persons or activities frequently included in the term "human services";

(2) The state legislature because it both passed the legislation from which the rules in question are derived and continues to amend this statute and act on other questions regarding regulation of persons; and

(3) The Human Services Occupations Advisory Council which has been and continues to be responsible for advising the Commissioner on matters related to the regulation of persons in human services occupations.

In addition, this roster of representatives is consistent with the agencies or organizations included in the Office of Human Services[2/] and implied in the services listed in Minn. Stat. § 402.02, subd. 2, which establishes human services regional boards.

1/ For a list of the names of the members of the Rules Task Force, see the Report at p. 8.

2/ The Office of Human Services was established by Executive Order No. 114, signed by Governor Wendell R. Anderson on July 9, 1975.

The Rules Task Force met seven times from October 4, 1977, through January 16, 1978. All meetings were announced in Health's Happenings, the Minnesota Department of Health's widely distributed monthly list of announcements. One of the meetings held on January 10, 1978, was a public forum designed specifically to encourage comment from any interested persons not specifically represented on the Rules Task Force. However, all meetings of the Rules Task Force were open to the public.

The National Association of Social Workers, Minnesota Chapter, and the Minnesota State Medical Association submitted testimony and proposed amendments.[3/] Members of the staff and the Rules Task Force also proposed some amendments. The recommendations finally developed by the Rules Task Force were derived primarily from the motions included in the Report and from the proposed amendments. All of this activity is detailed in the Report. Furthermore, the Department published in the State Register in compliance with Minn. Stat. § 15.0412, subd. 6, a Notice of Intent to Solicit Outside Opinion concerning these proposed amendments. 2 S.R. 2033.

The recommendations of the Rules Task Force were forwarded to the Human Services Occupations Advisory Council and approved by that group without change on January 30, 1978. On February 8, 1978, the Commissioner of Health approved without change the Human Services Occupations Advisory Council recommendations. Following this extensive public deliberation of and concurrence with the proposed definition of human services occupations and clarification of the regulatory factors in Minn. Stat. § 214.001, subd. 2, the Commissioner now proposes to adopt them[4/] as rules amending 7 MCAR § 1.536.

3/ Report at pp. 48 to 55.

4/ The recommendations of the Rules Task Force appear in slightly different form in the proposed amendments than as they were presented in the Report. The changes are not substantive in any respect but are merely editorial in nature dictated by the need to mold the amendments to fit into the existing rules. In addition, several changes of a non-substantive nature which were not considered by the Rules Task Force are also being proposed. Most of these changes are of a "housekeeping" variety.

III

STATUTORY AUTHORITY

The statutory authority for the proposed amendments is provided in Minn. Stat. § 214.13, subd. 1. This provision specifically directs the Commissioner to establish the procedures to be used in the process of identifying human services occupations not now credentialed by the state and to recommend what, if any, regulatory modes would be appropriate. The procedures and recommendations are to be consistent with the legislative policy expressed in Minn. Stat. § 214.001. In addition, Minn. Stat. § 15.0412, subd. 3, directs agencies to promulgate rules specifying the formal and informal procedures related to the administration of official agency duties which directly affect the rights of or procedures available to the public.

The proposed definition of human services occupations is not per se a procedure. Its intent, however, is to help clarify the existing procedural rules as well as the program to which the procedural rules apply. It is a well established legal principle that the Department of Health as an administrative agency may exercise not only those powers expressly delegated to it by the legislature but also those which arise by fair implication from the express powers. Wisconsin's Environmental Decade, Inc. v. Public Service Commission of Wisconsin, 69 Wis.2d 1, 230 N.W.2d 243, 251 (1975); Welsand v. State of Minnesota Railroad and Warehouse Commission, 251 Minn. 504, 88 N.W.2d 834 (1958). There can be no doubt that the power to adopt procedural rules includes the right to clarify those rules by adding definitions.

Welsand is a case in point. The Railroad and Warehouse Commission had been granted general rule making authority necessary to regulate irregular route common carriers. The rule being challenged was the definition of the term "irregular route common carriers." The court, in finding that there was statutory authority for the rule, held that the Commission could adopt by reasonable implication those definitions which were reasonably necessary to assist the program of regulation.

The proposals to make more explicit the factors specified in Minn. Stat. § 214.001, subd. 2, pose a related but slightly different problem. It is recognized that the Commissioner may not develop criteria on which to base his

regulatory decisions which modify or exceed the factors specified in section 214.001. Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588, 594 (1971). However, to more explicitly identify the various aspects which will be considered in the evaluation of each of the three factors contained in section 214.001 is not to modify or expand upon those factors but is to, in a sense, define them. Thus the principle authorizing the promulgation of rules as laid out in Welsand is equally applicable here, that is, that an agency may adopt by reasonable implication those definitions which are reasonably necessary to assist the program of regulation.

IV

REASONABLENESS OF PROPOSED AMENDMENTS

1. Proposed Amendments to 7 MCAR § 1.536 A. Two amendments are proposed for this rule, both of an editorial nature.

a. The (1976) citation to the reference to Minnesota Statutes is deleted as unnecessary.

b. The last sentence of the rule is deleted because its substance has been incorporated into the lead-in sentence of section 1.536 D. In essence, the sentence has been simply shifted within the rules.

2. Proposed Amendments to 7 MCAR §§ 1.536 B.2., 1.536 B.13.(proposed to be redesignated as § 1.536 B. 14.), 1.537 A.3., and 1.538 B.6.c. In these four sections, the words "credentialing" or "credentialed" are changed to "regulatory" or "regulated." When the rules were first presented for hearing in 1977, they generally referred to the credentialing of human services occupations. Several people suggested and the hearing examiner recommended that references to credentialing be changed to regulating. The Department intended to change all such references but inadvertently missed the places where the change is now proposed. Thus, these modifications are to conform these provisions with the rest of the rules.

3. Proposed Amendment to 7 MCAR § 1.536 B. by adding subsection 13 and renumbering all subsequent subsections as necessary. This addition serves the purpose of defining the term "human services." The term human services occupations can be defined extremely broadly, such as services performed for humans, and accordingly could encompass just about any occupation. However, it seems clear, although the legislature did not define the term, that given the context of Minn. Stat. §§ 214.001, 214.13 and 214.14, that at a minimum the legislature was concerned about those occupations engaged in assisting persons in basic necessitites of living or in equipping persons with the necessary tools to improve their situation in life. For example, a gardener certainly provides useful services for humans but not in the sense just described. On the other hand, a doctor also provides useful services for humans, but, in addition, those services are essential for maintaining what society considers a basic necessity of life. Thus, it is in this general way that a limitation has been placed upon the definition of human services. This limitation is reasonable.

The remaining area of human services occupations is still quite broad and necessarily so. It must be kept in focus, however, that the purpose of the definition is merely to assist the Commissioner in determining which occupations provide human services and thus subject to the Commissioner's jurisdiction. The definition is not a tool to aid in the determination of whether an occupation, once it is determined to provide human services, should be regulated. The factors specified in Minn. Stat. § 214.001, subd. 2, as explained by proposed rule 7 MCAR § 1.536 D., are the tools the Commissioner is to use in answering that latter question.

Several sources give insight and guidance in deciding what basic areas may be reasonably considered within the broad definition of human services occupations. On July 9, 1975, then Governor Wendell Anderson signed Executive Order No. 114 which established the State Office of Human Services and specified its duties. One of its duties was to coordinate the services provided by the State's human services agencies. Placed within the list of those agencies were the Departments of Corrections, Health, Employment Services, Education, and Public Welfare. The State Office of Human Services was also directed to provide support for the Human Services Boards created pursuant to Minn. Stat. ch. 402. Those

boards were, inter alia, to "[d] evelop a plan for the delivery of human services . . . [to] include correction services, public health services, public assistance, mental retardation services, social services, mental health services, and others of similar classification . . ." Minn. Stat. § 402.02, subd. 2(d).

A similar grouping of human services areas can be found in a report authored by Robert N. and Lee W. Galloway, Evaluation of Human Services Taxonomies Project, Vol. 1: The State of the Art, National Assembly of National Voluntary Health and Welfare Organizations, Inc., New York, March 1978. The report was designed to provide a description and analysis of the state of the art in the development of human service definition and a classification. In a survey of 299 taxonomies, 216 of them were either direct applications of or modifications of the United Way of America Service Identification System (VWASIS) or indicated that UWASIS was the basic model for the conceptual scheme utilized. As the Report explains, UWASIS was one of the primary sources which the Rules Task Force examined in developing the proposed definition.

Based upon the foregoing, it is amply clear that the four basic areas of economic security, health, knowledge and skills, and social functioning included within the proposed definition of human services are a reasonable delineation of the areas generally accepted as areas covered by human services occupations.

The only other item that needs to be addressed with respect to the definition of human services occupations is the limitation that the occupation be performed "customarily for remuneration." It appears that the kinds of activities considered appropriate for volunteers vary from organization to organization. In addition, in many cases those functions requiring someone with professional qualifications are always reserved for funded personnel. Consequently, it is appropriate to limit the definition as indicated.[5/]

5/ The Rules Task Force also recommended that the definition include the limiting phrase, "which has demonstrable potential for harm if not performed with reasonable competency." Upon further reflection, the phrase was deleted from the proposed rule since it is not a true basis for determining whether or not an occupation is a human service occupation but is instead a basis for determining whether or not a human services occupation should be regulated.

4. Proposed Amendment to 7 MCAR § 1.536 B.16. (proposed to be redesignated as § 1.536 B.17). The proposed change is the editorial deletion of the words "a group of" and "practices and roles in the delivery of human services" because they are redundant within the context of this definition and the definition of the word "function." This change also necessitates making a grammatical change of "that" to "who."

5. Proposed Amendment to 7 MCAR § 1.536 by adding subsection D. The lead-in sentence to 7 MCAR § 1.536 D. is merely a restatement of and represents a transfer of the last sentence of 7 MCAR § 1.536 A. This is an appropriate introductory sentence to the subsection as it informs the reader that the regulatory decisions as to whether or not an occupational group should be regulated in some way will be based upon the statutory factors contained in Minn. Stat. § 214.001, subd. 2.

a. Proposed 7 MCAR § 1.536 D.1. This proposed amendment amplifies the factor specified in Minn. Stat. § 214.001, subd. 2(a), to wit:

> Whether the unregulated practice of an occupation may harm or endanger the health, safety, and welfare of citizens of the state and whether the potential for harm is recognizable and not remote.

The factor raises three questions. Those questions are: (1) what is meant by harm or endangerment; (2) how is that harm identified or recognized; and (3) when is harm remote.

Since in defining human services occupations the types of areas served were listed as economic, health, educational, and social, it is only appropriate that harm be defined in terms of impairment resulting to a person in those same areas. Obvioulsy, in order to determine whether or not there is potential for harm, there must be evidence to support the contention. Consequently, the proposed rule specifies the sources of evidence or aspects about occupations which would indicate that there is a potential for harm.

One characteristic of an occupation which greatly increases the potential for harm is that of independent judgment. The major activities requiring this judgment are diagnosing or identifying the problem, developing a course of action to rectify the problem and implementing that plan. Some practitioners who collect the information or perform the tests which lead to a diagnosis or who carry out the treatment prescribed also may make some independent judgments, but these activities are typically dependent upon a prescription, authorization, written work order or study order from a licensed practitioner. The results of these other activities are also typically evaluated by the licensed practitioner who ordered them. This issue leads into the topics of supervision, control, delegation, and authority. The question of deciding what functions are performed independently is complex but important to acknowledge as significant.

Finally, the rule recognizes that although there may be evidence of some harm that it may not be of a significant nature. The rule thus specifies three indicators when harm may be considered remote. Those indicators of when harm is remote are (1) when it occurs infrequently or rarely, (2) when it is of minor consequence, or (3) when the effects are removed from the immediate impact of the service on the client. These indicators recognize that there can be a difference in degree, frequency, and immediacy in the type of harm a person can suffer. This basis as a grounds for distinguishing between types of harm when determining whether or not to regulate an occupation is reasonable.

b. Proposed 7 MCAR § 1.536 D.2. This proposed amendment amplifies the factor specified in Minn. Stat. § 214.001, subd. 2(b), to wit:

> Whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability.

In clarifying this factor, four characteristics of functions performed by human services occupation pratitioners which indicate a need for specialized skill or training have been identified.

In proceeding in this manner, it was recognized that the existence of specialized training programs indicate that employers, practitioners and/or perhaps the public were aware of the need for these practitioners to have specialized training, but the existence of training programs did not in itself indicate why the functions required this training. Therefore, the characteristics of functions which would require the specialized skill or training are emphasized in the rule rather than the types of evidence which would indicate that the specialized training existed. The characteristics are each explained below and relate to 7 MCAR § 1.536 D.2.a. through d. respectively.

Complexity of Functions. A function is what a practitioner does. Practitioners typically perform more than one function and these functions may be complex in themselves or complex because of the relationship between or among them. Clearly, understanding a complex function or a complex relationship among functions requires specialized skill or training.

Relationship of Functions. A function complex enough to require specialized skill or training is made up of sub-units, parts or components. For understanding the function, the practitioner must understand in detail how these specific parts relate to each other and to the function as a whole.

Furthermore, a practitioner performs a function when he/she thinks the problem warrants it. To know when to perform a specific function, the practitioner must understand in detail how it relates to the problem, symptom or condition at hand.

Inadequate Performance Without Training. Sometimes the most obvious way to indicate that a function requires specialized skill or training is to think about what would happen if an unskilled or untrained person tried to perform certain of these functions. Clearly, if a greater incidence or degree of harm is likely, then the need for the specialized skill or training is apparent.

Changing Knowledge. The performance of some functions requires that the practitioner keep abreast of changing technologies and advances in areas of skilled knowledge. Not only may specialized skill or training be required to enter the occupation, but continued training is then necessary for the practitioner to maintain his/her specialized skills.

c. Proposed 7 MCAR § 1.536 D.3. This proposed amendment amplifies the factor specified in Minn. Sat. § 214.001, subd. 2(c), to wit:

> Whether the citizens of this state are or may be effectively protected by other means.

The proposed rule approaches this factor by enumerating the types of regulation or control that also exist and might protect the public. However, identifying existing forms of regulation is only part of the task of implementing this factor. The forms of existing regulation must be evaluated and assessed as to their effectiveness. Thus, the proposed rule proceeds beyond a mere listing of forms of regulation and specifies guidelines or standards by which the various modes of regulation may be judged with respect to how well they protect the public. This approach to clarifying Minn. Stat. § 214.001, subd. 2(c) is reasonable.

d. Proposed 7 MCAR § 1.536 D.4.[6/] This proposed amendment places 7 MCAR §§ 1.536 D.1. to 3. in their proper context. It must be recognized the process involved in determining whether a

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6/ Proposed 7 MCAR § 1.536 D.4. was not suggested or considered by the Rules Task Force. In a sense, it would not have been appropriate to the Task Force to have made such a suggestion as it would have been beyond the scope of its charge. Nevertheless, as the justification makes clear, this addition is a necessary complement to the provisions of 7 MCAR §§ 1.536 D.1. to 3.

human services occupational group should be regulated is a quasi-legislative one as opposed to a quasi-judicial or regulatory process.[7/] The difference is significant for the legal duties, responsibilities and manner of handling the matter vary depending on which type of proceeding is involved.

The Minnesota Supreme Court has recognized that different rules apply to administrative agencies depending on the nature of the decision. Much stricter procedures must be followed by an agency when a quasi-judicial or regulatory decision is involved than when the agency renders a legislative or discretionary decision.

In City of New Brighton v. Metropolitan Council, 306 Minn. 425, 237 N.W.2d 620 (1975), the Metropolitan Council (hereinafter "Council") was given statutory authority to purchase all sewer lines "needed" to implement its comprehensive plan. The Council did not purchase a portion of New Brighton's sewer line which resulted in the court challenge. Although the Council had developed guidelines to help it determine which lines were needed, the guidelines had not been promulgated as rules. In addition, the Council in making its determination considered factors not included in the guidelines.

7/ The United States Supreme Court has set forth the factors to guide in determining whether an activity engaged in by an administrative agency is quasi-judicial or legislative. In explaining the difference, the Court stated:

> . . . A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. . .

Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226, 29 S.Ct. 67, 69 (1908). Clearly the process by which a determination is reached as to whether a human services occupation should be regulated is legislative for it sets a rule for the future and does not "enforce liabilities as they stand on present or past facts and under laws supposed already to exist."

In upholding the action of the Council, the Supreme Court found that the Council's action was legislative in nature and stated:

> . . . It is the nature of the decision, not the promulgation of criteria, that determines the permissible ambit of a governing body's decision-making authority. . . . Because the statute allows the acquisition of only those sewer lines needed for the comprehensive metropolitan plan, it is fundamental that the Council must base its decision on a wide range of factors.

(Emphasis added.) City of New Brighton v. Metropolitan Council at 432, 237 N.W.2d at 625. Accord, Prentis v. Atlantic Coast Line Co., supra at note 7. This case is significant with respect to the instant rules since the Supreme Court not only did not criticize the statutory decision-making factor of "need" as being too vague but also recognized that an agency in a legislative decision-making setting is not limited to, but may even look beyond, the criteria it has developed to define the general statutory standard. Instead of objecting to the lack of standards, the Supreme Court examined the process, found it "thorough and reasonable," and ruled that the decision itself was not arbitrary or capricious. City of New Brighton v. Metropolitan Council at 433, 237 N.W.2d at 625.

In another area, that of rate-making, which has been long classified as a legislative function by the Minnesota Supreme Court, the Public Service Commission (hereinafter "PSC") must carry out the legislative mandate to establish "just and reasonable" rates which shall not be "unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of consumers." Minn. Stat. § 216B.03. This standard is no more precise than the factors contained in Minn. Stat. § 214.001. However, the Minnesota Supreme Court has expressly endorsed the practice of the PSC to exercise a wide range of discretion in applying the standard and, in rendering a decision, to consider various factors which not only have not been promulgated as rules but on which no substantial evidence has been presented at the hearing. St. Paul Area Chamber of Commerce v. Minnesota Public Service Commission,

253 Minn. 822, ___, 251 N.W.2d 350, 354 (1977). Accord, Northwestern Bell Telephone Co. v. State, 299 Minn. 1, 218 N.W.2d 811 (1974); Anderson v. Commissioner of Highways, 267 Minn. 308, 126 N.W.2d 778 (1964); Gnecchi v. State, 58 Wash.2d 467, 364 P.2d 225 (1961).

These cases represent an explicit recognition that certain decisions made by administrative agencies which are based upon social policy grounds can be made only in a more flexible factual and procedural setting. Professor Davis, one of the leading administrative law scholars, has discussed this aspect of administrative law, in drawing a distinction between agency reliance on legislative as opposed to adjudicative facts as follows:

> . . . Legislative facts are the facts which help the tribunal determine the content of law and of policy and help the tribunal to exercise its judgment or discretion in determining what course of action to take. Legislative facts are ordinarily general and do not concern the immediate parties. In the great mass of cases decided by courts and by agencies, the legislative element is either absent or unimportant or interstitial, because in most cases the applicable law and policy have been previously established. But whenever a tribunal engages in the creation of law or of policy, it may need to resort to legislative facts, whether or not those facts have been developed on the record.
>
> . . . [T]he present stage of development of social science unfortunately brings us no more than barely to the threshold of ability to solve our basic problems of law and policy through the use of a full-bodied factual technique. The result is an uneven mixture of a priori conjectures and partially informed guesses with occasional factual investigations of varying depth.

2 Davis, Administrative Law § 15.03.

The Legislature, which relies heavily on "legislative facts," identified that the task it assigned to the Commissioner with respect to developing policy for human services occupations involved a quasi-legislative process. Thus the Legislature, in furnishing statutory factors, drafted them broadly in explicit recognition of this fact. As explained above, the activity is clearly legislative in nature and thus logically requires and legally permits the exercise of discretion within the boundaries specified in Minn. Stat. § 214.001 (1978). Wide latitude within those policy standards without further delineation by rule has been expressly recognized and endorsed in the above-cited City of New Brighton and PSC cases by the Minnesota Supreme Court in situations of this nature.

The Commissioner, in proposing the amendments contained in 7 MCAR §§ 1.536 D.1. to 3. has gone beyond what is required. He has responded to the call of a few concerned members of the public to try to amplify the factors contained in Minn. Stat. § 214.001, subd. 2. However, by adding proposed rule 7 MCAR § 1.536 D.4., the Commissioner is making plain that it will not limit his inquiry into the question of the possible regulation nor will he limit the groups requesting regulation to the types of concerns and evidence he can identify today as fitting within the factors specified in section 214.001. If additional relevant items of concern which fall within the section 214.001 factors can be identified during the review of an applicant group's questionnaire, those items will be fully explored. To proceed in any other way would be antithetical to the legislative directive that the Commissioner "...promote the recognition of human services occupations useful in the effective delivery of human services" (Minn. Stat. § 214.13, subd. 1) while at the same time exercising care "... to prevent the proliferation of unessential registered human service occupations" (Minn. Stat. § 214.13, subd. 5). Such determinations could not be reasonably made without permitting the presentation and development of all relevant information and issues. All interested parties would be protected from the undisclosed use of considerations as a basis for decision-making by the requirement that any such element would have to be identified during the course of reviewing the questionnaire and specifically addressed in the Commissioner's written decision required by 7 MCAR § 1.538 B.6.

Proposed rule 7 MCAR § 1.536 D.4. clearly meets the standard expressed by the Minnesota Supreme Court in the City of New Brighton case discussed above that, when legislative decisions are to be made by an administrative agency, the court will look more to the process to determine whether it allowed for reasonable presentation of the relevant factors. This amendment meets that purpose, satisfies the concerns of the Supreme Court, and is reasonable.

6. Proposed Amendment to 7 MCAR § 1.538 B.5. The first sentence in the rule has a grammatical error in it. The plural word "them" refers to the singular word "recommendation." This error will be corrected by changing "them" to "it."

Date: October 25, 1979.

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

George R. Petersen M.D.

GEORGE R. PETTERSEN, M.D.
Commissioner

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

In the Matter of Proposed Amendments to 7 MCAR §§ 1.536 to 1.540, the Rules Governing the Procedures for Determining Regulation of Human Services Occupations

AFFIDAVIT OF MAILING

Larry Woods, being first duly sworn, deposes and says:

That on the 25th day of October, 1979, at the City of Minneapolis, County of Hennepin, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses contained on a list provided by the Secretary of State attached and made a part hereof as Exhibit A, to all persons and associations at the addresses listed on Exhibit B, attached and made a part hereof, as well as to all members of the Minnesota Legislature as of the date of mailing.

Larry Woods

Larry Woods

Subscribed and sworn to before
me this 26 day of October, 1979.

Madeline Harris

MADELINE HARRIS
NOTARY PUBLIC - MINNESOTA
CHISAGO COUNTY
My Commission Expires Sep. 17, 1985

Exhibit A

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to 7 MCAR §§ 1.536 to 1.540, the Rules Governing the Procedures for Determining Regulation of Human Services Occupations

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Larry Woods, being first duly sworn upon oath, deposes and says:

1. That he is an employee of the Minnesota Commissioner of Health.

2. That on the 19 day of October, 1979, he called the Minnesota Secretary of State's office 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 or amendments thereto pursuant to Minn. Stat. § 15.0412, subd. 4 (1978).

3. That on the 22 day of October, 1979, in response to the above request, the Secretary of State provided him with such a list, a photocopy of which is attached hereto and incorporated by reference.

FURTHER AFFIANT SAYETH NOT.

Larry Woods

Larry Woods

Subscribed and sworn to before me
this 26 day of October, 1979.

Madeline Harris

MADELINE HARRIS
NOTARY PUBLIC - MINNESOTA
CHIS. CO. COUNTY
My Commission Expires Sep. 17, 1985

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CITY OF APPLE VALLEY
14200 CEDAR AVE SO
APPLE VALLEY MN
55124

CITY OF BLAINE
9150 CENTRAL AVE NE
BLAINE MN
55434

CITY OF BRAINERD
CITY HALL
BRAINERD MN
56401

CITY OF BRECKENRIDGE
CITY HALL
BRECKENRIDGE MN
56520

CITY OF BROOKLYN CENTER
6301 SHINGLE CREEK PKWY
BROOKLYN CTR MN
55430

CITY OF BROOKLYN PARK
5800 85TH AVE NO
BROOKLYN PARK MN
55443

CITY OF BURNSVILLE
1313 E HWY 13
BURNSVILLE MN
55337

CITY OF CAMBRIDGE
139 E FIRST AVE
CAMBRIDGE MN
55008

CITY OF CHAMPLIN
12001 HWY 52
CHAMPLIN MN
55316

CITY OF CHANHASSEN
7610 LAREDO
CHANHASSEN MN
55317

CITY OF CHASKA
205 E 4TH ST
CHASKA MN
55318

CITY OF COTTAGE GROVE
7516 80TH ST SO
COTTAGE GROVE MN
55016

CITY OF CRYSTAL
4141 DOUGLAS DRIVE NO
CRYSTAL MN
55422

CITY OF DETROIT LAKES
106 E HOLMES ST
DETROIT LAKES MN
56501

CITY OF DULUTH
CITY HALL
DULUTH MN
55802

CITY OF EAGAN
3795 PILOT KNOB ROAD
EAGAN MN
55122

CITY OF EAST BETHEL
2751 VIKING BLVD NE
WYOMING MN
55092

CITY OF E GRAND FORKS
P O BOX 453
E GRAND FORKS MN
46721

CITY OF EDEN PRAIRIE
8950 EDEN PRAIRIE RD
EDEN PRAIRIE MN
55343

CITY OF EDINA
4801 W 50TH ST
EDINA MN
55424

CITY OF GOLDEN VALLEY
7800 GOLDEN VALLEY RD
GOLDEN VALLEY MN
55427

CITY OF HASTINGS
100 SIBLEY ST
HASTINGS MN
55033

CITY OF MAPLEWOOD
1380 FROST AVE
MAPLEWOOD MN
55109

CITY OF MINNEPOLIS
3801 66TH AVE NO
BROOKLYN CTR MN
55429

CITY OF MINNETONKA
74600 MINNETONKA BLVD
MINNETONKA MN
55343

CITY OF MORRIS
CITY HALL
MORRIS MN
56244

CITY OF MOUNDSVIEW
2401 HWY 10
ST PAUL MN
55113

CITY OF NEW HOPE
4401 XYLON AVE NO
NEW HOPE MN
55428

CITY OF ORONO
PO BOX 66
CRYSTAL BAY MN
55323

CITY OF ROCHESTER
1421 3RD AVE SE
ROCHESTER MN
55901

CITY OF ROSEMOUNT
BOX 455
ROSEMOUNT MN
55068

CITY OF ROSEVILLE
2701 NO LEXINGTON AVE
ROSEVILLE MN
55113

CITY OF ST CLOUD
CITY HALL
ST CLOUD MN
56301

CITY OF ST LOUIS PARK
5005 MINNETONKA BLVD
ST LOUIS PARK MN
55416

CITY OF ST PAUL
445 CITY HALL
ST PAUL MN
55102

CITY OF SHAKOPEE
129 E 1ST AVE
SHAKOPEE MN
55379

CITY OF SHOREVIEW
4665 NO VICTORIA ST
SHOREVIEW MN
55112

CITY OF WAYZATA
600 RICE STREET
WAYZATA MN
55391

CITY OF WHITE BEAR LAKE
250 MILLER AVE
WHITE BEAR LK MN
55110

CLARKSON J.B.
2350 I.D.S. CENTER
MINNEAPOLIS MN
55402

CLAUSEN PHILLIP
2307 STANDISH ST
ST PAUL MN
55108

COHEN LAWRENCE
1291 1 APPLETREE SOU
MPLS MN
55420

CONCORDIA COLLEGE
DEAN
MOORHEAD MN
56560

CONSUMER SERVICES DEPT COMM
5TH FLR METRO SQ BLDG
ST PAUL MN
55101

COUNTY ATTYS COUNCIL
40 NO MILTON ST STE 106
ST PAUL MN
55104

DAILEY THOMAS ECONOMICS LAB
370 WABASHA ST
ST PAUL MN
55102

DAKOTA CO MENTAL HEALTH CTR
744 19THAVE NO
SO ST PAUL MN
55075

DANIELSON RODNEY L.
411 MAIN ST. SU 210
ST. PAUL, MN
55102

DAWSON JEAN MN GOV'T REPORT
ROOM 812 CAPITOL
ST PAUL MN
55155

DAYTON, HERMAN, ET AL
80C MIDLAND BANK BLDG.
MPLS., MN
55401

DEVELOP DISABILITIES PROG
STATE PLAN 200 CAP SQ.
ST. PAUL, MN
55155

DICKSON GARY L
4665 NO VICTORIA ST
SHOREVIEW MN
55112

DUPONT MIKE
5720 EXCELSIOR BLVD
MPLS MN
55416

DZUGAN KEN ST.PAUL PLANNING
25 W. 4TH. ST.
ST PAUL, MN
55102

E CENTRAL REG. DEV. COMM
COURTHOUSE 18 N VINE ST
MORA MN
55051

EBELING EDWARD H.
161 W. MAIN
PERHAM MN
56573

ECKLUND WM EELLHABER-LARSON
W 1080 1ST NATL BANK
ST PAUL MN
55101

EDINA HEALTH DEPT
4801 W 50TH ST
EDINA MN
55424

ELMER EDWIN W
2901 PLEASANT AVE
MPLS MN
55408

ENDERSON WILLIAM
3644 NICOLLET AVE
MINNEAPOLIS MN

ENNIS A F BOISE CASCADE
PO BOX 713
INTL FALLS MN

ERNEST K LEHMANN & ASSOC.
1409 WILLOW ST.
MPLS MN

FELHABER R S
W 1ST NATL BANK BLDG
ST PAUL MN
55101

FITZGERALD DR BOB
3007 LYNDALE AVE SO
MPLS MN
55408

FITZPATRICK LEO
8138 HENSLOWE AVE S
COTTAGE GROVE MN
55016

FORBES GORDON MINN RRS AS
203 HANOVER 480 CEDAR
ST PAUL MN
55101

FORSBERG AGR SERV
518 SUMMIT AVE
NEW ULM MN
56073

FOX W.E. LINDQUIST & VENNUM
4200 IDSCTR 80 S.8TH ST
MINNEAPOLIS MN
55402

FREDIN CONRAD M
811 FIRST NATL BK BLDG
DULUTH MN
55802

FRIESEN MILLER A
RAHR BD 624 13TH ST S
VIRIGINIA MN
55792

FRISON FRANK NECA
RM 305 200 SO ROBERT
ST PAUL MN
55107

GEBERT KENNETH L
300 PUBLIC HEALTH CTR
MPLS MN
55415

GEO A HORMEL & CO LAW DEPT
PO BOX 800
AUSTIN MN
55912

GODIN RALPH J
3824 47TH AVE SO
MPLS MN
55406

GOLDBERG PROF MELVIN
WM MITCHELL COL OF LAW
ST PAUL MN
55105

GRAHAM THOS H.
900 MIDLAND BK. BLDG.
MPLS., MN
55401

GREATER MET AREA HOSPITALITY
5152 CEDAR AVE S
MPLS MN
55417

GREEN GARY J
41 SHERBURNE AVE
ST PAUL MN
55102

GRUMMERT REV DONALD
1435 ADAMS ST
MPLS MN
55413

H B FULLER CO
2400 KASOTA AVE
ST PAUL MN
55108

HAIK RAYMOND A
4344 IDS CENTER
MPLS MN
55402

HALVERSON SUE R
720 AMERICAN CENTER BLD
ST PAUL MN
55101

HARRY, RICK
1000 LAKESHORE DR.
MOOSE LAKE, MN
55767

HARTFELDT WILL
2850 METRO DRIVE STE8CO
BLOOMINGTON MN
55420

HAUN DR J W GEN MILLS
PO BOX 1113
MPLS MN
55440

HAYES, THOMAS W
700 SELLWOOD BLG
DULUTH MN
55812

HAVEN ROBT TWIN TN TREATM
1706 UNIV AVE
ST PAUL MN
55104

HEAD & TRUHN
1007 SOO LINE BLDG
MPLS MN
55402

HEADWATERS REG DEV. COMM
BOX 584 MENTAL HEALTH
BEMIDJI MN
56601

HEALTH CENTRAL
2810 57TH. AVE. NO.
MINNEAPOLIS, MN
55430

HEALTH MANPOWER C LARSON
717 DELAWARE ST SE
MPLS MN
55440

HEANEY BILL
30 W SUPERIOR ST
DULUTH MN
55802

HEARING EX.OFF. M GREENBERG
1745 UNIV AVE
ST PAUL MN
55104

HEIM, PAUL M.
5501 NORMAN CENTER DR.
MPLS., MN
55437

HELTZER JAMES DAYTON HUDS
777 NICOLLET MALL
MPLS MN
55402

HINIKER JAMES COMM OF ADMIN
200 ADMIN BLDG
ST PAUL MN

HOGLUND RICHARD C
BOX 755
WILLMAR MN
56201

HOLEY GEORGE
1509 SW SIXTH STREET
FARIBAULT MN
55021

HOLMES EUSTIS ET AL
4610 IDS CENTER
MPLS MN
55402

HORNER WALDORF - KAZIUKEWICZ
PO BOX 3260
ST PAUL MN

HULSTRAND ANDERSON & LARSON
PO BOX 130
WILLMAR MN

HUTCHISON R.M. ANOKA CO.COMP
COURT HOUSE
ANOKA MN

IVERSON DR JUS DEPT ED
ST OLAF COLLEGE
NORTHFIELD MN
55057

IZAAK WALTON LEAGUE OF AM
111 E FRANKLIN SU 201
MPLS MN
55404

JAIN NIRMAL ENIV PROCESS
1220 GLENWOOD AVE
MPLS MN
55405

JENOS INC
525 LAKE AVE SO
DULUTH MN
55801

JENSEN MRS GAYNOLD
111 WEST 107TH ST
MPLS MN
55420

JOHANSEN BUS SERV INC.
11911 HWY. 52
CHAMPLIN, MN
55316

JOHNSON & SANDERSON
ST MARYS HOSPITAL
ROCHESTER MN
55901

JOHNSON CLARENCE IBEW LU 292
3615 37TH AVE S
MPLS MN
55406

JOHNSON G ROBERT
4344 IDS CENTER
MPLS MN
55402

JOHNSON KEL MACI
HANOVER BLDG
ST PAUL MN
55101

JOHNSON LEROY
1207 98TH LANE NW
COON RAPIDS MN
55433

JOHNSON M.D. FRUNDT & FRUNDT

BLUE EARTH MN
56013

JOHNSON LANCE J
265 S LAFAYETTE RD
ST PAUL MN
55107

KAVANEY RICHARD
1220 NORTHERN FED BLDG
ST PAUL MN
55102

KEENAN RICHARD J
4444 IDS BLDG
MPLS MN
55402

KELLY BARBARA SOLID WASTE
4001 PEBBLEBROOK DR
BLOOMINGTON MN
55437

KJERVIK DIANE
4302 POWEL HALL U OF M
MPLS MN

KNOPP TIMOTHY
COLLEGE FORESTRY U OF M
ST PAUL MN
55108

KNUTSON R N GRANNIS ETAL
F J SCHULT BLDG
ST ST PAUL MN
55075

KRAMER ERNEST W
617 DELAWARE ST SE
MPLS MN
55440

KRONLOKKEN J E
10048 NORD RD
BLOOMINGTON MN
55437

LAKE SUPERIOR INDUSTRIAL BUR
828 FIRST AM. BK. BLDG.
DULUTH MN
55802

LANGEVIN, DAVID P.
8748 IDEN AVE. SO.
COTTAGE GROVE MN
55016

LEAGUE WOMEN VOTERS OF MINN
555 WABASHA
ST PAUL MN
55102

LEG.REF.LIB-Z. DEWITT
RM 111 STATE CAPITOL
ST PAUL MN
55155

LEG REPORT SERV-P STURDEVANT
PO BOX 3259
ANNAPOLIS MD
2140

LEWIS DR.G.M JR.
ABBOTT 110 E 18TH ST
MPLS MN
55403

LOCH DAVID REG 5 REG DEV CO6
11 IOWA AVE
STAPLES MN
56479

LOEFFLER DOROTHY MRS
U OF M 101 EDDY HALL
MPLS MN
55455

LUTH SOC SERVICE OF MN
2414 PARK AVE
MPLS MN
55404

MAHCF RICK CARTER
2850 METRO DR SUITE 431
BLOOMINGTON MN
55420

MALECKI JAMES
1 SO STATE ST
NEW ULM MN
56073

MANKATO STAT STUDENT SENATE
CENTENNIAL STUDENT UN
MANKATO MN
56001

MANTHEY T J PICKANDS MATHER
1100 SUPERIOR AVE
CLEVELAND OH
44114

MARLATT RALPH J
1320 SOO LINE BLDG
MPLS MN
55402

MARQUARDT PHILIP
RTE 2 BOX 209
JANESVILLE MN
56048

MASTOR & BALE, LTD.
315 PEAVEY BLDG.
MPLS. MN
55402

MAUL WARREN E.
605 4TH. AVE. SO.
MPLS., MN
55415

MCDONALD PHILIP M
2077 SELBY AVE
ST PAUL MN

MIDLAND GLASS-BARTO R.J.
P.O. BOX 69
SHAKOPEE, MN
55379

MILLER PAUL J PHARMACY SERV
ST MARYS HOSP
ROCHESTER MN
55901

MILLER TOM
2311 PILLSBURY AVE S
MPLS MN
55404

MILLER THOMAS F
1628 IDS CENTER
MPLS MN
55402

MINN ASPHALT PAVEMENT ASSN
555 WABASHA RM 209
ST PAUL MN
55102

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

MINN ASSN VOL SOC SERVICE
1821 UNIV SUITE 389
ST PAUL MN
55114

MINN CHAP ASSOC BLDRS-CON
7204 W 27TH ST
MPLS MN
55426

MINN DEPT HEALTH J C MCKASY
717 DELAWARE S E
MPLS MN
55440

MINN GOV ENG COUNCIL
2400 SHERWOOD HILL RD
MINNETONKA MN
55343

MINN HOSPITAL ASSN
2333 UNIV AVE SE
MPLS MN
55414

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

MINN.MTR.TRANSP. .J.N.DENN
1821 UNIV.
ST.PAUL MN
55104

MINN NEWSPAPER ASSN
84 S 6TH ST STE 400
MPLS MN
55402

MINN PCA WATER QUALITY
1935 W CO RD B 2
ROSEVILLE MN
55113

MINN PETROLEUM COUNCIL
1020 NORTHERN FED BLDG
ST PAUL MN
55102

MINN POLLUTION CONTROL AGCY
1935 W CO RD B2
ROSEVILLE MN
55113

MINN RETAIL FEDERATION
180 METRO SQUARE BLDG
ST PAUL MN
55101

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BLVD 313
MPLS MN
55416

MINN RURAL ELECTRIC ASSN
4901 W 77TH ST
MPLS MN
55435

MINN. SERV. STA. ASSN.
1115 2ND. AVE. SO.
MPLS., MN
55403

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN
55402

MINN STATE BD PHARMACY
717 DELAWARE ST SE #351
MPLS MN
55414

MINN STATE MEDICAL ASSOC
STE 900 AM NATL BK BLDG
STPAUL MN
55101

MINN TEAMSTERS CREDIT UNION
2021 HENN AVE E
MPLS MN
55413

MINN. TBR. PRODUCERS ASSN.
333 W. SUPERIOR ST.
DULUTH, MN
55802

MINN.TURKEY GROWERS ASSN
2383 UNIV AVE
ST PAUL MN
55114

MINN WATER RESOURCES BD
RM 206 555 WABASHA ST
ST PAUL MN
55102

MINN-WISC BOUNDARY AREA COMM
600 2ND ST
HUDSON WI
54016

MINNESOTA AFL-CIO
175 AURORA AVE
ST PAUL MN
55103

MIXA FRANK LK MNTKA CONS DIS
402 E LAKE ST
WAYZATA MN
55391

MN AUTOMOBILE DEALERS ASS
277 UNIV AVE
ST PAUL MN
55103

MN.BD OF NURSING
717 DELAWARE ST SE
MPLS MN
55414

MN ELECTRICAL ASSN
3100 HUMBOLT SO
MPLS MN
55408

MN PUB INT RESEARCH GROUP
3036 UNIV AVE SE
MPLS MN
55414

MN REP STATE CENTRAL COMM
555 WABASHA AVE
ST PAUL MN
55102

MN SOC SERV ASS J HOOD
614 PORTLAND
ST PAUL MN
55102

MN ST COUNCIL FOR HANDICAPP
METRO SQ 7TH & ROBERT
ST PAUL MN
55101

MN ST PHARMACEUTICAL ASSN
2469 UNIVERSITY AVE
ST PAUL MN
55114

MOFFITT R C
RM 301 M MPLS CITYHALL
MPLS MN
55415

MOSS DR JEROME
125 PEIK 159 PILLSBURY
MPLS MN
55455

MOSTCA
PO BOX J
PERHAM MN

MOTOR VEHICLE MFRS ASSN
411 MAIN ST (215)
ST PAUL MN

MPLS ASSN RETARDED CITIZE
2344 NICOLLET AVE. SO.
MPLS.. MN

NATL FAMILY INS CO
2147 UNIV AVE
ST PAUL MN
55114

NCEC INC C/O DR DAHLBERG
CONCORDIA COLLEGE
MOORHEAD MN
56560

NELSON HOWARD I

LINDSROM MN
55045

NEMDA
706 ALWORTH BLDG
DULUTH MN
55802

NOZISKA HOWARD
7851 METRO PKWY S 103
MPLS MN
55420

NURSING HOME ADMRS BD EXAMRS
RM 340 717 DELAWARE SE
MPLS MN
55414

NURSING HOME RES ADV CO.
111 E FRANKLIN S210
MPLS MN
55404

NW BELL TEL CO LEGAL DEPT
224 S 5TH ST RM 2000
MPLS MN
55402

NW COUNTRY ELEVATOR ASSN
P.O.BOX.15004COMM.STAT
MPLS., MN
55415

NW REG. DEV. COMM
425 WOODLAND AVE
CROOKSTON MN
56716

O'BRIEN J.DENNIS
1100 1ST NATL.BANK BLDG
MINNEAPOLIS MN
55402

O'CONNELL RAY
MN GAS CO 733 MARQ AVE
MPLS MN
55402

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
ST PAUL MN
55101

OLOFSON ARTHUR MBO & MAINC
927 SOO LINE BLDG
MPLS MN
55402

OTTER TAIL POWER CO.
215 S. CASCADE ST.
FERGUS FALLS MN
56537

PAYNE COL ALVIN

DEGRAFF MN
56233

PETERSON DOUG AM RED CROSS
11 DELL PLACE
MPLS MN
55403

PETERSON, H. COMM LABOR&I
444 LAFAYETTE RD.5TH FL
ST. PAUL, MN
55101

PHAR MFGRS ASSN GROSSMAN S.
1155 15TH. ST. N.W.
WASHINGTON, DC
20005

PHILLIPS LEGISLATIVE SERVICE
459 RICE ST
ST PAUL MN
55103

PIDGEON, JOHN G. CITY MGR.
BLOOMINGTON CITY HALL
BLOOMINGTON, MN
55431

PINNETTI NICK M HALEY & A
40 CENTRAL PARK S
NEW YORK NY
10019

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

PORTER DAVID
3002 27 AVE S
MPLS MN
55406

POYZER ROBT
BOX 675
FERGUS FALLS MN
56357

PRAUSE J.C.
1313 COON RAPIDS BLVD.
COON RAPIDS, MN
55433

PRICE WALT C REISS COAL CO
1011 SO 8TH ST
SHEBOYGAN WI
53081

RADMAN RICHARD-LABOR TEMP
411 MAIN STREET
ST. PAUL, MN
55102

RALPH BURKE ASSOCIATES
5200 W 73RD ST
MPLS MN
55435

RAMSEY CO MEDICAL SOC
908 AM NATL BK BLDG
ST PAUL MN
55101

RAUENHORSTCORP-RONALD G KIRK
7900 XERXES S S-2200
MPLS MN
55431

REAGAN MICHAEL
% MINN LEARNING CTR
BRAINERD MN
56401

REARDON MRS HELEN
1125 S E 6TH ST
WILLMAR MN
56201

RED OWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

REGION NINE DEV. COMM.
120 S. BROAD ST.
MANKATO, MN
56001

RENNER R.H. ST PAUL AREA
300 OSBORN BLDG.
ST PAUL MN
55102

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

RIEKE, DAVID
SCORPION IND. INC.
CROSBY, MN
56441

RITTER, JERRY
1011 NICOLLET MALL
MPLS., MN
55403

ROSENTHAL ABE MN TRANS SE
SUITE 310 N 1821 UNIV
ST PAUL MN
55104

SANFORD S M
7000 PORTLAND AVE
RICHFIELD MN
55423

SAX DOVE & STENSON
310 ENDICOTT BLDG
ST PAUL MN
55101

SCARBOROUGH WILLIAM
DIV.ED. U.M.
MORRIS MN
56267

SCHMIDT WARREN WELLCOME M
GARDEN CITY
MN
56034

SCHNEIDER MAHLON
GREEN GIANT
LESUEUR MN
56058

SCHUTZ LINDA
RM 328 CAPITOL BLDG
ST PAUL MN
55155

SCHWINN, ROBT. P.
1830 SOO LINE BLDG.
MPLS., MN
55402

SE MN REG DEV COMM
301 MARQ BK BLDG
ROCHESTER MN
55901

SHABATURA EUGENE H
2833 LAKE AVE. SO.
DULUTH, MN
55802

SHEEHY LEE E
625 ADMIN BLDG
ST PAUL MN
55155

SIX EAST REG. DEV. COMM.
311 W 6TH ST
WILLMAR MN
56201

SMITH BOB III
PIONEER BLDG
ST PAUL MN
55101

SNYDER, R.W. U OF M
RM 248C CLASS OFF BLDG.
ST PAUL MN
55108

SODERBERG HAROLD J
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

SOUTHWEST REGIONAL DEV COMM
25TH & BROADWAY
SLAYTON MN
56172

SPRAGUE CHARLOTTE B
AREA HOSPITAL BOX 339
WINDOM MN
56101

ST. PAUL FOOD RETAILERS ASSN
555 WABASHA ST. STE.204
ST. PAUL, MN
55102

STATE & FEDERAL AGENCIES
1101-15TH NW
WASHINGTON DC
20005

STD AM LIFE & ANNUITY CO
3801 W 50TH ST
MPLS MN
55410

STEELWORKERS CREDIT UNION
BOX 250
BABBITT MN
55706

STONE JOHN F MOSS FLAHERTY
2350 IDS CENTER
MPLS MN
55402

SULLIVAN J KIRK
P.O. BOX 50
BOISE, IDAHO
83728

SULLIVAN JEANETTE
CDIC SW STATE UNIV
MARSHALL MN
56258

SWANSON DALE
1068 SO LAKE ST
FOREST LAKE MN
55025

TATE VERN 3M CO
3M CENTER 220/6W
ST PAUL MN
55101

TENNESSEN SEN ROBERT J
RM 309 STATE CAPITOL
ST PAUL MN
55165

THORNTON, P.J.
107 SO. 15TH. AVE. W.
VIRGINIA, MN
55792

TOWNSHIP OF WHITE BEAR
1281 HAMMOND RD
WHITE BEAR LK MN
55110

UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

US DEPT OF AGRICULTURE
252 FEDERAL BLDG
ST PAUL MN
55101

VALLY CENTER DRUG
4827 W 124TH ST
SAVAGE MN
55378

VIITALA, W.C. HONEYWELL
HONEYWELL PLAZA
MPLS MN
55408

VOS LEROY
2137 BURNS AVE
ST PAUL MN
55119

WALTERS THOMAS MN MFG HOUSE
4530 W 77TH ST STE 227
MPLS MN
55435

WALZ SAM CO ADMINISTRATIO
ANOKA CTY COURTHOUSE
ANOKA MN
55303

WAMPLER LINUS DIR USW OF AM
609 PROVIDENCE BLDG
DULUTH MN

WASHINGTON COUNTY
14900 61ST ST NO
STILLWATER MN

WATERS, DONNA M.
110506 WINDMILL COURT
CHASKA MN

WELK G V NORTHERN STATES
414 NICOLLET MALL
MPLS MN

CITY OF HUTCHINSON
37 WASHINGTON AVE WEST
HUTCHINSON MN
55350

CITY OF JORDAN FRANK HOUSER2
10 E 1ST
JORDAN MN
55352

CITY OF LAKE INDEPENDENCE
RT 1 BOX 123A
MAPLE PLAIN MN
55359

CITY OF MAPLE GROVE
9401 FERNBROOK LANE
MAPLE GROVE MN

ENDERSON WILLIAM
3644 NICOLLET AVE
MINNEAPOLIS MN
55409

ENNIS A F BOISE CASCADE
PO BOX 713
INTL FALLS MN
56649

ERNEST K LEHMANN & ASSOC.
1409 WILLOW ST.
MPLS MN
55403

FARMERS ELEVATOR ASSN
852 GRAIN EXCH BLDG
MPLS MN
55415

FARRELL FRANK BUR NOR
RM 1180 176 E 5TH ST
ST PAUL MN
55101

FARSETH PAUL FOOD STAMPS PRO
WELFARE DEPT 690 N ROBT
ST PAUL MN

FED-ST REPORTS INC.
5203 LEESBURGPIKE S1201
FALLS CHURCH, VA
22041

IMS PAUL

ECHO MN

INGRAM ALAN NASW MN CH
22 NO DALE ST
ST PAUL MN

INGVALSON VERN MN.FARM BU
1976 WOODDALE BOX 43370
ST PAUL MN
55164

INTERSTATE POWER RW STEEL
1000 MAIN ST
DUBUQUE IA
52001

MALECKI JAMES
1 SO STATE ST
NEW ULM MN
56073

MANKATO STAT STUDENT SENATE
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MANKATO MN
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1100 SUPERIOR AVE
CLEVELAND OH
44114

MARLATT RALPH J
1320 SOO LINE BLDG
MPLS MN
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MARQUARDT PHILIP
RTE 2 BOX 209
JANESVILLE MN
56048

MASTOR & BALE, LTD.
315 PEAVEY BLDG.
MPLS. MN
55402

MAUL WARREN E.
605 4TH. AVE. SO.
MPLS., MN
55415

MCDONALD PHILIP M
2077 SELBY AVE
ST PAUL MN
55104

MCNEILLY GREG MNDSVIEW ED AS
41 SHERBURNE AVE
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55103

MET. WASTE CONTOL COMM.
350 METRO SQ BLG
ST PAUL MN
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300 METRO SQUARE
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BLOOMINGTON MN
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MPLS MN
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MT OLIVET ROLLING ACRES
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EXCELSIOR MN
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ST. PAUL, MN
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875 SUMMIT AVE.
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orty Club, Aitkin 56431

ox, Howard, 244 Dayton Avenue, St. Paul 55102 (Cemeteries Only)

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etro Community Health Consortium, 1729 Nicollet Ave, Mpls 55403

pls & Hennepin County Mental Health Clinic, 619 S 5th St, Mpls 55415

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DIV.OF ENVIRONMENTAL SANITATION

U.S. Soil Conservation Service, 517 Red Courts Bldg., St. Paul (Swimming Pools)

HOTELS, RESORTS, RESTAURANTS

U.S. Soil Conservation Service, 517 Red Courts Bldg., S l Paul (Trailer Parks,e

MINNESOTA PLUMBING CODE ONLY

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Exhibit B

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Bonstead, John, Dir. Southeast Minn. Health Systems Agency, 303 Marquette Bldg., 1903 S. Broadway. Rochester, MN 55901

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Church, Rodney, Dist. Rep., South Central Dist. Health Office, 75 Navaho Ave., Mankato, MN 56001

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STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to 7 MCAR §§ 1.536 to 1.540, the Rules Governing the Procedures for Determining Regulation of Human Services Occupations

ORDER FOR HEARING

To effectively implement Minn. Stat. §§ 214.001, 214.13 and 214.14 (1978), the Minnesota Commissioner of Health deems it necessary to consider adoption of the proposed amendments to 7 MCAR §§ 1.536 to 1.540 captioned above pursuant to the authority vested in him by the above-referenced statutes.

NOW, THEREFORE, IT IS ORDERED this 3 day of October, 1979, that a public hearing on the proposed rules captioned above be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on Friday, November 30, 1979, commencing at 9:30 a.m., and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of said hearing be published in the State Register and be given to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose and to all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

George R. Petersen M.D.

GEORGE R. PETTERSEN, M.D.
Commissioner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to 7 MCAR §§ 1.536 to 1.540, the Rules Governing the Procedures for Determining Regulation of Human Services Occupations

NOTICE OF HEARING

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on Friday, November 30, 1979, commencing at 9:30 a.m.

All interested or affected persons will have an opportunity to participate concerning the adoption of the proposed amendments to 7 MCAR §§ 1.536 to 1.540 captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to George Beck, Hearing Examiner, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8108, either before the hearing or within five (5) working days after the close of the hearing or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner at the hearing. All such statements will be entered into and become part of the record.

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearing shall be governed by the rules of the Office of Hearing Examiners, 9 MCAR § 2.101-2.112.

The statutory authority to promulgate these amendments is contained in Minn. Stat. §§ 15.0414, subd. 3, and 214.13, subd. 1 (1978). If adopted, the proposed amendments would define the term "human services occupations" as it is meant to be used within the rules. The amendments also clarify the factors cited in Minn. Stat. § 214.001, subd. 2 and referenced in Minn. Stat. § 214.13, which are to be considered when making decisions as to the necessity for and advisability of regulating persons engaged in human services occupations. Finally, several minor editorial changes are also proposed.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to Larry Woods, Minnesota Department of Health, Division of Manpower, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440. Additional copies will be available at the door on the date of the hearing.

NOTICE: The proposed amendments are subject to change as a result of the rule hearing process. The Commissioner therefore strongly urges those who are potentially affected in any manner by the substance of the proposed amendments to participate in the rule hearing process.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed amendments. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge. Additional copies will also be available in the hearing room on the day of the hearing.

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1978) as amended by Minn. Laws 1979, ch. 59 § 3, as any individual:

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

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

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

Promulgation of these proposed amendments will not result in the expenditure of public monies by local government units.

Dated: October 11, 1979.

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

s / George R. Pettersen, M.D.

GEORGE R. PETTERSEN, M.D.
Commissioner

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

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

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

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Promulgation of these proposed amendments will not result in the expenditure of public monies by local government units.

Dated: October 11, 1979.

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

Allen Z. Fifer M.D.

for GEORGE R. PETTERSEN, M.D.
Commissioner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to 7 MCAR §§ 1.536 to 1.540, the Rules Governing the Procedures for Determining Regulation of Human Services Occupations

STATEMENT OF NUMBER OF PERSONS EXPECTED TO ATTEND AND LENGTH OF HEARING

The number of persons expected to attend the hearing in the above-captioned matter is twenty.

It is estimated that the length of the hearing will be two hours.

Dated: October 3, 1979

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

George R. Petersen MD

GEORGE R. PETTERSEN, M.D.
Commissioner